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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
THE HONORABLE JEAN HOEFER TOAL

Appellate Case No. 2023-000145

Kenneth B. Loveless, ...Appellant,

v.

Lesley Ann Stiles a/k/a Leslie Lou Stiles, ...Respondent.

RECORD ON APPEAL
VOLUME I OF II

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INDEX

Volume I of II

Orders and Decisions

Order Granting Defendant's Motion to Compel filed December 21, 2022 3

Order Granting Motion for Judgment on the Pleadings filed December 22, 2022.....12

Order Denying Motion for Reconsideration filed January 10, 2023 23

Form 4 filed January 12, 2023 25

Order on Motion for Rule to Show Cause filed April 25, 2023 29

Pleadings

Summons and Complaint filed March 16, 2022 35

Answer and Counterclaim filed April 13, 2022.....45

Answer to Counterclaim, Motion to Dismiss and Motion to Bifurcate filed April 26, 2022.....55

Motion for Judgment on the Pleadings filed May 10, 2022 59

Motion for Rule to Show Cause as to Third Parties filed May 11, 2022.....61

Motion for Protective Order filed May 27, 2022.....98

Motion to Compel Discovery, Deem Matters admitted and Sanctions filed May 27, 2022.....124

Motion to Overrule filed June 27, 2022.....177

Motion to Quash filed July 14, 2022 208

Memorandum in Support of Motion to Intervene filed August 19, 2022.....236

Motion to Intervene filed August 19, 2022.....240

Objection to Motion to Intervene filed August 26, 2022.....241

Defendant's Omnibus Memorandum of Law pages 1-498 filed November 23, 2022.....242

Volume II of II

Defendant's Omnibus Memorandum of Law pages 499-603 filed November 23, 2022.499

Motion to Reconsider filed January 3, 2023.....604

Rule to Show Cause filed January 5, 2023 608

Notice of Hearing filed January 12, 2023 657

Memorandum of Law in Support of D. Motion for Rule to Show Cause filed January 23, 2023.....659

Notice of Appeal filed January 27, 2023 697

D. Status Report on Motion for Rule to Show Cause filed March 27, 2023 725

P. Response to D. Status Report on Motion for Rule to Show Cause filed April 17, 2023.....750

Transcripts

Transcript of Proceedings held December 2, 2022.....776

Other Documents

Plaintiff's 3rd Supplemental Interrogatory responses served May 3, 2023.....906

Letter from Kenney to the Honorable Jean Hoefer Toal regarding Order on the Rule to Show Cause filed May 8, 2023 920

Certificate of Counsel

ELECTRONICALLY FILED - 2022 Dec 21 10:26 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-01364 **ORDER GRANTING DEFENDANT'S MOTION TO COMPEL, DEEM MATTERS ADMITTED AND FOR SANCTIONS**

This matter is before the Court on Defendant Leslie Stiles'[1] motion to compel, deem matters admitted, and for sanctions against Plaintiff Kenneth B. Loveless. At issue are Plaintiff's responses and objections to 30 interrogatories, 25 document requests, and 18 requests to admit.

On December 2, 2022, the Court held a hearing on the motion at the Richland County Courthouse. Plaintiff was represented by Desa Ballard of Ballard & Watson, Attorneys at Law. Defendant was represented by Christopher P. Kenney of Richard A. Harpootlian, P.A. After reviewing Defendant's motion, Plaintiff's discovery responses, and hearing argument from the parties, the Court granted Defendant's motion, ordered Plaintiff to respond to the interrogatories and document requests within 10 days, deemed the requests to admit admitted, and retained jurisdiction to resolve any subsequent disputes related to Defendant's motion. This written Order memorializes the Court's oral Order on December 2, 2022, and the rationale for it.

[1] Stiles' answer and motion indicate she is misidentified in the caption as Lesley Ann Stiles a/k/a Leslie Lou Stiles.

ELECTRONICALLY FILED - 2022 Dec 21 10:26 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Factual Background and Procedural Background

This libel action was filed on March 16, 2022. At all times relevant to this action, Plaintiff was an elected member of the board of trustees for Lexington-Richland School District 5 (District 5). Defendant is the administrator of page called "Deep Dive Into D5" located on the social media website Facebook. Plaintiff's claim arises from statements made on the Facebook page that Plaintiff contends are "libel *per se*" and were "voluntarily published on the internet by [Defendant] and by others with her [Defendant's] consent, ratification, and endorsement" which Plaintiff alleges were intended by Defendant to be seen by the public "with specific knowledge they were false and/or with a reckless disregard for whether they were false or not." Compl. ¶ 5.

On April 13, 2022, Defendant filed and answer and counterclaim for abuse of legal process, which she served with the discovery at issue here.

On May 13, 2022, Plaintiff served responses and objections.

On May 27, 2022, Defendant moved to compel and asked the Court to deem matters admitted and sanction Plaintiff for responses she argued "failed to fairly respond to the substance, are replete with boilerplate and frivolous objections, and refuse to produce a single document." Def.'s MTC, 1–2. While Defendant's motion offered examples of responses that she argued were illustrative of "bad-faith litigation conduct by the person who chose to file this lawsuit," her motion challenges *all* of Plaintiff's objections and responses to her interrogatories, document requests, and requests to admit and asks the Court to (1) deem all objections and claims of privileged improperly stated and waived, (2) require Plaintiff to submit specific, verified written interrogatory responses, (3) require the production of all requested documents, (4) deem all requests to admit as admitted, (5) sanction Plaintiff for frivolous objections, and (6) award Defendant attorney's fees and costs.

ELECTRONICALLY FILED - 2022 Dec 21 10:26 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

The Court reviewed Defendant's motion, Plaintiff's discovery responses and objections, Defendant's memorandum of law, and the relevant rules and case law. The Court also considered the argument of the parties during the December 2, 2022, hearing.

Legal Standard

A trial court's exercise of discretion in resolving discovery disputes will not be disturbed so long as it is not based on an error of law or factual conclusions that lack evidentiary support. *Arthur v. Sexton Dental Clinic*, 368 S.C. 326, 333, 628 S.E.2d 894, 898 (Ct. App. 2006).

Discussion

Having reviewed Plaintiff's discovery objections and responses, the Court believes they reflect a lack of seriousness and are an intentional departure from the discovery rules that warrants much of the relief sought by Defendant. A litigant may not bring a defamation claim like the allegations Plaintiff made here and then refuse to answer questions and disclose documents to the opposing party. Nevertheless, more than six months after Defendant served discovery, Plaintiff is yet to offer substantive responses or produce any documents. This is not acceptable under the discovery rules. The relief ordered by the Court during the motions' hearing and memorialized here is required for at least three reasons.

First, the proper scope of discovery in this case is broad. The South Carolina Rules of Civil Procedure authorize discovery on "any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party[.]" Rule 26(b)(1), SCRCP. "Any matter" includes information concerning the existence of other discoverable information without concern for whether it will be admissible at trial. *Id*. Thus, it has long been the law in South Carolina that and "an objection on relevance grounds is likely to limit only the most excessive discovery

request" and relevance is broadly construed to that end. *See Samples v. Mitchell*, 329 S.C. 105, 110, 495 S.E.2d 213, 215–16 (Ct. App. 1997) (quoting J. Flanagan, South Carolina Civil Procedure 216 (2d ed.1996)).

The Court has reviewed Defendant's discovery requests and has not identified any item that would fall outside the very broad scope of what our courts deem "relevant" under Rule 26. The claims and defenses joined here—including the defense of truth—necessarily require broad investigation into the facts underlying the disputed statements. Defendant is also entitled to learn what impact, if any, those statements have had on Plaintiff's reputation in the community because "the focus of defamation is not on the hurt to the defamed party's feelings, but on the injury to his reputation." *See Holtzscheiter v. Thomson Newspapers, Inc. (Holtzscheiter II)*, 332 S.C. 502, 517, 506 S.E.2d 497, 505 (1998) (Toal, J., concurring). Further, Defendant is entitled to discovery on her counterclaim for abuse of legal process, which requires her to prove an improper, ulterior purpose (usually coercion to obtain collateral advantage not involved in the proceeding) and an overt act to that end. *See Pallares v. Seinar*, 407 S.C. 359, 370–71, 756 S.E.2d 128, 133–34 (2014). These observations are not as an exhaustive list of what Rule 26 might allow in this case, but merely illustrate the broad scope in an action with the type of claims joined by the parties.

Plaintiff's principal effort to resist this conclusion was his counsel's argument that much of the discovery sought was not relevant because Plaintiff brought this suit in his "private" capacity, not as a member of the school board. The Court rejects this argument. Based on the Court's review of the Complaint, the disputed statements were made about Plaintiff's performance as a member of the school board. The Facebook page where those statements were purportedly made is called "Deep Dive Into D5"—i.e., it is a forum to discuss the school district where Plaintiff was an elected member of the board. Further, as an elected official during the relevant period, the

ELECTRONICALLY FILED - 2022 Dec 21 10:26 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Dec 21 10:26 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Court finds Plaintiff is a public-official plaintiff within the meaning of *N.Y. Times v. Sullivan*, 376 U.S. 254 (1964), and progeny. *See also Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 208, 838 S.E.2d 698, 718 (Ct. App. 2019) (a public official is someone who's position "would invite public scrutiny and discussion of the person holding it"). The Court is unaware of any precedent that allows a public official to bring a defamation action in his "private" capacity or to use that distinction as a basis to limit the scope of discovery.

Second, if Plaintiff had legitimate concerns about Defendant's discovery requests, he has failed to raise those concerns in the manner that the discovery rules require. When an interrogatory is objected to, the reason must be stated in lieu of an answer, and it is not objectionable merely because an answer involves an opinion or contention that relates to fact or the application of law to fact. Rule 33(a), (d), SCRCP. Similarly, objections to document requests require a specific reason for any objection. Rule 34(b), SCRCP. Likewise with requests to admit; they must be admitted or denied with a denial that fairly meets the substance and is limited to the matter disputed. Rule 36(a), SCRCP. Objections based on privilege must expressly make the claim and describe the nature of the information withheld in a manner that will allow the requesting party to assess the applicability of the privilege or protection. Rule 26(b)(5)(A), SCRCP. Defendant construes these rules to require the responding party to "fairly apprise the requesting party of the information being withheld and the basis for the withholding." Def.'s MTC, 1. The Court agrees.

When discovery threatens a party with annoyance, embarrassment, oppression, or undue burden, a court can grant protection upon good cause shown. Rule 26(c), SCRCP. Applying this rule entails burden shifting followed by balancing. First, the resisting party must show a particularized harm, then the requesting party must respond with a showing of relevance and necessity. *See Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009). If both sides

ELECTRONICALLY FILED - 2022 Dec 21 10:26 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

meet their burden, then the court must balance the particularized harm against the need for the discovery. *Id.* However, before such a dispute finds its way before a court, Rules 26, 33, 34, and 36 require the exchange of information in a manner designed to *narrow* the items reasonably in dispute by making specific requests and specific objections. Plaintiff has not done that here.

When non-specific, unsupported objections are made, it unnecessarily burdens litigants and the court with discovery matters that should either be worked out between the parties or worked out to the greatest extent possible leaving the court to handle truly difficult questions over which reasonable minds might disagree. Interposing formulaic objections followed by an answer "preserves nothing and serves only to waste the time and resources of both the parties and the court" while "leaving the requesting party uncertain as to whether the question has actually been fully answered[.]" *Curtis v. Time Warner Ent.-Advance/Newhouse P'ship*, No. 3:12-CV-2370-JFA, 2013 WL 2099496, at *3 (D.S.C. May 14, 2013) (Anderson, J.) (ordering litigant to submit all new discovery responses). Accordingly, "[b]oilerplate, general objections standing alone waive any actual, specific objections." *State Farm Fire & Cas. Co. v. Admiral Ins. Co.*, 225 F. Supp. 3d 474, 485 (D.S.C. 2016) (Gergel, J.) (citing *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 358–59, 364 (D. Md. 2008), and deeming litigant's objection waived).

Here, the Court concludes that Plaintiff's objections are the sort of non-specific, boilerplate that the discovery rules do not permit. The examples highlighted by Defendant's motion (MTC, 2) are instructive. Plaintiff's objections purport to justify his refusal to produce a single document. He refuses to answer interrogatories about specific factual allegations in the complaint. *See* MTC at Ex. B at Interrog. Resp. Nos. 9–13. He repeatedly interposes one-word objections without any explanation, representation, or showing of the sort of annoyance, embarrassment, oppression, or undue burden that might constitute good cause for relief under Rule 26(c). *See*, *e.g.*, MTC at Ex.

ELECTRONICALLY FILED - 2022 Dec 21 10:26 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

B at Interrog. Resp. Nos. 17–30, Ex. C at Resp. Nos. 6–8, 10–16 & 19–25. Plaintiff's responses to requests to admit are argumentative, fail to fairly engage the substance, and incorporate the sort of non-specific "general" objections that make it impossible to discern what, in fact, has been admitted and what remains in dispute. *See*, *e.g.*, MTC at Ex. D at Resp. Nos. 1–3, 6–16 & 18.

Again, these examples are illustrative (not exhaustive) of an approach the Court finds incompatible with the discovery rules. Based on the Court's review, Plaintiff has failed to interpose any specific objection that might reasonably place Defendant on notice of the nature of the objection or the information being withheld such that she could evaluate the merit of that claim and attempt to resolve it with judicial intervention. In the absence of such a showing, the Court assumes no justification exists.[2]

Finally, while the rules presume a remedy, the need for one here is underscored by the scope of the problem and the fact that the litigant flouting the discovery rules is the plaintiff—the party that chose to bring this case. The discovery rules authorize a court considering a motion to compel to order discovery, treat "an evasive or incomplete answer … as a failure to answer," and presumes fees and costs will be awarded to the prevailing party. Rule 37(a)(3)–(4), SCRCP ("the court shall, … require the party … whose conduct necessitated the motion … to pay to the moving party the reasonable expenses incurred…").

Defendant requests sanctions in the form of fees and costs and urges the Court to issue a compulsory discovery order that deems objections waived. The Court declines to order fees and costs at this time but believes two compulsory remedies are appropriate.

[2] This conclusion is borne out by that fact that Plaintiff's has not pointed to one single item as a specific example of discovery from which he needs protection. In another motion heard during the motions' hearing, Plaintiff sought protection based on broad, unsupported claims that Defendant's discovery was "completely unrelated" and sought in "bad faith." Mot. Protect. Order, 3. However, at no point did Plaintiff provide a *specific* example that would purportedly warrant this protection.

ELECTRONICALLY FILED - 2022 Dec 21 10:26 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

First, during the December 2, 2022, hearing, the Court ordered Plaintiff to resubmit full and complete discovery responses to all interrogatories and document requests within 10 days. Plaintiff's objections to those discovery items are hereby overruled. At Defendant's request, the Court is also retaining jurisdiction to ensure compliance with that order.

Second, Plaintiff's objections and responses to Defendant's request to admit are also overruled and those 18 requests are deemed admitted due to the evasive responses initially submitted. The Court finds these remedies proportional to the infraction considering the law, the full record, and the reasoning outlined above.

Conclusion

For the reasons explained above, Plaintiff's objections to Defendant's discovery are overruled. Plaintiff has 10 days from December 2, 2022, to resubmit substantive responses to Defendant's 30 interrogatories and 25 document requests, and to produce responsive documents. Defendant's 18 requests to admit are hereby deemed admitted.

Defendant's request for fees and costs is denied without prejudice. The Court is retaining jurisdiction of this dispute to ensure compliance with this Order.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]

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Richland Common Pleas

Case Caption: Kenneth B Loveless vs Lesley Ann Stiles , defendant, et al

Case Number: 2022CP4001364

Type: Order/Compel

So Ordered

Jean H. Toal

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STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.	)	C/A No.: 2022-CP-40-01364 **ORDER GRANTING DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS**

This matter is before the Court on Defendant Leslie Stiles'[1] motion for judgment on the pleadings as to Plaintiff Kenneth B. Loveless's claim for libel. On December 2, 2022, the Court held a hearing on the motion at the Richland County Courthouse. Plaintiff was represented by Desa Ballard of Ballard & Watson, Attorneys at Law. Defendant was represented by Christopher P. Kenney of Richard A. Harpootlian, P.A. For the reasons explained below, Defendant's motion is **GRANTED**, and Plaintiff's libel claim is **DISMISSED WITH PREJUDICE**.

Factual and Procedural Background

This libel action was filed on March 16, 2022. At all times relevant to this action, Plaintiff was an elected member of the board of trustees for Lexington-Richland School District 5 (District 5). Defendant is the administrator of page called "Deep Dive Into D5" located on the social media website Facebook. Plaintiff's claim arises from statements made on the Facebook page that Plaintiff contends are "libel *per se*" and were "voluntarily published on the internet by [Defendant] and by others with her [Defendant's] consent, ratification, and endorsement" which Plaintiff

[1] Stiles' answer and motion indicate she is misidentified in the caption as Lesley Ann Stiles a/k/a Leslie Lou Stiles.

alleges were intended by Defendant to be seen by the public "with specific knowledge they were false and/or with a reckless disregard for whether they were false or not." Compl. ¶ 5.

On April 13, 2022, Defendant filed and answer and counterclaim for abuse of legal process. On April 26, 2022, Plaintiff filed a reply. On May 10, 2022, Defendant filed this motion arguing the Court should grant judgment on the pleadings because (1) she is immune from suit under § 230 of the Communications Decency Act of 1934 (CDA), as amended, (2) the statements are not actionable, and (3) the statements are privileged by the First Amendment to the U.S. Constitution. On November 23, 2022, Defendant filed a memorandum of law in support of this motion, which the Court has considered, along with the relevant case law. On December 2, 2022, the Court held a hearing on the motion and heard argument from the parties.

Legal Standard

Judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff's favor. *Sapp v. Ford Motor Co.*, 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009) (citing *Russell v. City of Columbia*, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)). All well-pleaded factual allegations are deemed admitted for purpose of the motion. *Russell*, 305 S.C. at 89, 406 S.E.2d at 339. The motion will be denied only if there is a controverted material fact which, if decided in favor of the non-moving party, would entitle him to judgment in his favor. *Id.*

Judgment on the motion should also be granted when a pleading is so defective that no cause of action is stated, and the plaintiff is not entitled to any relief whatsoever. *See Pope v. Wilson*, 427 S.C. 377, 384, 831 S.E.2d 442, 445 (Ct. App. 2019); *Diminich v. 2001 Enters., Inc.*, 292 S.C. 141, 355 S.E.2d 275 (Ct. App. 1987).

ELECTRONICALLY FILED - 2022 Dec 22 10:54 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Dec 22 10:54 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Findings of Fact and Conclusions of Law

The tort of defamation allows a plaintiff to recover for injury to his reputation resulting from the defendant's communications a false message about the plaintiff to others. *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 464–65, 629 S.E.2d 653, 664 (2006). Libel is a written defamation or one accomplished by actions or conduct. *Id.* The elements of defamation are (1) a false and defamatory statement, (2) unprivileged publication to a third party, (3) fault, and (4) actionability irrespective of special harm or special harm caused by publication. *Id.* As discussed below, the First Amendment to the U.S. Constitution modifies the common law of defamation when, in relevant part, the plaintiff is a public official.

Having reviewed the pleadings and applicable law, and having considered the arguments of the parties, the Court concludes the Complaint is irreparably flawed as a matter of law and should be dismissed. Plaintiff's claim is barred by the CDA, and he has not and cannot pled a cognizable claim considering his status as a public official and the actual malice standard required by the Constitution.

I. Section 230 of the CDA bars state law claims to impose liability on a social media user for third party statements.

Defendant argues Plaintiff's claim is foreclosed by Section 230 of the CDA because it bars state law actions that seek to hold one social media user responsible for the statements of another. The Court agrees.

Section 230 of the CDA requires that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). An "information content provider" is "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." *Id.* §

ELECTRONICALLY FILED - 2022 Dec 22 10:54 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

230(f)(2). An "interactive computer service" is "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server…." *Id.* § 230(f)(2). The CDA also provides an immunity for users from state law claims: "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." *Id.* § 230(e)(3).

Defendant argues Facebook is an interactive computer service, and she is an information content provider, as are the unnamed individuals who allegedly made statements Plaintiff contends are libelous. Defendant reads Subsection 230(c)(1) to say that she cannot be treated as the publisher or speaker of information provided by another Facebook user and Subsection 230(e)(3) prohibits this state law action as an effort to hold her responsible for those other users' statements in contravention of Subsection 230(c)(1). The Court agrees. This is the natural and plain reading of the statute, and it comports with the way Section 230 has been applied by federal courts for the last 25 years. *See, e.g.*, *Monsarrat v. Newman*, 28 F.4th 314 (1st Cir. 2022) (moderator of online neighborhood forum immune from suit where he copied and reposted defamatory comments about plaintiff by anonymous users accusing plaintiff of being a "child predator"); *Bennett v. Google, LLC*, 882 F.3d 1163 (D.C. Cir. 2018) (Google immune from defamation claim predicated on failure to remove third-party post), *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, 591 F.3d 250 (4th Cir. 2009) (consumer affairs website immune from suit over statements made in consumer reviews), *Zeran v. Am. Online, Inc.*, 129 F.3d 327 (4th Cir. 1997) (negligence action against AOL for unreasonable delay in removing defamatory post barred).

Plaintiff sought to avoid this conclusion by arguing his claim is different than those barred by Section 230. The Complaint alleges Defendant "voluntarily published" the purportedly libelous statements as administrator of the Facebook page. *See* Compl. ¶ 5. During the hearing on this

ELECTRONICALLY FILED - 2022 Dec 22 10:54 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

motion, Plaintiff's counsel argued Plaintiff was presenting a "novel" theory not foreclosed by Section 230 and that it was based on Defendant's purported undertaking as page administrator. Specifically, counsel pointed to Defendant's statement on the Facebook page that "All information posted is a result of much research and analysis. . ." *See* Compl. ¶ 8. In Plaintiff's view, this statement constitutes an undertaking by Defendant to ensure the accuracy of the content posted by others on the page and allows Plaintiff to hold her liable for purportedly defamatory statements, even if made by third parties. The Court rejects this argument for three reasons.

First, the Court finds as a matter of law that no reasonable person could read Defendant's statement concerning "research and analysis" and conclude she undertook to ensure every posting made on the Facebook page, including the postings of others, were factual, verified, and endorsed by Defendant. *See White v. Wilkerson*, 328 S.C. 179, 183, 493 S.E.2d 345, 347 (1997) (trial court makes initial determination whether statements are capable of defamatory meaning).

Second, even if that statement could be read as an "undertaking" of sorts, that is not a legally meaningful distinction under Section 230 and caselaw applying it. For instance, in *Zeran* the plaintiff brought a claim for negligence for failing to timely remove an offending third party post and argued AOL was not a "publisher," but a "distributor" that was exempt from the CDA. *See* 129 F.3d at 331–32. The Fourth Circuit found this distinction meaningless and "foreclosed by § 230." *Id.* at 332. In *Nemet*, the plaintiff argued Section 230 did not apply because it alleged that the consumer affairs website where an offending statement was posted "contacted the consumer to ask questions about the complaint and to help her draft or revise her complaint." 591 F.3d at 258 (quotations omitted). The court rejected this argument noting the allegation made "upon information and belief" that the web site "participated in the preparation" of the statement was a

bare allegation that, even if true, would not render the website the content provider within the meaning of the CDA. *Id.*

Plaintiff's claim here is similarly defective. Even crediting his bald assertion that the statements were published with Defendant's consent, ratification, and endorsement, his allegations are indistinguishable from the theories rejected in *Zeran* and *Nemet*. Plaintiff's undertaking theory is just negligence by another name—he contends Defendant undertook a duty vet the content of the Facebook page and failed to perform that duty. That is a negligence claim, but *Zeran* is clear that styling a claim as one that sounds in negligence does not circumvent Section 230 when the factual allegations that purportedly give rise to liability attempt to hold one content provider responsible for statements of another. Likewise, statements on a website suggesting review or control over third party content do not render one content provider liable for the statements of another. *Cf. Nemet*, 591 F.3d at 258 ("Moreover, in view of our decision in *Zeran*, [the car dealer] was required to plead facts to show any alleged drafting or revision by [the website] was something more than a website operator performs as part of its traditional editorial function."); *Barrett v. Rosenthal*, 40 Cal. 4th 33, 63, 146 P.3d 510, 529 (2006) (Section 230 "does not permit Internet service providers or users to be sued as 'distributors,' nor does it expose 'active users' to liability."). While no reasonable person would assume Defendant's statement about research and analysis constituted an undertaking to validate the accuracy of every other user's statement, that argument fails regardless as a matter of settled law.

Finally, based on the Court's review of the Complaint, there are no statements specifically attributed to the Defendant herself. *See* Compl. ¶ 15 (alleging Defendant published, ratified, and/or endorsed seven enumerated statements) & ¶ 16 (26 statements of others). The Complaint is clear that Plaintiff seeks to hold Defendant liable for third-party statements based on the notion

ELECTRONICALLY FILED - 2022 Dec 22 10:54 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Dec 22 10:54 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Defendant was responsible for censoring statements that Plaintiff finds offensive. *E.g.*, Compl. ¶ 16 (alleging Defendant "acted with actual malice in undertaking the responsibility for monitoring the Page, which imposed on her the obligation to delete defamatory posts on the Page."). Plaintiff's counsel repeatedly confirmed this during the hearing when arguing Plaintiff's claim is predicated on an undertaking theory. However, because there are no statements directly attributable to the Defendant, Section 230 is dispositive of the entirety of Plaintiff's libel claim.

* * *

For these reasons, the Court concludes Section 230 of the CDA controls here and requires dismissal of this case. The purpose of the CDA is to "act[ ] as a bulwark against 'intrusive government regulation of speech.'" *Bennett*, 882 F.3d at 1165 (quoting *Zeran*, 129 F.3d at 330). In passing the CDA, Congress sought to protect and preserve vibrant Internet discourse unfettered by federal or state regulation. 47 U.S.C. § 230(b)(2). "The specter of tort liability in an area of such prolific speech would have an obvious chilling effect." *Zeran*, 129 F.3d at 331. This case is no exception to that rule. Accordingly, the Court holds Section 230 requires judgment on the pleadings in Defendant's favor.

II. The First Amendment protects Defendant from suit by a public official claiming she had a duty to censor third party statements on a social media site.

Alternatively, the Court concludes Defendant is entitled to judgment on the pleadings as to Plaintiff's libel claim because the actual malice standard articulated in *N.Y. Times v. Sullivan*, 376 U.S. 254 (1964), and progeny protects Defendant from suit by a public official alleging she was responsible for the veracity of statements by others on Facebook.

As an initial matter, the Court finds Plaintiff is a public official. In cases involving defamation of a public official, the plaintiff must prove the defendant acted with constitutional actual malice, i.e., with knowledge the statement was false or with reckless disregard of its falsity.

ELECTRONICALLY FILED - 2022 Dec 22 10:54 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Sanders v. Prince, 304 S.C. 236, 239, 403 S.E.2d 640, 643 (1991) (citing *Sullivan*, 376 U.S. 254 at 279–80). Thus, "an important initial step in analyzing any defamation case is determining whether a particular plaintiff is a public official, public figure, or private figure." *Erickson*, 368 S.C. at 468, 629 S.E.2d at 666. This determination is a matter of law that must be decided by the court. *Id.* Here, Plaintiff is a public official. As a member of the school board elected by voters, he had the sort of power and responsibility over governmental affairs that invites public scrutiny and discussion separate and apart from the controversy giving rise to this action. *See id.* (quoting *Holtzscheiter v. Thomson Newspapers, Inc. (Holtzscheiter II)*, 332 S.C. 502, 520 n.4, 506 S.E.2d 497, 507 n.4 (1998) (Toal, J., concurring in result)). Accordingly, Plaintiff must plead and prove by clear and convincing evidence that Defendant's publication was made with "actual malice," or it is constitutionally privileged. *Garrard v. Charleston Cty. Sch. Dist.*, 429 S.C. 170, 209, 838 S.E.2d 698, 718 (Ct. App. 2019).

Defendant argued Plaintiff's claim fails because Defendant did not publish the statements and the statements are not actionable under several theories. *See* Def.'s Omnibus Mem., 14–26. The Court finds it unnecessary to reach many of these arguments. As explained, Plaintiff's theory is that, as administrator of the Facebook page, Defendant undertook an obligation to remove defamatory statements and, by failing to do so, she was ratifying or endorsing them. This theory is incompatible with the constitutional protections afforded to Defendant by the First Amendment for two reasons.

First, Plaintiff's undertaking theory can never, as a matter of law, constitute actual malice. Under South Carolina tort law, an undertaking is one way an individual can come to have a legal duty, the breach of which might cause damages that might be recoverable. *See*, *e.g.*, *Wright v. PRG Real Est. Mgmt., Inc.*, 426 S.C. 202, 213, 826 S.E.2d 285, 290–91 (2019) (quoting Restatement

ELECTRONICALLY FILED - 2022 Dec 22 10:54 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

(Second) of Torts (1965) to explain voluntary undertaking for consideration can be liable for failure to exercise reasonable care). However, a libel claim never sounds in negligence because "[a] claim that a statement constitutes libel or slander must be brought in a defamation cause of action, which is grounded in and affected by both common and constitutional law." *Erickson*, 368 S.C. at 482–83, 629 S.E.2d at 673–74 (affirming dismissal of negligence claim).

Here, Plaintiff must allege not only that the statements are false, but that Defendant, in fact, *knew* they were false or that she "entertained serious doubt" as to the truth but disregarded the concern of that falsity. *See St. Amant v. Thompson*, 390 U.S. 727, 731 (1968) ("reckless conduct is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing."). This extremely high standard is not met by an undertaking theory. At most, Plaintiff has alleged negligent performance of a duty, but mere errors fall well short of what Plaintiff must plead and prove. *See Erickson*, 368 S.C. at 467, 629 S.E.2d at 665 (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974)). Thus, even assuming an undertaking allegation could suffice as the predicate for a libel claim (it does not under *Erickson*), it never satisfies the actual malice standard.

Second, this conclusion is underscored by the prophylactic purpose the actual malice standard serves in a case like this one. Speech concerning public officials "must be protected with special vigilance" because electing members of the government and debating their qualifications touches on "the essence of a free and responsible government." *George v. Fabri*, 345 S.C. 440, 455, 548 S.E.2d 868, 875 (2001) (quoting *Harte–Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 686 (1989) (quoting James Madison, 4 J. Elliot, Debates on the Federal Constitution 575 (1861))). Those who choose public life must reasonably expect that this "profound national commitment" to public debate on public issues will be "uninhibited, robust, and wide-open" and

ELECTRONICALLY FILED - 2022 Dec 22 10:54 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

will at times "include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." *Sullivan*, 376 U.S. at 270. "However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1093 (4th Cir. 1993). These constitutional concerns are most present in this case.

The essence of the statements in the Complaint are opinions and criticism of Plaintiff's performance of his duties as a member of the school board. Some of these statements are pointed and question whether Plaintiff has performed his duties ethically, particularly in connection with decisions concerning a school district contract and his obligation to recuse himself from official action related to the contract. *See* Compl. ¶ 15. Other statements are sharper, claiming Plaintiff is an "unethical hypocrite," a "liar," and a "loser," for example. *See id.* ¶ 16. However, unpleasant or offensive this criticism may be to Plaintiff, it is protected discourse by the First Amendment. Defendant was under no obligation to censor the speech of others to protect Plaintiff from criticism. The Constitution protects her from such a claim and requires dismissal here.

Conclusion

For the reasons explained above, Plaintiff's libel claim fails under Section 230 of the CDA and the First Amendment to the U.S. Constitution. Defendant's motion for judgment on the pleadings is **GRANTED**. Having liberally construed the Complaint and considered the arguments of the parties and relevant law, the Court concludes Plaintiff's libel claim fails as a matter of law and is hereby **DISMISSED WITH PREJUDICE**.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLWS]

ELECTRONICALLY FILED - 2022 Dec 22 10:54 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Richland Common Pleas

Case Caption: Kenneth B Loveless vs Lesley Ann Stiles , defendant, et al

Case Number: 2022CP4001364

Type: Order/Civil Judgment

So Ordered

Jean H. Toal

ELECTRONICALLY FILED - 2023 Jan 10 8:55 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND KENNETH B. LOVELESS, Plaintiff, v. LESLEY ANN STILES A/K/A LESLIE LOU STILES, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT C.A. No. 2022-CP-40-01364 **ORDER DENYING PLAINTIFF'S MOTION TO RECONSIDER**

Plaintiff Kenneth B. Loveless has moved this Court to reconsider its December 22, 2022 Order granting Defendant's Motion for Judgment on the Pleadings.

This Court DENIES the Motion to Reconsider.

IT IS SO ORDERED.

[JUDGE'S ELECTRONIC SIGNATURE FOLLOWS]

ELECTRONICALLY FILED - 2023 Jan 10 8:55 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Richland Common Pleas

Case Caption: Kenneth B Loveless vs Lesley Ann Stiles , defendant, et al

Case Number: 2022CP4001364

Type: Order/Other

So Ordered

Jean H. Toal

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2022-CP-40-01364

Kenneth B. Loveless
PLAINTIFF(S)

Lesley Ann Stiles a/k/a Leslie Lou Stiles
DEFENDANT(S)

Submitted by:	**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. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **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:

Various motions were heard on December 2, 2022. Motion to Quash (filed 7/13/22) was DENIED. Motion to Overrule District 5 Claims of Attorney-Client Privilege (filed 6/27/2022) was GRANTED IN PART AND DENIED IN PART. Motion for Protective Order or Confidentiality Order (filed 5/27/22) was DENIED. Motion for Rule to Show Cause (filed 5/11/2022) was GRANTED. Motion to Dismiss, to Bifurcate and Reply (filed 4/26/22) was DENIED in part. The Motion to Dismiss is DENIED, but can be bifurcated as to trial. Motion to Intervene (filed 8/19/22) was GRANTED.
*see also Order Granting Defendant's Motion for Judgment on the Pleadings (filed 12/22/22) and Order Granting Defendant's Motion to Compel, Deem Matters Admitted and for Sanctions (filed 12/21/22)

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:

ELECTRONICALLY FILED - 2023 Jan 12 8:51 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	**Judge Code**	**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:

ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**
	CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

ELECTRONICALLY FILED - 2023 Jan 12 8:51 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2023 Jan 12 8:51 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2023 Jan 12 8:51 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Richland Common Pleas

Case Caption: Kenneth B Loveless vs Lesley Ann Stiles , defendant, et al

Case Number: 2022CP4001364

Type: Order/Form 4

So Ordered

Jean H. Toal

ELECTRONICALLY FILED - 2023 Apr 25 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.	C/A No.: 2022-CP-40-01364 **ORDER ON MOTION** **FOR RULE TO SHOW CAUSE**

This matter was before the Court on Defendant Leslie Stiles' motion for a rule to show cause (filed January 5, 2023) seeking to enforce the Order Granting Defendant's Motion to Compel, Deem Matters Admitted and For Sanctions (filed December 21, 2022) (the "Discovery Order"). The parties appeared for a hearing on January 27, 2023. The Court gave Plaintiff Kenneth B. Loveless until February 28, 2023, to fully comply with the Discovery Order and ordered the parties to report thereafter as to what, if any, discovery issues remain outstanding. Defendant filed a status report on March 27, 2023; Plaintiff filed a response on April 17, 2023. The Court reviewed both filings. On April 19, 2023, a hearing was held. This Order memorializes the Court's oral order to Plaintiff who is ordered as follows:

Further Discovery Order

1. No later than **Friday, April 21, 2023**, Plaintiff will provide a verification for the interrogatory answers that have already been served, with digital signature being sufficient.

2. No later than May 3, 2023, Plaintiff shall serve supplemental responses to interrogatories—specifically Interrogatory Nos. 6, 7, 9, 10, 11, 12, 15, 16, 20, 23, 28, 29, and 30—that are verified, provide full disclosure and are not argumentative or subject to any further

ELECTRONICALLY FILED - 2023 Apr 25 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

objection. Plaintiff's prior discovery objections have been noted, preserved for the purpose of appeal, and overruled by the Discovery Order.

3. No later than **Wednesday, May 3, 2023**, Plaintiff will provide Defendant with a supplemental disclosure of the Cellebrite digital forensic reports that either furnishes (1) an electronic version of the previously provided reports that can be sorted by date/time (e.g., .csv, Excel) and allows for the viewing of documents contained in the text *or* (2) a native .efdr file format that Defendant can use with a Cellebrite reader.

4. The parties will each file status reports within ten days of the date the Cellebrite materials are produced.

5. The Court is retaining jurisdiction over these discovery issues to ensure compliance with this Order and the Discovery Order.

Confidentiality Protocol Requested by the Parties

6. The Court is informed that after the hearing, counsel for the parties conferred and agreed to a confidentiality protocol to facilitate the production and use of the Cellebrite disclosure. At the parties' request, the Court is memorializing and ordering that procedure as follows.

7. Any native or derivative Cellebrite production by Plaintiff under this Order shall be deemed "Confidential" or "Confidential Information," meaning it shall not be disclosed to any person or entity except:

a. The parties, their attorneys, and employees of counsel in this lawsuit;

b. Consultants, investigators, or experts (collectively, "Experts") employed by the parties or counsel for the parties to assist in the preparation of the lawsuit;

c. Court reporters and court personnel, but only for the limited purpose of performing official duties in conjunction with the lawsuit; and

ELECTRONICALLY FILED - 2023 Apr 25 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

d. Other persons only upon the consent of the producing party.

8. Prior to furnishing Confidential Information to an Expert or employee of counsel, the person receiving the information shall be furnished a copy of this Order and execute a written acknowledgement agreeing to be bound by these confidentiality and non-disclosure provisions. Such signed documentation is protected from disclosure pursuant to Rule 26(b)(4)(B)a, SCRCP unless the expert is designated as a testifying expert.

9. Upon receipt of the Confidential native Cellebrite production, Defendant shall review and extract the files she believes necessary for the litigation in an electronic form (the "Production Files") and furnish a copy of that information to Plaintiff for review. The Production Files shall be deemed Confidential subject to the procedure described below.

10. No later than 7 days from the extraction of the Production Files, Defendant shall destroy the Confidential native Cellebrite production and confirm in writing to Plaintiff it has been destroyed. Plaintiff's counsel shall retain a copy of the Confidential native Cellebrite production until the termination of the lawsuit.

11. All documents produced by Defendant in response to this order will be considered Confidential without any separate designation being required. Any party may move before a court of competent jurisdiction to determine if any particular material(s) produced by the opposing party should be declassified as Confidential Information.

12. Notwithstanding any challenge to the designation of confidentiality, the Production Files will continue to be treated as subject to the full protections of this Order until (1) the designation is withdrawn in writing by consent of the parties, (2) Plaintiff fails to make a timely motion, or (3) the Court rules the particular items should no longer be designated Confidential.

ELECTRONICALLY FILED - 2023 Apr 25 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

13. The burden of proving the necessity of a Confidential designation will be with the party asserting confidentiality.

14. Counsel for the parties shall make reasonable efforts to prevent unauthorized disclosure of documents designated as Confidential pursuant to the terms of this order. Counsel shall maintain a record of those persons, including employees of counsel, who have reviewed or been given access to the documents along with the originals of the forms signed by those persons acknowledging their obligations under this Order.

15. In the event a party seeks to file Confidential Information, that party shall take appropriate action to ensure the documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the party who designated the document as confidential; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal.

16. All provisions of this Order restricting the use of documents designated Confidential shall continue to be binding after the conclusion of the litigation unless otherwise agreed or ordered.

17. Unless the document has been entered into evidence, within 30 days after the conclusion of the litigation, including conclusion of any appeal, all Confidential documents shall be returned to Plaintiff if they are physical documents or shall be destroyed if they are electronic document or physical documents with notations, summations, or other mental impressions of counsel. Notwithstanding the above requirements to return or destroy documents, counsel may retain attorney work product including an index which refers or relates to Confidential Information so long as that work product does not duplicate verbatim substantial portions of the text of

Confidential Information. This work product continues to be Confidential under the terms of this Order. An attorney may use his or her work product in a subsequent litigation provided that its use does not disclose the Confidential Information.

18. The parties, through counsel, agree that no discovery information produced by either party in this case[1] will be produced or published online in any forum or format other than as a part of this litigation in filings with any court having jurisdiction over this case.

AND IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]

[1] "This case" includes Plaintiff's original complaint, the dismissal of which is on appeal in Appellate Case No. 2023-000145.

ELECTRONICALLY FILED - 2023 Apr 25 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2023 Apr 25 2:57 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Richland Common Pleas

Case Caption: Kenneth B Loveless vs Lesley Ann Stiles , defendant, et al

Case Number: 2022CP4001364

Type: Order/Rule To Show Cause

So Ordered

Jean H. Toal

ELECTRONICALLY FILED - 2022 Mar 16 3:48 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless, Plaintiff vs. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant	)	Civil Action No.: 2022-CP-40-____ **SUMMONS**

TO: THE ABOVE-NAMED DEFENDANTS AND THEIR ATTORNEYS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served on you, and to serve a copy of your Answer to the said Complaint upon the subscribers at 226 State Street, West Columbia, South Carolina 29169, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in such Complaint.

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

March 16, 2022

ELECTRONICALLY FILED - 2022 Mar 16 3:48 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless, Plaintiff	)	Civil Action No.: 2022-CP-40-____
vs. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant	)	**COMPLAINT** (Jury trial demanded)

Plaintiff Kenneth B. Loveless (hereafter "Loveless") prays for actual and punitive damages against Defendant Lesley Ann Stiles a/k/a Leslie Lou Stiles. In support of his prayer for relief as set forth herein, Loveless will show:

1. Loveless is a citizen and resident of the County of Lexington, State of South Carolina. He brings this action in his individual capacity and not as a member of any group, organization, or entity.
2. On information and belief, Leslie Ann Stiles a/k/a Leslie Lou Stiles (hereafter "Stiles") is a citizen and resident of the County of Richland, State of South Carolina. She is named in this action in her individual capacity, and as one of the administrators of a Facebook group titled "Deep Dive Into D5."
3. On information and belief, this Court has personal jurisdiction over defendant Stiles.
4. This Court has subject matter jurisdiction over this action.
5. This is not an action based in negligence. This is an action for intentional misconduct in the form of libel *per se* based on numerous and repeated defamatory statements voluntarily published on the internet by Stiles and by others with her consent, ratification, and endorsement which were intended by Stiles in her individual capacity and in her capacity as administrator of the Facebook site "Deep Dive Into D5" to be consumed by

ELECTRONICALLY FILED - 2022 Mar 16 3:48 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

the public during the past year with specific knowledge they were false and/or with a reckless disregard for whether they were false or not.

6. The libelous statements published to the public by Stiles were not opinions, nor were they postured as opinions. They were stated as facts. However, even if the defendant contends they were opinions, they are still actionable pursuant to controlling legal authority in the State of South Carolina and the United States of America.

7. The libel *per se* has been read by numerous people, so Stiles' libelous statements have been circulated widely and repeated by others, often in, *inter alia*, both public and private Facebook groups.

8. On information and belief, a Facebook site entitled "Deep Dive Into D5" (hereafter "the Page") was created on or about October 5, 2020 by Stiles, who serves as administrator. In creating the Page, Stiles represented to the public "All information posted is a result of much research and analysis. . ."

9. During Stiles' administration of the Facebook Community "Deep Dive Into D5", she has frequently authored defamatory posts about Plaintiff herself. However, as administrator of the Deep Dive Into D5 page, she has full control and authority to monitor the posts made to the page and on information and belief she has the unfettered discretion, power, and authority to delete posts from the Page, delete comments and posts made to the Page, and to remove and ban people from the Page. As a result, posts made to the Page by others appear on the page with the express approval and endorsement of Stiles.

10. Pursuant to the terms of Facebook, Defendant Stiles, as administrator of the "Deep Dive Into D5" page had the authority and responsibility to do the following: create and

ELECTRONICALLY FILED - 2022 Mar 16 3:48 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

delete posts, send messages, respond to and delete comments and posts on the page, remove and ban people from the page.

11. In failing to abide by the terms of Facebook, Stiles harmed Plaintiff and is therefore liable to Plaintiff for all harm done to him by Stiles' libel *per se*.

12. On multiple occasions, Stiles has published, approved, and endorsed posts to the Page that contain false and defamatory statements about Loveless, which defame him, harm him and his reputation, and subject him to humiliation and ridicule.

13. Stiles had been warned in July, 2021 by a different person she had defamed on the Page that she should cease and desist from making defamatory statements on the Page. While she stopped defaming that person, she continued to recklessly defame Loveless.

14. On information and belief, Stiles defamatory *per se* statements regarding Loveless were made with actual malice, and with an intent to harm the reputation of Loveless.

15. Stiles acted with actual malice in publishing, ratifying, and/or endorsing false and defamatory statements about Loveless. Those statements include but are not limited to:

    a. "If you are against government conspiracy, if you are against the appearance of corruption, if you are against the appearance of rewarding friends, if you are against back room deals and public business conducted in private – then you should be interested in the way your current school Board or [*sic*] Trustees is doing business."

    b. "Mr. Loveless had an EC opinion requiring his recusal from certain matters and he refused for a length of time."

    c. "My apologies to Mr. Ken Loveless – I didn't know he was a reader but am happy to make a correction to a comment I made in error stating there was an

ELECTRONICALLY FILED - 2022 Mar 16 3:48 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

AG opinion regarding him and I meant an Ethics Commission. . . opinion that he should recuse himself from certain discussion and voting."

d. "Loveless says he will no longer recuse himself from topics related to construction. Likely bc (*sic*) his financial relationship with Contract Construction has ended, although he makes it appear that he has just decided to end it be he wants to."

e. "Mr. Loveless uses his position to influence decisions."

f. "Mr. Loveless participates in deliberations and attempts to use his position to influence decisions."

g. "This SEC Ethics Opinion . . . further states that Mr. Loveless may not in any way attempt to use his position to influence decisions. Has Trustee Loveless complied with these requirements? Sadly, he has not."

16. Further, Stiles acted with actual malice in undertaking the responsibility for monitoring the Page, which imposed upon her the obligation to delete defamatory posts on the Page. By not doing so, Stiles republished, thus ratifying and endorsing, statements of others that were false and defamatory and consciously permitted them to remain on the Page. Those statements include but are not limited to:

a. "Crooked Ken is an unethical hypocrite and a liar."

b. ". . . Don't let it be lost that as per usual, Crooked Ken goes after a woman. He continues to demonstrate contempt and disrespect for women."

c. "What do you get when you elect the dumbest people in the district to be in charge of education? If you're tired of these incompetent imbeciles embarrassing our district and wasting our time and money. . ."

ELECTRONICALLY FILED - 2022 Mar 16 3:48 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

d. "Wow, he is a loser."

e. "Be it Ken's ethics violations, waffle house quorums or other FOIA violations, this board isn't much for following rules."

f. ". . . we absolutely do not currently have a board that we can trust to determine how best to spend our money and through what means."

g. "But then again, with Ken on the board, you HAVE to always be concerned about ethics."

h. "Nothing is out of the question with corrupt Ken Loveless. He's already proven to lie and ignore ethics guidelines."

i. "This reeks of desperation from a crooked board trying to keep their misdeeds hidden. They desperately want to squash these suits b/c they know the discovery process will bring their corruption to light."

j. "This is what you get with an incompetent, micromanaging board majority and an ineffective and weak superintendent."

k. "CALL THEIR BLUFF!!! Think about it . . . what is the last place Ken or Jan want to be? On the witness stand or in a deposition where they HAVE TO TELL THE TRUTH. They are not used to that. They'll stumble and bumble themselves into a perjury charge within the first ten minutes."

l. "Ken and Jan are proven liars, ethics violators, and remarkably untrustworthy."

m. "The board seems to be more concerned with settling personal vendettas than taking care of our district."

n. "Crooked Ken strikes again!!!"

o. “As far as I am aware, he’s the only one with an ethics violation. . .”

p. “They came after me. That’s why I am rarely contributing. Don’t want to lose my license. Don’t know if that is possible but don’t want to take the chance.”

q. “Ken used his money to blow smoke up the citizens. I suspect he can and will do it again.”

r. “Ken has been at DO [district office] meddling in their employee issues. . .”

s. “Do you ya’ll see the animosity that built by Ken Loveless . . after he was served the Cease and Desist order issued because he was continuing to show up daily at the new school being built. . . he was constantly showing up unannounced and slowing up work.”

t. “I’m glad you didn’t hold up Mr. Loveless as an example, what with his ethics violations and all.”

u. “yeah we do [know where your money goes]… To buy yours and other board members seats. Buying himself some yes-women.”

v. “I am no longer surprised by anything this board does. They spend more time on vendettas than on education . . .”

w. “They are all crooked as a creek.”

x. “That would be a comedy show. They can’t even tell the same lie.”

y. “Nothing is out of the question with corrupt Ken Loveless. He’s already proven to lie and ignore ethics guidelines.”

z. “But then again, with Ken on the board, you HAVE to always be concerned about ethics.”

ELECTRONICALLY FILED - 2022 Mar 16 3:48 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

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FOR A FIRST CAUSE OF ACTION
(Libel - Count 1)

17. All allegations above are incorporated herein as if fully stated.

18. Prior to publication, ratification, and endorsement of the libelous statements, Stiles had a duty to refrain from making or publishing statements about Loveless that were false.

19. Stiles' statements are false as are the statements she republished, ratified, and endorsed on the Page as identified above.

20. Stiles either knew or should have known that the statements were false and were published, ratified, and endorsed for the purpose of causing harm to Loveless.

21. Stiles' repeated instances of libel *per se* regarding Loveless are a breach of her duty to refrain from making false statements about Loveless.

22. Stile's statements have harmed the reputation of Loveless.

23. Defendant Stiles' statements as well as those she republished, ratified, and endorsed about Loveless are libelous and constitute libel *per se* pursuant to the common law of South Carolina and therefore general damages are presumed. Plaintiff need not plead nor prove special damages pursuant to controlling legal authority in South Carolina.

24. Loveless is entitled to a judgment and award of actual and punitive damages from Defendant Stiles in an amount to be determined by the trier of fact.

25. Loveless demands a trial by jury.

WHEREFORE, Plaintiff Loveless prays for an order for the following:

A. A jury trial on all issues of fact;

B. An award of actual and punitive damages against defendant Stiles in an amount to be determined by the jury;

C. Statutory costs as permitted by law; and

D. Such other and further relief as the court deems just and proper.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)

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ATTORNEYS FOR PLAINTIFF

March 16, 2022

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless, Plaintiff	)	Civil Action No.: 2022-CP-40-____
vs.	)	**VERIFIED PETITION**
Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant	)	

Personally appears KENNETH B. LOVELESS, who first being duly sworn, deposes and says that he is the Plaintiff and that he has read the foregoing Complaint and knows the contents thereof and the same are true of his own knowledge except to matters alleged therein on information and belief, and as to these, he believes it to be true.

Kenneth Loveless

SWORN AND SUBSCRIBED BEFORE ME
THIS 16th DAY OF March

Notary Public for South Carolina
Printed Name: Krystyne Ammerman

My Commission Expires March 7, 2026

ELECTRONICALLY FILED - 2022 Apr 13 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364 **ANSWER & COUNTERCLAIM** **(Jury Trial Demanded)**

Defendant Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles, is the parent of three young children in the Richland-Lexington School District 5 (District 5), who took an interest in her children's education and the public body responsible for the public school system they attend. She volunteers in her children's schools, participates in the parent teacher organization (PTO) and her school improvement council (SIC), and attends meetings of the District 5 school board—i.e., the public meetings of trustees elected by and accountable to the voters they represent. She also runs a Facebook page where approximately 2,500 public members post about and concerning District 5. Plaintiff Kenneth B. Loveless is a trustee of District 5—a public official engaged in matters of public concern—who brought this action complaining Stiles libeled him in Facebook posts about District 5 and because she did not censor speech of others on Facebook who posted and commented about Loveless and District 5.

This litigation is frivolous harassment of a private citizen by a public official designed to chill her speech and participation in matters of public concern. This lawsuit violates the First Amendment to the U.S. Constitution; Article I, Section 2 of the S.C. Constitution; Section 230 of the Communications Decency Act of 1934, as amended, and the common law of South Carolina.

ELECTRONICALLY FILED - 2022 Apr 13 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Judgment should be rendered in Stiles' favor, and she should be awarded fees, costs, and exemplary damages to punish this abusive use of process.

ANSWER TO COMPLAINT

Any allegation not specifically admitted is denied. Stiles demands strict proof of all allegations denied and specifically answers the Complaint as follows:

1. Stiles lacks sufficient information to admit or deny Paragraph No. 1, therefore it is denied.

2. In response to Paragraph No. 2, it is admitted that Defendant Leslie Stiles, misidentified here, is a citizen and resident of Richland County, South Carolina and that she is an administrator of a Facebook group with the name "Deep Dive Into D5."

3. Paragraph No. 3 is admitted.

4. Paragraph No. 4 is admitted.

5. Paragraph No. 5 is denied.

6. Paragraph No. 6 is denied.

7. Paragraph No. 7 is denied.

8. In response to Paragraph 8, it is admitted that Stiles created a Facebook group, not a page, sometime in October 2020 and that Stiles is the administrator of the group. It is admitted that the partial quotation contained in Paragraph 8 appears in the "About" section of the group.

9. In response to Paragraph No. 9, it is admitted that Stiles, as administrator of the group, is able to make posts, delete posts, make comments, delete comments, and block other users from posting or commenting. All other allegations in Paragraph No. 9 are denied.

10. Paragraph No. 10 is denied.

11. Paragraph No. 11 is denied.

ELECTRONICALLY FILED - 2022 Apr 13 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

12. Paragraph No. 12 is denied.

13. Paragraph No. 13 is denied.

14. Paragraph No. 14 is denied.

15. Paragraph No. 15, including all subparts, is denied. Further, as to any statements quoted or referenced in those subparts, Stiles craves reference to the full statement including all relevant content and context surrounding those statements.

16. Paragraph No. 16, including all subparts, is denied. Further, as to any statements quoted or referenced in those subparts, Stiles craves reference to the full statement including all relevant content and context surrounding those statements.

17. Paragraph No. 17 incorporates prior allegations in the Complaint; accordingly, Stiles incorporates all prior responses here as if set forth verbatim.

18. Paragraph No. 18 is denied.

19. Paragraph No. 19 is denied.

20. Paragraph No. 20 is denied.

21. Paragraph No. 21 is denied.

22. Paragraph No. 22 is denied.

23. Paragraph No. 23 is denied.

24. Paragraph No. 24 is denied.

25. Paragraph No. 25 demanding a trial by jury is admitted. Stiles also demands a trial by jury.

26. The prayer for relief on pages 7–8 of the Complaint beginning “WHEREFORE,” is denied, including as to all subparts.

ELECTRONICALLY FILED - 2022 Apr 13 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

FOR A FIRST DEFENSE:
FAILURE TO STATE A CLAIM

27. The Complaint should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because it fails to state a claim for relief against Stiles.

FOR A SECOND DEFENSE:
PRIVILEGED SPEECH UNDER THE
FIRST AMENDMENT TO THE U.S. CONSTITUTION

28. Loveless's claim is barred because any statements by Stiles or any statements by others that the Complaint wrongly attempts to hold Stiles responsible for are privileged in whole or in part by the First Amendment to the U.S. Constitution.

FOR A THIRD DEFENSE:
PRIVILEGED SPEECH UNDER
ARTICLE I, SECTION 2 OF THE S.C. CONSTITUTION

29. Loveless's claim is barred because any statements by Stiles or any statements by others that the Complaint wrongly attempts to hold Stiles responsible for are privileged in whole or in part by Article I, Section 2 of the S.C. Constitution.

FOR A FOURTH DEFENSE:
PRIVILEGED SPEECH UNDER THE COMMON LAW

30. Loveless's claim is barred because any statements by Stiles or any statements by others that the Complaint wrongly attempts to hold Stiles responsible for are privileged in whole or in part by the common law.

FOR A FIFTH DEFENSE:
IMMUNITY FROM SUIT UNDER SECTION 230 OF
THE COMMUNICATIONS DECENCY ACT OF 1934, AS AMENDED

31. Loveless's claim is barred because Stiles is immune from civil liability under 47 U.S.C. § 230.

ELECTRONICALLY FILED - 2022 Apr 13 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

FOR A SIXTH DEFENSE:
TRUTH

32. Loveless's claim is barred because any statements by Stiles or any statements by others that the Complaint wrongly attempts to hold Stiles responsible for are true.

FOR A SEVENTH DEFENSE:
OPINION

33. Loveless's claim is barred because any statements by Stiles or any statements by others that the Complaint wrongly attempts to hold Stiles responsible for are opinions that are not actionable under the law of libel.

FOR AN EIGHTH DEFENSE:
RHETORICAL HYPERBOLE

34. Loveless's claim is barred because any statements by Stiles or any statements by others that the Complaint wrongly attempts to hold Stiles responsible for are rhetorical hyperbole that are not actionable under the law of libel.

FOR AN NINTH DEFENSE:
NO PROXIMATE CAUSE

35. Loveless's claim is barred because any purported harm to Loveless's reputation were the result of his own actions and were unrelated to and not caused by the conduct Stiles is alleged to have taken.

FOR A TENTH DEFENSE:
SELF-PUBLICATION

36. Loveless's claim is barred because he has self-published and/or disseminated the allegedly libelous statements to third parties.

ELECTRONICALLY FILED - 2022 Apr 13 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

FOR A ELEVENTH DEFENSE:
NOT ENTITLED TO DAMAGES

37. Loveless is not entitled to recover actual or punitive damages on his claim because he has not suffered any reputational harm because of the conduct alleged in the Complaint.

FOR AN TWELFTH DEFENSE:
PUNITIVE DAMAGES UNCONSTITUTIONAL

38. Loveless's claim for punitive damages is barred because an award of punitive damages would violate due process, equal protection, and privileges and immunities guaranteed by the U.S. Constitution and S.C. Constitution.

FOR A THIRTEENTH DEFENSE:
GOOD FAITH AND LAWFUL CONDUCT

39. Loveless's claim is barred because Stiles acted lawfully and in good faith at all times relevant to the Complaint and has not violated any statutory or legal right of Loveless's.

FOR A FOURTEENTH DEFENSE:
NO ACTUAL MALICE/GOOD-FAITH RELIANCE ON OTHERS

40. Loveless's claim is barred because Stiles did not make any statement with actual malice and relied upon information provided by others.

FOR A FIFTEENTH DEFENSE:
RESERVATION OF RIGHTS

41. Stiles hereby reserves her right to amend this Answer to join any further defense authorized by law or identified during the discovery of this action.

COUNTERCLAIM
FOR ACTUAL AND PUNITIVE DAMAGES

Stiles hereby brings the following counterclaims against Loveless:

42. The Court has personal jurisdiction over the parties to this action and venue is proper in Richland County.

ELECTRONICALLY FILED - 2022 Apr 13 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

43. Loveless is a member of the board of trustees for Richland-Lexington School District 5 (District 5) and has been since November 2018.

44. Loveless was elected as a District 5 trustee in November 2018.

45. Loveless is a public figure.

46. Loveless intends to run for re-election in November 2022.

47. Loveless filed this lawsuit against Stiles joining a single claim for libel.

48. Stiles is a private citizen.

49. Loveless's lawsuit alleges Stiles made libelous statements about him on Facebook.

50. The purportedly libelous statements that Loveless alleges Stiles made are set forth in Paragraph 15 of his Complaint in this lawsuit.

51. All statements in Paragraph 15 of the Complaint are either about or concerning District 5 or Loveless's service as a District 5 trustee.

52. Stiles' statements are not libelous and are not actionable in libel.

53. Loveless's lawsuit also alleges Stiles published, ratified, and/or endorsed libelous statements of others because she is an administrator of a Facebook group.

54. The purportedly libelous statements that Loveless alleges Stiles published, ratified, and/or endorsed are set forth in Paragraph 16 of his Complaint in this lawsuit.

55. Stiles is not liable for the statements of others on a Facebook group.

56. Nor are the statements that Stiles allegedly published, ratified, and/or endorsed libelous or actionable in libel.

57. Prior to filing his lawsuit, Loveless was the subject of public criticism and public news reports about or concerning his performance as a District 5 school board member.

ELECTRONICALLY FILED - 2022 Apr 13 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

58. Some of that public criticism has occurred on social media, including the Facebook group where Stiles is the administer.

59. Loveless filed this lawsuit to silence Stiles and his critics, including those on the Facebook group she administers.

60. Loveless intends to use this lawsuit to investigate Stiles, the Facebook group she administers, the people she has communicated with about him and District 5, and her participation in District 5 politics.

61. Loveless also hopes to discourage or "chill" other citizens interested in District 5 and its board from criticizing him, District 5, or the school board.

62. Eliminating or reducing public criticism of Loveless and District 5 will improve his forthcoming effort to win re-election in November 2022.

FOR A FIRST CAUSE OF ACTION:
ABUSE OF PROCESS

63. Each of the foregoing paragraphs is incorporated here verbatim.

64. Loveless has and continues to use legal process against Stiles through his prosecution of this lawsuit.

65. Loveless has an ulterior purpose, bad intent, or improper collateral purpose in filing and prosecuting this lawsuit against Stiles, including:

a. Silencing her speech about him, District 5, and the school board;

b. Coercing her into taking down the Facebook group she administers;

c. Investigating Stiles and the people she communicates with about Loveless and District 5;

d. Investigating his critics in the District 5 community, including parents and teachers;

ELECTRONICALLY FILED - 2022 Apr 13 11:24 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

e. Investigating Stiles' politics and discouraging her political participation in District 5;

f. Harassing Stiles and causing her to incur legal fees and costs to defend this action;

g. Discouraging or chilling others from speaking about him, District 5, and the school board; and

h. Improving his chances of winning reelection by silencing critics.

66. This is a misuse or perversion of legal process that is not a legitimate legal objective but an abuse of the legal system to achieve an illegitimate objective.

67. Stiles has suffered actual damages because of Loveless's conduct and is entitled to recover her damages.

68. Loveless's intentional, wrongful conduct should also be punished with an award of exemplary damages to punish him and discourage others from engaging in similar conduct.

JURY DEMAND

Stiles hereby requests trial by jury on all claims, defenses, and counterclaims.

PRAYER

WHEREFORE, Stiles prays for entry of judgment in her favor and against Loveless as to all claims, defenses, and counterclaims set forth above and that the Court enter a judgment awarding her:

i. Actual and punitive damages against Loveless in an amount to be determined by the jury;

ii. Statutory attorneys' fees and costs for filing frivolous litigation;

iii. All other fees and costs permitted by law; and

iv. Such other relief as the Court may deem just and proper.

Respectfully submitted,

s/Christopher P. Kenney
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April 13, 2022
Columbia, South Carolina.

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ELECTRONICALLY FILED - 2022 Apr 26 12:04 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kenneth B. Loveless, Plaintiff vs. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Civil Action No.: 2022-CP-40-01364 **MOTION TO DISMISS, MOTION TO BIFURCATE AND REPLY TO COUNTERCLAIM**

Plaintiff, responding to the answer and counterclaim of the defendant filed on April 13, 2022, would move as follows:

Each and every allegation of the complaint herein is renewed as fully as if repeated herein verbatim.

MOTION TO DISMISS

Plaintiff moves to dismiss the counterclaim for abuse of process pursuant to Rule 12(b)(6), SCRCP because the counterclaim fails to state a cause of action for relief that can be granted.

MOTION TO BIFURCATE

Plaintiff moves to bifurcate the counterclaim in full pursuant to Rule 42(b), SCRCP, in that the issues raised by the counterclaim are permissive counterclaims which introduce multiple irrelevant issues into the main cause of action, discovery and trial of which would be unnecessarily complicated by having the issues raised in the counterclaim litigated at the same time as the primary action. Moreover, until the primary action is fully and finally decided, none of the issues in the counterclaim may be the subject of discovery or trial. As a result, failure to bifurcate the counterclaim would unnecessarily complicate the litigation of the actual issues in dispute in plaintiff's complaint.

ELECTRONICALLY FILED - 2022 Apr 26 12:04 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

REPLY TO COUNTERCLAIM

1. Each and every allegation of the complaint herein is renewed as fully as if repeated herein verbatim.
2. Paragraph No. 42 is admitted.
3. Paragraph No. 43 is admitted.
4. Paragraph No. 44 is admitted.
5. Paragraph No. 45 is admitted.
6. In response to Paragraph No. 46, Loveless lacks sufficient knowledge to admit or deny the allegations set forth herein, and therefore denies same at this time.
7. Paragraph No. 47 is denied.
8. Paragraph No. 48 is denied. Further answering this allegation, Loveless would show that, by creating a page which she warranted to the public would contain researched and factual information, since she retained the ability to delete or remove any posts or comments which she felt, in her discretion were inaccurate or misleading. Therefore, Stiles became a public figure and a media reporter and lost her status as a private citizen.
9. Paragraph No. 49 - Answering this allegation, Loveless craves reference to the language of the complaint including, but not limited to, paragraphs 15 and 16.
10. Paragraph No. 50 - Answering this allegation, Loveless craves reference to the language of the complaint, including but not limited to, paragraphs 15 and 16.
11. Paragraph No. 51 is denied.
12. Paragraph No. 52 is denied.

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13. Paragraph No. 53 - Answering this allegation, Loveless craves reference to the language of the complaint, including, but not limited to Paragraph 16.

14. Paragraph No. 54 - Answering this allegation, Loveless craves reference to the language of the complaint, including but not limited to Paragraph 16.

15. Paragraph No. 55 is denied. Further answering this paragraph, Stiles warranted and represented to the public that the posts and comments on the page of which she was an administrator would be the subject of much research and analysis, and therefore warranted the accuracy and/or reliability and/or truth of comments and posts made the page of which she was administrator.

16. Paragraph No. 56 is denied.

17. Paragraph No. 57 is denied. Further answering this paragraph, Loveless admits there had been some media reports regarding his service as a District 5 School Board Member, but denies the articles were limited to his performance of his public duties.

18. Paragraph 58 is denied. Further answer this paragraph, Loveless admits that some of the messages, comments and posts on the page that Stiles administer have been critical of him in various capacities, not limited to his role as a member of the District Five school board.

19. Paragraph No. 59 is denied.

20. Paragraph No. 60 is denied.

21. Paragraph No. 61 is denied.

22. Paragraph No. 62 is denied. Loveless has made no decisions regarding the possibility of running for re-election in November, 2022.

Wherefore, having fully set forth his motions and reply to counterclaim, Plaintiff moves for an order:

A. Dismissing the counterclaim pursuant to Rule 12(b)(6), SCRCP.

B. Bifurcating the counterclaim pursuant to 42(b), SCRCP;

C. Denying all relief sought by Defendant in the counterclaim at the appropriate time the issues can be presented and adjudicated.

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

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ATTORNEYS FOR PLAINTIFF

April 26, 2022

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ELECTRONICALLY FILED - 2022 May 10 4:20 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364 **MOTION FOR** **JUDGMENT ON THE PLEADINGS**

Defendant Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles, hereby moves under Rule 12(c), SCRCP for judgment on the pleadings as to Plaintiff Kenneth B. Loveless' claim for libel. Stiles is entitled to judgment and Loveless' claim fails because:

1. Stiles is immune from suit for the statements of others on Facebook under the Communications Decency Act of 1934 codified at 47 U.S.C. § 230.
2. The purportedly libelous statements are not actionable because:
    a. They do not concern Loveless,
    b. They are not defamatory,
    c. They were not published by Stiles, and
    d. Loveless has no legally compensable damages.
3. The statements are privileged by the First Amendment, true as a matter of law, and made without actual malice.

For these reasons, the Court should enter judgment on the pleadings for Stiles as to Loveless' libel claim, along with such further relief the Court deems just and proper. Stiles will supplement this motion with a memorandum of law in support prior to a hearing on the motion.

Respectfully submitted,

s/Christopher P. Kenney
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May 10, 2022
Columbia, South Carolina.

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ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364 **MOTION FOR RULE TO SHOW CAUSE AS TO THIRD PARTIES NIKKI GARDNER AND JAN HAMMOND, AND TO COMPEL CATHERINE HUDDLE**

Defendant Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles, hereby moves under Rule 45, SCRCP for a rule to show cause as to why third parties Nikki Gardner and Jan Hammond should not be held in contempt for ignoring compulsory process requiring the production of documents. Further, the Court should compel third party Catherine Huddle to produce documents responsive to the subpoena notwithstanding her objection.

In support of this motion, Stiles would show the Court as follows:

1. Plaintiff Kenneth B. Loveless is a public official elected to the School District Five of Lexington & Richland Counties (District 5).

2. Loveless alleges Stiles libeled him in Facebook posts about District 5 and because she did not censor the speech of others on Facebook who posted and commented about Loveless and District 5. Stiles filed a counterclaim against Loveless for abuse of process.

3. The statements Loveless contends are libelous are statements about District 5 of his service as a District 5 board member.

4. On April 14, 2022, Stiles issued and served subpoenas to District 5 and District 5 board members, including Gardner (**Exhibit A**), Hammond (**Exhibit B**), and Huddle (**Exhibit C**)

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

seeking two categories of documents: (a) communications sent to or received from Loveless and (b) communications sent to or received from another person about or concerning Loveless.

5. The subpoenas required the production of documents on or before May 5, 2022.

6. Counsel for District 5 sent letter correspondence (**Exhibit D**) indicating she was appearing on behalf of individual District 5 board members for the limited purpose of assisting with any District 5 communications. The undersigned has conferred with District 5 counsel and understands that universe of documents is limited to District 5 emails. That consultation is ongoing.

7. However, as for all other documents within their custody and control, Gardner and Hammond made no response and simply ignored the subpoena.

8. Huddle did timely respond (**Exhibit E**) with an objection claiming the subpoena is "overly broad" because she is "friends" with Loveless (and his wife) and she believes she has a "reasonable expectation of privacy" in communications she contends are "irrelevant." Huddle also maintains the request imposes an undue burden because it "would require printing a ton of paper and using a lot of ink, not to mention my time."

9. A person responding to a subpoena to produce documents must produce them as they are kept in the usual course of business or must organize and label them to correspond with the categories in the demand. Rule 45(d)(1)(A), SCRCP.

10. "On motion to compel discovery or to quash, the person from whom discovery is sought *must show* that the information sought is not reasonably accessible because of undue burden or cost." Rule 45(d)(1)(D), SCRCP (emphasis added).

11. Even if that showing is made, the court may nonetheless order discovery while considering the limitations of Rule 26(b)(6)(B), or setting conditions. Rule 45(d)(1)(D), SCRCP.

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

12. Failure by any person without adequate excuse to obey a subpoena may be deemed a contempt of the court from which the subpoena issued. Rule 45(e), SCRCP.

13. Here, this motion should be granted, and the Court should:

a. Require Gardner and Hammond to appear and show cause as to why they should not be held in contempt of court, and

b. Compel Huddle to produce the documents required by the subpoena because they are (i) relevant to the claims and defenses joined, (ii) do not impose any undue burden or cost, and (iii) Huddle has made no showing either Stiles or the Court could rely on to conclude otherwise.

14. A proposed rule to show cause requiring Gardner and Hammond to appear will be submitted for the Court's consideration once this matter is placed on the non-jury roster.

15. Stiles reserves the right to supplement this motion with a memorandum of law prior to the hearing.

Respectfully submitted,

s/Christopher P. Kenney
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May 11, 2022
Columbia, South Carolina.

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Exhibit A

Subpoena *duces tecum* to Nikki Gardner

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

Kenneth B. Loveless, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant

Case Number: 2022-CP-40-001364

Pending in Richland County

TO: Nikki Gardner, 699 Village Market Drive Chapin, SC 29036

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See **Exhibit A**

PLACE	DATE AND TIME
Richard A. Harpootlian, P.A. 1410 Laurel Street Columbia, SC 29201	May 5, 2022 at 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature	4/14/2022 Date	Christopher P. Kenney Print Name

Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :
1410 Laurel Street, Columbia, SC 29201, cpk@harpootlianlaw.com, 803-252-4848

Clerk of Court/Issuing Officer's Signature	Date	Print Name

Pro Se Litigant's Name, Address and Telephone Number :

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

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PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL
	PLACE	☐YES ☐ NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A)A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

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Exhibit A

INSTRUCTIONS

In responding to this subpoena, produce all documents available to you or subject to your reasonable access or control. In producing documents, you are required to produce each document requested together with all non-identical copies and drafts of that document. If the original of any document cannot be located, a copy shall be provided in lieu thereof and shall be legible and bound or stapled in the same manner as the original. If any requested document is not or cannot be produced in full, you are required to produce it to the extent possible, indicating which document, or portion of that document, is being withheld and the reason that document is being withheld.

Documents shall be produced as they are kept in the usual course of business or organized and labeled to correspond to the categories in this Request. In making production of electronically stored information (ESI), including, without limitation, electronic data compilations, electronic email, or documents that are kept in electronic format (such as, without limitation, Microsoft Outlook, Microsoft Word, Microsoft Excel, Microsoft PowerPoint, or any similar program or platform), produce all data compilations (e.g., Microsoft Excel files, comma separated value files, text files, etc.) in native form. Email should be produced either in native form or as TIFF image files appended with corresponding metadata and OCR files. Documents attached to email should not be separated. Documents not otherwise responsive to this subpoena should be produced if such documents mention, discuss, refer to, or explain the documents called for by this subpoena or if such documents are attached to documents called for by this subpoena.

DEFINITIONS

The following definitions apply to the discovery requests that follow:

1. Unless specifically stated to the contrary, all words and phrases utilized here shall

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

be given their ordinary, dictionary, and common-sense definitions. Additionally, unless another meaning is obvious from the context, the terms here shall have the same meaning as they have in the Complaint in this action.

2. The terms "Plaintiff" or "Loveless" mean the plaintiff in this case, Kenneth B. Loveless.

3. The terms "Defendant" and "Stiles" mean the defendant and counterclaimant in this case, Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles.

4. The term "District 5" means the School District Five of Lexington & Richland Counties, including its administrators, teachers, and employees.

5. The term "District 5 school board" means the duly elected trustees of District 5, specifically, Jan Hammond, Loveless, Nikki Gardner, Catherine Huddle, Matt Hogan, Rebecca Blackburn Hines, and Tifani Moore.

6. The term "Facebook" means the social media platform at www.facebook.com, owned by Meta Platforms, Inc.

7. The term "social media" means internet-based forms of communication that allow users to converse, share information, and create online content. Examples include Facebook, Twitter, Instagram, Reddit, etc.

8. The term "S.C. Ethic Commission" means the South Carolina Ethics Commission and any commissioners, directors, lawyers, or staff employed by the commission.

9. The term "FOIA" means the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq.

10. As used in these requests, "person" shall include natural persons, proprietorships, corporations, public corporations, municipal corporations, state governments, local governments,

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

governmental agencies, political subdivisions, partnerships, groups, associations or other business or public organizations.

11. To "identify" a person means to state the full name, home and business addresses, email addresses, and home and business telephone numbers. To "identify" a document means to state a description or name of it, the date, its author, each person to whom the document or any copy was sent, and every person having custody of the document.

12. The terms "relating to," "with respect to," and "refer to" shall mean embodying, containing, comprising, indicating, concerning, referring, identifying, describing, discussing, involving, evidencing or otherwise pertaining to.

13. The term "document" has the broadest meaning permitted under Rules 26 and 34 of the South Carolina Rules of Civil Procedure and includes, (but is not limited to) all writings, recordings (audio and visual), tapes, films, ESI, discs, memory drives, maps, diagrams, blueprints, pictures, and photos of any nature whatsoever (including drafts and copies). Examples of written documents include contracts, agreements, communications, correspondence, records, reports, studies, memoranda, notes, advertisements, notices, bills, cables, books, diaries, appraisals, forecasts, statistical statements, work papers, graphs, summaries, lists, tabulations, calendars, charts, tables, indices, accounts, minutes, brochures, pamphlets, circulars, letters, press releases, checks and check stubs, receipts, or invoices.

14. The term "ESI" means electronically stored information, electronically stored data or electronic data, and is to be interpreted broadly to include all types of information, regardless of the storage media (e.g., hard drive, CD-ROM, DVD, disc, tape, thumb drive, etc.), that requires a computer or other machine to read or process it.

15. The term "communications" means the transmittal of information in any form.

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Written communications include letters, correspondence, notes, memoranda, emails, text messages, social media message, instant message, telegram, or other forms of word exchange whether through physical or electronic transmittal.

LIMITATION AS TO SCOPE

Unless expressly stated to the contrary, every interrogatory, document request, and request to admit below seeks information concerning the period of January 1, 2018, through the present.

DOCUMENTS FOR PRODUCTION

You are required to produce the following documents in response to this subpoena:

1. All communications sent to or received from Loveless. This request includes:
    a. All email accounts, whether personal (e.g., gmail, yahoo, aol, etc.), work, or District 5;
    b. All text messages sent to any phone or tablet, whether personal, work, or District 5; and
    c. All direct or instant messenger messages, whether through a social media application (e.g., Facebook, Twitter, etc.) or an online or application service (e.g., Signal).
2. All communications sent to or received from another person about or concerning Loveless. This request includes:
    a. Email accounts, whether personal, work, or District 5;
    b. Text messages sent to any phone or tablet, whether personal, work, or District 5; and
    c. Direct or instant messenger messages, whether through a social media application or an online or application service.

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

AFFIDAVIT OF SERVICE

State of South Carolina **County of Richland** **Common Pleas Court**

Case Number: 2022-CP-40-001364

Plaintiff:
Kenneth B. Loveless

vs.

Defendant:
Lesley Ann Stiles A/K/A Leslie Lou Stiles

For:
Richard A. Harpootlian, PA
1410 Laurel Street
Columbia, SC 29201

Received by Palmetto Legal Gophers, LLC to be served on **Nikki Gardner, 699 Village Market Dr., Chapin, SC 29036**.

I, Ron Grossberg, being duly sworn, depose and say that on the **19th day of April, 2022** at **7:06 pm, I:**

SUBSTITUTE served by delivering a true copy of the **Letter, Subpoena In A Civil Case, Exhibit A** to: **Janice Perry** as **Mother** at the address of: **699 Village Market Dr., Chapin, SC 29036**, the within named person's usual place of abode, who resides therein, who is sixteen (16) years of age or older.

Additional Information pertaining to this Service:
4/19/2022 7:07 pm Served at 699 Village Market Dr., Chapin, SC 29036, c/o Janice Perry who is her mother and said she stays at the house with Nikki.

Description of Person Served: Age: 65, Sex: F, Race/Skin Color: White, Height: 5'2", Weight: 150, Hair: White, Glasses: N

I certify that I am over the age of 18 and have no interest in the above action.

Subscribed and Sworn to before me on the 19th day of April, 2022 by the affiant who is personally known to me.

Kristin Ann Patterson
NOTARY PUBLIC
EXP. DATE _____

KRISTIN ANN PATTERSON
Notary Public, State of South Carolina
My Commission Expires
November 15, 2026

Ron Grossberg

Palmetto Legal Gophers, LLC
www.palmettolegalgophers.com
PO Box 6108
Columbia, SC 29260
(803) 216-1621

Our Job Serial Number: LPW-2022000774

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Exhibit B

Subpoena *duces tecum* to Jan Hammond

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

Kenneth B. Loveless, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant

Case Number: 2022-CP-40-001364

Pending in Richland County

TO: Jan Hammond, 141 Stephenson Lane, Columbia, SC 29212

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See **Exhibit A**

PLACE	DATE AND TIME
Richard A. Harpootlian, P.A. 1410 Laurel Street Columbia, SC 29201	May 5, 2022 at 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature	4/14/2022 Date	Christopher P. Kenney Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number :

1410 Laurel Street, Columbia, SC 29201, cpk@harpootlianlaw.com, 803-252-4848

Clerk of Court/Issuing Officer's Signature	Date	Print Name

Pro Se Litigant's Name, Address and Telephone Number :

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

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PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL
	PLACE	☐YES ☐ NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

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(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

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(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

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(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

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ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

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2. The terms "Plaintiff" or "Loveless" mean the plaintiff in this case, Kenneth B. Loveless.

3. The terms "Defendant" and "Stiles" mean the defendant and counterclaimant in this case, Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles.

4. The term "District 5" means the School District Five of Lexington & Richland Counties, including its administrators, teachers, and employees.

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12. The terms "relating to," "with respect to," and "refer to" shall mean embodying, containing, comprising, indicating, concerning, referring, identifying, describing, discussing, involving, evidencing or otherwise pertaining to.

13. The term "document" has the broadest meaning permitted under Rules 26 and 34 of the South Carolina Rules of Civil Procedure and includes, (but is not limited to) all writings, recordings (audio and visual), tapes, films, ESI, discs, memory drives, maps, diagrams, blueprints, pictures, and photos of any nature whatsoever (including drafts and copies). Examples of written documents include contracts, agreements, communications, correspondence, records, reports, studies, memoranda, notes, advertisements, notices, bills, cables, books, diaries, appraisals, forecasts, statistical statements, work papers, graphs, summaries, lists, tabulations, calendars, charts, tables, indices, accounts, minutes, brochures, pamphlets, circulars, letters, press releases, checks and check stubs, receipts, or invoices.

14. The term "ESI" means electronically stored information, electronically stored data or electronic data, and is to be interpreted broadly to include all types of information, regardless of the storage media (e.g., hard drive, CD-ROM, DVD, disc, tape, thumb drive, etc.), that requires a computer or other machine to read or process it.

15. The term "communications" means the transmittal of information in any form.

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Written communications include letters, correspondence, notes, memoranda, emails, text messages, social media message, instant message, telegram, or other forms of word exchange whether through physical or electronic transmittal.

LIMITATION AS TO SCOPE

Unless expressly stated to the contrary, every interrogatory, document request, and request to admit below seeks information concerning the period of January 1, 2018, through the present.

DOCUMENTS FOR PRODUCTION

You are required to produce the following documents in response to this subpoena:

1. All communications sent to or received from Loveless. This request includes:
    a. All email accounts, whether personal (e.g., gmail, yahoo, aol, etc.), work, or District 5;
    b. All text messages sent to any phone or tablet, whether personal, work, or District 5; and
    c. All direct or instant messenger messages, whether through a social media application (e.g., Facebook, Twitter, etc.) or an online or application service (e.g., Signal).
2. All communications sent to or received from another person about or concerning Loveless. This request includes:
    a. Email accounts, whether personal, work, or District 5;
    b. Text messages sent to any phone or tablet, whether personal, work, or District 5; and
    c. Direct or instant messenger messages, whether through a social media application or an online or application service.

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Richland** **Common Pleas Court**

Case Number: 2022-CP-40-001364

Plaintiff:
Kenneth B. Loveless

vs.

Defendant:
Lesley Ann Stiles A/K/A Leslie Lou Stiles

For:
Richard A. Harpootlian, PA
1410 Laurel Street
Columbia, SC 29201

Received by Palmetto Legal Gophers, LLC to be served on **Jan Hammond, 141 Stephenson Lane, Columbia, SC 29212**.

I, Ron Grossberg, being duly sworn, depose and say that on the **19th day of April, 2022** at **7:37 pm, I:**

SUBSTITUTE served by delivering a true copy of the **Letter, Subpoena In A Civil Case, Exhibit A** to: **John Hammond** as **Son** at the address of: **141 Stephenson Lane, Columbia, SC 29212**, the within named person's usual place of abode, who resides therein, who is sixteen (16) years of age or older.

Additional Information pertaining to this Service:
4/19/2022 7:38 pm Served at 141 Stephenson Lane, Columbia, SC 29212, c/o John Hammond, son and co-resident.

Description of Person Served: Age: 35, Sex: M, Race/Skin Color: White, Height: 5'8", Weight: 160, Hair: Light Brown, Glasses: N

I certify that I am over the age of 18 and have no interest in the above action.

Subscribed and Sworn to before me on the 19th day of April, 2022 by the affiant who is personally known to me.

Kristin Ann Patterson
NOTARY PUBLIC
EXP. DATE _____

KRISTIN ANN PATTERSON
Notary Public, State of South Carolina
My Commission Expires
November 15, 2026

Ron Grossberg

Palmetto Legal Gophers, LLC
www.palmettolegalgophers.com
PO Box 6108
Columbia, SC 29260
(803) 216-1621

Our Job Serial Number: LPW-2022000775

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Exhibit C

Subpoena *duces tecum* to Catherine Huddle

STATE OF SOUTH CAROLINA

ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF RICHLAND

Kenneth B. Loveless, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant

Case Number: 2022-CP-40-001364

Pending in Richland County

TO: Catherine Huddle, 132 Water Links Dr. Chapin, SC 29036

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME , AM

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME , AM

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:

See **Exhibit A**

PLACE	DATE AND TIME
Richard A. Harpootlian, P.A. 1410 Laurel Street Columbia, SC 29201	May 5, 2022 at 5:00 PM

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME , AM

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Attorney/Issuing Officer's Signature	4/14/2022 Date	Christopher P. Kenney Print Name

Indicate if Attorney for Plaintiff or Defendant

Attorney's Address and Telephone Number :

1410 Laurel Street, Columbia, SC 29201, cpk@harpootlianlaw.com, 803-252-4848

Clerk of Court/Issuing Officer's Signature	Date	Print Name

Pro Se Litigant's Name, Address and Telephone Number :

SCCA 254 (05/2015)

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

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PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL
	PLACE	☐YES ☐NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A)A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

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Exhibit A

INSTRUCTIONS

In responding to this subpoena, produce all documents available to you or subject to your reasonable access or control. In producing documents, you are required to produce each document requested together with all non-identical copies and drafts of that document. If the original of any document cannot be located, a copy shall be provided in lieu thereof and shall be legible and bound or stapled in the same manner as the original. If any requested document is not or cannot be produced in full, you are required to produce it to the extent possible, indicating which document, or portion of that document, is being withheld and the reason that document is being withheld.

Documents shall be produced as they are kept in the usual course of business or organized and labeled to correspond to the categories in this Request. In making production of electronically stored information (ESI), including, without limitation, electronic data compilations, electronic email, or documents that are kept in electronic format (such as, without limitation, Microsoft Outlook, Microsoft Word, Microsoft Excel, Microsoft PowerPoint, or any similar program or platform), produce all data compilations (e.g., Microsoft Excel files, comma separated value files, text files, etc.) in native form. Email should be produced either in native form or as TIFF image files appended with corresponding metadata and OCR files. Documents attached to email should not be separated. Documents not otherwise responsive to this subpoena should be produced if such documents mention, discuss, refer to, or explain the documents called for by this subpoena or if such documents are attached to documents called for by this subpoena.

DEFINITIONS

The following definitions apply to the discovery requests that follow:

1. Unless specifically stated to the contrary, all words and phrases utilized here shall

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be given their ordinary, dictionary, and common-sense definitions. Additionally, unless another meaning is obvious from the context, the terms here shall have the same meaning as they have in the Complaint in this action.

2. The terms "Plaintiff" or "Loveless" mean the plaintiff in this case, Kenneth B. Loveless.

3. The terms "Defendant" and "Stiles" mean the defendant and counterclaimant in this case, Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles.

4. The term "District 5" means the School District Five of Lexington & Richland Counties, including its administrators, teachers, and employees.

5. The term "District 5 school board" means the duly elected trustees of District 5, specifically, Jan Hammond, Loveless, Nikki Gardner, Catherine Huddle, Matt Hogan, Rebecca Blackburn Hines, and Tifani Moore.

6. The term "Facebook" means the social media platform at www.facebook.com, owned by Meta Platforms, Inc.

7. The term "social media" means internet-based forms of communication that allow users to converse, share information, and create online content. Examples include Facebook, Twitter, Instagram, Reddit, etc.

8. The term "S.C. Ethic Commission" means the South Carolina Ethics Commission and any commissioners, directors, lawyers, or staff employed by the commission.

9. The term "FOIA" means the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq.

10. As used in these requests, "person" shall include natural persons, proprietorships, corporations, public corporations, municipal corporations, state governments, local governments,

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

governmental agencies, political subdivisions, partnerships, groups, associations or other business or public organizations.

11. To "identify" a person means to state the full name, home and business addresses, email addresses, and home and business telephone numbers. To "identify" a document means to state a description or name of it, the date, its author, each person to whom the document or any copy was sent, and every person having custody of the document.

12. The terms "relating to," "with respect to," and "refer to" shall mean embodying, containing, comprising, indicating, concerning, referring, identifying, describing, discussing, involving, evidencing or otherwise pertaining to.

13. The term "document" has the broadest meaning permitted under Rules 26 and 34 of the South Carolina Rules of Civil Procedure and includes, (but is not limited to) all writings, recordings (audio and visual), tapes, films, ESI, discs, memory drives, maps, diagrams, blueprints, pictures, and photos of any nature whatsoever (including drafts and copies). Examples of written documents include contracts, agreements, communications, correspondence, records, reports, studies, memoranda, notes, advertisements, notices, bills, cables, books, diaries, appraisals, forecasts, statistical statements, work papers, graphs, summaries, lists, tabulations, calendars, charts, tables, indices, accounts, minutes, brochures, pamphlets, circulars, letters, press releases, checks and check stubs, receipts, or invoices.

14. The term "ESI" means electronically stored information, electronically stored data or electronic data, and is to be interpreted broadly to include all types of information, regardless of the storage media (e.g., hard drive, CD-ROM, DVD, disc, tape, thumb drive, etc.), that requires a computer or other machine to read or process it.

15. The term "communications" means the transmittal of information in any form.

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Written communications include letters, correspondence, notes, memoranda, emails, text messages, social media message, instant message, telegram, or other forms of word exchange whether through physical or electronic transmittal.

LIMITATION AS TO SCOPE

Unless expressly stated to the contrary, every interrogatory, document request, and request to admit below seeks information concerning the period of January 1, 2018, through the present.

DOCUMENTS FOR PRODUCTION

You are required to produce the following documents in response to this subpoena:

1. All communications sent to or received from Loveless. This request includes:
    a. All email accounts, whether personal (e.g., gmail, yahoo, aol, etc.), work, or District 5;
    b. All text messages sent to any phone or tablet, whether personal, work, or District 5; and
    c. All direct or instant messenger messages, whether through a social media application (e.g., Facebook, Twitter, etc.) or an online or application service (e.g., Signal).
2. All communications sent to or received from another person about or concerning Loveless. This request includes:
    a. Email accounts, whether personal, work, or District 5;
    b. Text messages sent to any phone or tablet, whether personal, work, or District 5; and
    c. Direct or instant messenger messages, whether through a social media application or an online or application service.

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Richland** **Common Pleas Court**

Case Number: 2022-CP-40-001364

Plaintiff:
Kenneth B. Loveless

vs.

Defendant:
Lesley Ann Stiles A/K/A Leslie Lou Stiles

For:
Richard A. Harpootlian, PA
1410 Laurel Street
Columbia, SC 29201

Received by Palmetto Legal Gophers, LLC to be served on **Catherine Huddle, 132 Water Links Dr., Chapin, SC 29036**.

I, Ron Grossberg, being duly sworn, depose and say that on the **20th day of April, 2022** at **7:18 am, I:**

INDIVIDUALLY/PERSONALLY served by delivering a true copy of the **Letter, Subpoena In A Civil Case, Exhibit A**, to: **Catherine Huddle** at the address of: **132 Water Links Dr., Chapin, SC 29036**.

Additional Information pertaining to this Service:
4/20/2022 7:18 am Served at 132 Water Links Dr., Chapin, SC 29036, Ms. Huddle opened the door only enough to accept the papers, unable to estimate her weight.

Description of Person Served: Age: 48, Sex: F, Race/Skin Color: White, Height: 5'4", Weight: NA, Hair: Light Brown, Glasses: N

I certify that I am over the age of 18 and have no interest in the above action.

Ron Grossberg

Subscribed and Sworn to before me on the 20th day of April, 2022 by the affiant who is personally known to me.

Kristin Ann Patterson
NOTARY PUBLIC
EXP. DATE _____

KRISTIN ANN PATTERSON
Notary Public, State of South Carolina
My Commission Expires
November 15, 2026

Palmetto Legal Gophers, LLC
www.palmettolegalgophers.com
PO Box 6108
Columbia, SC 29260
(803) 216-1621

Our Job Serial Number: LPW-2022000773

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Exhibit D

Letter from District 5 counsel

Andrea E. White
Ashley C. Story
J. Alexander Sherard
Michael D. Davidson

WHITE & STORY LLC
ATTORNEYS AT LAW

3614 Landmark Dr. Ste. EF
P.O. Box 7036 (29202)
Columbia, SC 29204
Tel: 803.814.0993
Fax: 803.814.1183
www.sodacitylaw.com

Andrea E. White
awhite@sodacitylaw.com

RECEIVED
MAY 09 2022
Richard A. Harpootlian, P.A.
Calendared

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

April 29, 2022

VIA EMAIL & FIRST-CLASS U.S. MAIL

Mr. Christopher P. Kenney, Esq.
RICHARD A. HARPOOTLIAN, P.A.
P.O. Box 1090
Columbia, SC 29202
cpk@harpootlianlaw.com

Re: Kenneth B. Loveless v. Lesley Ann Stiles a/k/a Leslie Lou Stiles
C/A No. 2022-CP-40-01364

Dear Mr. Kenney:

This firm represents School District Five of Lexington and Richland Counties ("the District"). In that capacity, I am writing in response to the subpoenas you issued on April 19 and 20, 2022, in the above matter. Your subpoenas were issued to several non-parties including District Superintendent Dr. Akil Ross and six of the District's Trustees. Please accept this letter as an objection pursuant to Rule 45(c)(2)(B), SCRCP, to certain portions of those subpoenas.

Your subpoena directs the production of "all communications sent to or received from Loveless," including communications using District Five email addresses and telephone numbers. You also direct the production of "all communications sent to or received from another person about or concerning Loveless," including communications sent via District Five email addresses and telephone numbers.

Because you do not specify the content of any communication using District Five technology that you are seeking other than those communications containing the name "Loveless", I believe your subpoenas are overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence. Emails and text messages sent between Trustees often contain confidential student and personnel information as well as other information for which a protective order may be necessary.

If you are willing and able to specify terms in addition to "Loveless" that would narrow the scope of the search of emails and text messages using District Five technology, I would be glad to consider withdrawing this objection.

Please note that I do not represent Dr. Ross or any of the Trustees in their individual or personal capacity in this or any other matter. Accordingly, I am not objecting to or taking any position

on the remainder of your subpoenas seeking communications using personal or work technology and/or social media platforms.

If you have questions or would like to discuss this matter, please feel free to contact me directly.

Sincerely,

Andrea E. White

AEW/mmy

c: Ms. Jan Hammond, Board Chair (via email)
Mr. Ken Loveless, Vice Chair (via email)
Ms. Nikki Gardner, Secretary (via email)
Mr. Matt Hogan (via email)
Ms. Rebecca Blackburn Hines (via email)
Ms. Catherine Huddle (via email)
Ms. Tifani Moore (via email)
Dr. Akil Ross, Superintendent (via email)
Ms. Desa Ballard, Esq. (via email)

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Exhibit E

Letter and emails from Catherine Huddle

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Chris Kenney

From: Catherine Huddle <catherineghuddle@gmail.com>
Sent: Tuesday, May 10, 2022 12:10 PM
To: Chris Kenney
Subject: Re: Please see attached

Chris, I believe the request is overly broad because I am friends with Mr. and Mrs. Loveless and as such, I have personal email and texts with them on my personal account which have absolutely nothing to do with this matter. As a private citizen I have a reasonable expectation of privacy and should not be required to produce communications irrelevant to the case. In addition, producing such information would be an undo burden and would require printing a ton of paper and using a lot of ink, not to mention my time.

A reasonable approach would be to limit the request to anything mentioning the persons involved in the suit or the subject matter of the suit.

I am not a lawyer, but if you proceed with a court order to force an unreasonable request for personal information that has absolutely nothing to do with this case, I will engage an attorney and do my best to ensure your client reimburses my costs.

Thank-you,
Catherine Huddle

On Thu, May 5, 2022 at 5:34 PM Chris Kenney <cpk@harpootlianlaw.com> wrote:

> Ms. Huddle,
>
> Thank you for your letter. I respectfully disagree that the requested documents are overly broad given the allegations that have been made in this case. Further, I would note that your objection fails to make any representations or proffer any facts that would allow me to conclude the request is, in fact, too broad or burdensome for you to comply.
>
> I understand Ms. White is assisting you as to your District 5 correspondence; however, if you have a personal attorney assisting you, please have that individual contact me. In the meantime, please let me know whether you are willing to reconsider your position as I intend to move the Court for an order compelling your compliance with the subpoena.
>
> Thanks again,
>
> Chris Kenney

Chris Kenney
Attorney at Richard A. Harpootlian, PA

Address 1410 Laurel Street Columbia, SC 29201
Phone 803-252-4848 **Fax** 803-252-4810 **Email** cpk@harpootlianlaw.com **Website** http://www.harpootlianlaw.com/

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CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by an attorney. It may contain information that is confidential, privileged, proprietary or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy, or disseminate this message, or any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

IRS CIRCULAR 230 NOTICE: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (1) avoiding penalties under the Internal Revenue Code or (2) promoting, marketing, or recommending to another party any transaction or matter addressed in this communication or attachment.

From: Cathy Huddle <catherineghuddle@gmail.com>
Sent: Friday, April 29, 2022 2:52 PM
To: Chris Kenney <cpk@harpootlianlaw.com>
Subject: Please see attached

Thank-you,

Catherine Huddle

ELECTRONICALLY FILED - 2022 May 11 3:07 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

April 29, 2022

VIA EMAIL & FIRST-CLASS U.S. MAIL

Mr. Christopher P. Kenney, Esq.
RICHARD A. HARPOOTLIAN, P.A.
P.O. Box 1090
Columbia, SC 29202

cpk@harpootlianlaw.com

Re: Kenneth B. Loveless v. Lesley Ann Stiles a/k/a Leslie Lou Stiles C/A No. 2022-CP-40-01364

Dear Mr. Kenney, I am writing in response to the subpoena you issued to me on April 19, 2022 in the above matter.

Please accept this letter as an objection pursuant to Rule 45(c)(2)(B).

Your subpoena directs the production of "all communications sent to or received from Loveless," including communications using personal or work email addresses and telephone numbers. You also direct the production of "all communications sent to or received from another person about or concerning Loveless," including communications sent via personal or work email addresses and telephone numbers. Because you do not specify the content of any communication you are seeking other than those communications containing the name "Loveless", I believe your subpoena is overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence.

Additionally, I have contacted my employer and I have been instructed that I am not to release any information from my work email or phone. The court would need to issue an order for any such information directly to my company.

Sincerely,

Catherine Huddle

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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kenneth B. Loveless, Plaintiff vs. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Civil Action No.: 2022-CP-40-01364 **MOTION FOR PROTECTIVE ORDER OR CONFIDENTIALITY ORDER**

Pursuant to Rule 26(b)(1), SCRCP, and Rule 26(c), SCRCP, Plaintiff Loveless moves for a protective order prohibiting Defendant and her counsel from engaging in discovery which seeks to inquire into matters which are completely unrelated to the instant action for personal and unrelated purposes, far beyond the scope of the issues in dispute in this matter.

This is an action for defamation. This action is brought by a single individual against a second individual. This is not a case brought by a school district or of the members of the administration or School Board of any District. It is a private matter. Rule 26(b) permits discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party…" Rule 26(b), SCRCP.

Defendant Stiles has issued subpoenas to members of the Lexington/Richland School District Five and perhaps others seeking to conduct an overly broad scope of discovery (as evidenced by the subpoenas attached to the Rule to Show Cause filed in this matter on May 1, 2022), for purposes that are totally unrelated to this case. Stiles, who created a Facebook page approximately one year ago for purposes of airing her grievances about decisions made by the School Board and administration, where she began publishing "information" that was a "result of much research and analysis. . ." for the purpose of complaining about certain actions taken by the

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Lexington-Richland School District and related matters. (Complaint ¶ 8), which allegations she had admitted in her answer in this action. (Answer ¶ 9).

Stiles was sued by a member of the School Board, Kenneth B. Loveless, on March 16, 2022, for defamation and libel, based largely on statements posted on the Facebook group she created and for which she serves as administrator. Following the initiation of the suit until she filed her Answer, Stiles ceased activity on her Facebook group page. On April 13, 2022, Stiles filed an answer, reactivated her Facebook page, and notified the viewers of the page to make donations to a Go Fund Me page, seeking to solicit funds to defend herself in the action brought by Loveless. **Exhibit A.**

As is evident by her discovery, Stiles is continuing her self-described investigation into "how our District was being run" by serving discovery requests upon Defendant and subpoenas that have nothing to do with the allegations against her, but to further her investigation and publicize it to raise money for her defense and for whatever other reasons she chose to inject herself into and lead public debate. *Id.* The scope of the discovery she served on certain members of the School District Members, as described in Stiles' Rule to Show Cause, is radically abusive, and likely sanctionable.

When discovery is abusive a trial judge may issue an order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense." *Hollman v. Woolfson*, 384 S.C. 571, 683 S.E.2d 495, 498 (2009). It seems obvious that a private civil action for defamation is not a forum to allow a public fishing expedition into "how our District was being run" as Defendant Stiles describes.

A casual search of www.thestate.com reveals how Defendant Stiles and others have generated dissent and acted with malice toward the School District. Nonetheless, the School

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

District has not taken action against Stiles, nor has it spoken out against her. Now, however, Stiles has begun a broad range of discovery that is clearly not related to the legal or factual issues at dispute in this case, apparently to further generate publicity and generate dissent regarding Plaintiff and others.

Stiles' Request for Admissions, Interrogatories and Requests to Produce demonstrate the bad faith in which Stiles and her counsel are engaged. **Exhibit B**. As established by those discovery requests, the vast majority of information sought is completely unrelated to the issues in this case and it is not likely to lead to discovery that is relevant in this action. Stiles wants discovery for publicity and to raise money. By using the discovery process for her own financial purposes, Stiles and her counsel are abusing the system.

Stiles and her counsel know full well that the discovery they are attempting is prohibited. They know full well that Stiles and others have publicly commented that litigation would enable them to conduct a deep dive into the operations of the school district, for whatever their purpose might be.

Rule 26(c), SCRCP, authorizes the Court, in appropriate circumstances, to issue a protective order which limits, in whole or in part, discovery related to a particular matter. *Doe v. American National Bank Cros*, 788 F.Supp. 884, 889 (D.S.C. 1992). Existing precedent from the appellate courts of this state provide a detailed framework for requiring a party who seeks to improperly abuse the discovery process to "come forward and show that the information sought 'is both relevant and necessary to the case." *Hamm v. SCPSC*, 312 S.C. 238, 439 S.E.2d 852, 854 (1994).

As evidenced by the Rule to Show Cause filed by Stiles and the wholesale irrelevant discovery propounded against Defendant, the intentions of Defendant Stiles are clear.

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Counsel for the school district objected to the subpoenas issued to the school board members, but that did not stop Stiles and her counsel from seeking punitive relief against the non-parties as evidenced in the Petition for Rule to Show Cause.

Defendant seeks an order strictly limiting discovery in this action to the issues raised by the pleadings and matters directly related thereto, in accordance with Rule 26.

ALTERNATIVE RELIEF

Should the Court nevertheless allow the discovery sought by Stiles, Defendant seeks a protective order to prevent Stiles and her counsel from disseminating the information they obtain in discovery and to restrict parties and counsel from using the information gained in discovery for any purpose other than legitimate purposes directly related to this litigation.

This lawsuit arose solely because Stiles proclaimed herself a watchdog for the public and created a broad-based social media brigade because she disagreed with actions taken by the School Board when it accepted the resignation of the former superintendent of the school district. Stiles paused her social media page "Deep Dive Into Five" when she was sued, but activated it again when she filed her answer and counterclaim, reactivating it and posting information about she intended to defend herself and to raise money to fund her defense. It is clearly Stiles' intent to escalate the media storm she began with her social media campaign, and her discovery in this case is clearly intended to continue Stiles' campaign to malign the School District and its members individually.

It is the clear intent of Stiles and her counsel to publicize whatever information they obtain in discovery to further Stiles' efforts at fund raising for her "defense" (which is more of an attack than a defense) and to perpetuate hostility and anger among persons for whom the actions of the Lexington Richland School District Five Board are of interest.

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Should the Court not see fit to totally prohibit Stiles' fishing expedition into the operations of the School District and decision-making of the Board in this purely private matter, this Court is requested, at a minimum, to issue an order imposing confidentiality upon the materials obtained by Stiles and her counsel in their wide-ranging discovery.

Plaintiff's counsel inquired of Stiles' counsel whether an agreement can be reached as to the issues raised here, but he opposed the motion. **Exhibit C**.

Wherefore, Defendant moves for a Protective Order prohibiting discovery beyond the scope of the issues in dispute in this action and/or an order of confidentiality prohibiting Stiles and her counsel from disseminating or publicizing the information they obtain in response to their abuse and wide-ranging discovery, which is clearly sought for improper purposes.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
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desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

May 27, 2022

EXHIBIT
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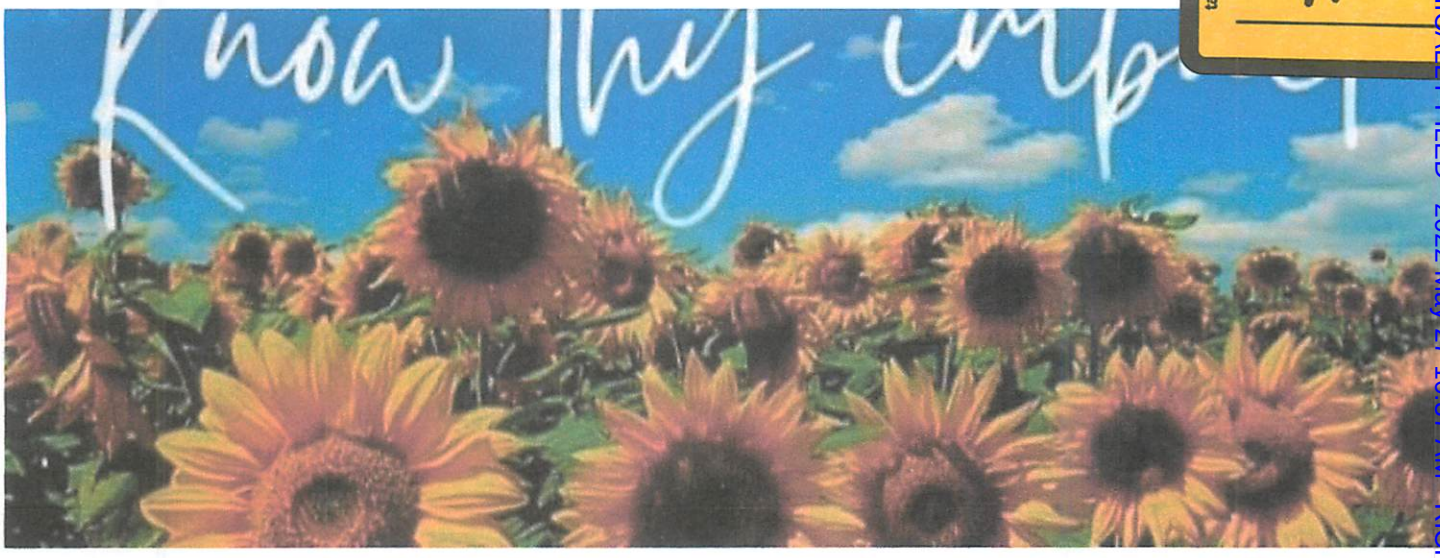

Deep Dive Into D5

Public group · 2.5K members

Join group

This Group is temporarily paused for 27 days

An admin paused this group on May 3, 2022. Group activity will resume on May 31, 2022 at 2:46 AM

Featured

Leslie Anne shared a link.
April 13 ·

Dear Deep Dive Into D5 co...

Leslie Anne sh
March 16 ·

https://www.thestate.c
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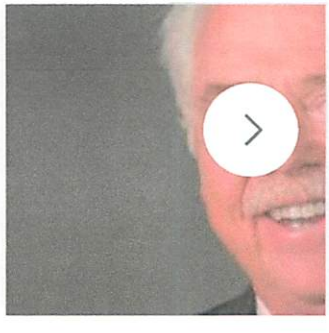

ROA 000103

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Defense, organized by Leslie Stiles

constituent for criti

Newest Activity

Leslie Anne
April 13 ·

Please read the most recent post for more information

Leslie Anne shared a link.
April 13 ·

Discussion

Dear Deep Dive Into D5 community members:

This group page was paused on March 16, 2022, after I was sued by Kenneth B. Loveless, a trustee of our Lexington-Richland School District 5, who alleges that I defamed him and that, as administrator of this page, allowed others to defame him. Those allegations have no merit.

Today, I filed an answer with the Court officially disputing Mr. Loveless's claims. Court filings in this case are available to the public at the Richland County Public Index and can be located by searching for Case No. 2022CP4001364. (see link at the bottom of this post)

When I started this group page in October 2020, I wanted to share information about our schools, how our District was being run, and how we can improve our children's education. I am not a public official—I'm just a mom of three young children. Like many of you, I volunteer in our schools, I participate in our PTO, and I follow the work of our elected District trustees with great interest. Never in my wildest dreams did I imagine that a public official would sue me for exercising my First Amendment right to speak about our public schools or for the things other people said in a Facebook group I created.

Thank you to those who have extended words of support. Many of you have asked how you can help. Here are three things you can do:

- First, if you can support my legal defense financially, I have set up a GoFundMe page https://gofund.me/13adc36d where you can contribute. Unfortunately, it costs a lot of money to defend even a frivolous lawsuit. I am not a wealthy person and I do not know how long this lawsuit will drag on or what it will cost. This financial burden is a real concern for me and my family, and I

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

via check to Leslie Stiles - 7320 Broad River Rd Suite K Box#112, Irmo, SC 29063)

- Second, keep paying attention to what elected leaders are doing. This lawsuit is a bully tactic designed to shut me up and scare other parents from participating in our school district. That cannot stand. I urge you to pay attention and encourage friends and family to do the same. Sometimes it is tempting to throw up our hands in frustration, but we can't let the actions of others chill or discourage us from being involved in our children's education.
- Third, make your voice heard. Our government is elected by the people, for the people. We have a right to speak about it and about the public officials we elect. Americans never stand down or stand by when a bully is picking on someone, and I do not intend to do so here. If you believe what Mr. Loveless is doing is wrong, I encourage you to get involved and respectfully make your voice heard. Of course, one of the best ways to hold our public officials accountable is by voting and I do not believe it is a coincidence that Mr. Loveless filed this lawsuit the same year he is up for reelection in November 2022.

Thank you again for the support and kind words and for each of your commitment to our children in District 5.

Link to the Richland County Public Index (court cases)

https://publicindex.sccourts.org/.../Publ.../disclaimer.aspx

Choose Richland County. And agree to the terms. You can then search for case number 2022CP4001364

GOFUNDME.COM

Leslie Stiles' 1st Amendment Legal Defense, organized by Leslie Stiles

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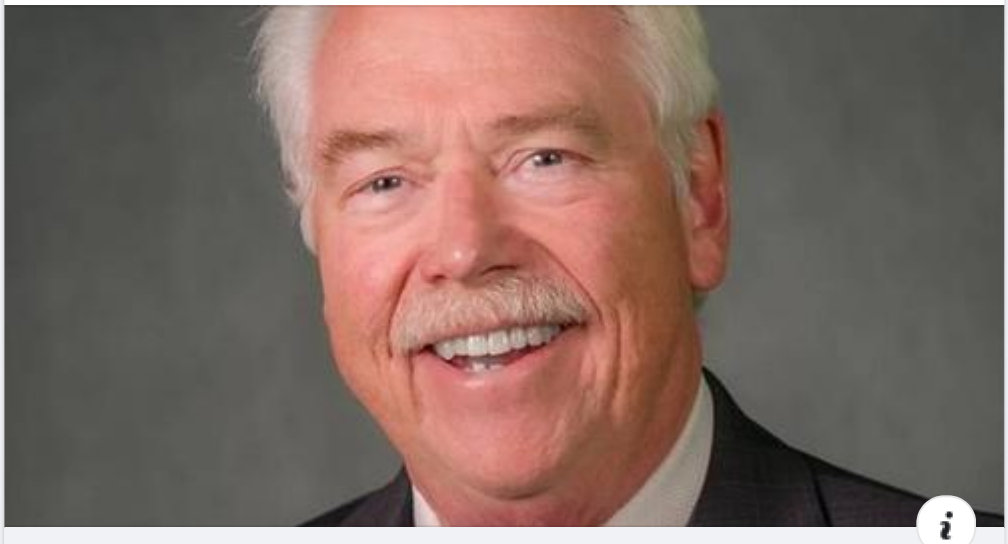
Leslie Anne shared a link.
March 16 ·

https://www.thestate.com/article259425984.html



THESTATE.COM

LR5 school board member sues constituent for criticizing him on Facebook

14 18 Comments

Most recent

Brent Chitwood
Apparently the legal information about these type of suits that I have received was incorrect. I have been told that political free speech is the most protected kind.

I was recently called a liar on FB by an elected Town Councilman. I just laughed... **See more**

4

8w

Danielle Gray replied · 2 Replies

Catherine Williams

8w

ROA 000106

View 10 more comments

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STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364 **FIRST SET OF INTERROGATORIES, DOCUMENT REQUESTS, AND REQUESTS TO ADMIT TO THE PLAINTIFF**

Defendant Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles, pursuant to Rules 26, 33, 34, and 36 of the South Carolina Rules of Civil Procedure, hereby requires Plaintiff Kenneth B. Loveless to answer the following interrogatories, upon oath and in writing, to respond to document requests and make available certain documents, tangible things, and electronically stored information (ESI) specified below available for copying, photographing, inspecting, or measuring, and to answer the following requests to admit within 30 days of service.

INSTRUCTIONS

Please take notice that the following instructions and definitions are <u>not</u> boilerplate but were specifically drafted to explain the information sought and the way the rules require it be disclosed. You should expect Defendant to move the Court to compel disclosure and seek other appropriate relief if furnished with responses that interpose non-specific, boilerplate objections or otherwise depart from what the civil rules require.

Interrogatories

Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection must be stated in lieu of an answer. Rule

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

33(a), SCRCP. You must serve a copy of the answers and objections, if any, within 30 days of service. Id. The answers are to be signed by the person making them, and the objections signed by the attorney making them. Id.

An interrogatory is not objectionable merely because an answer involves an opinion or contention that relates to fact or the application of law to fact. Rule 33(d), SCRCP.

Document Requests

You are required to respond to each document request in writing within 30 days and either state that inspection and copying will be permitted or the reasons for any objection. Rule 34(b), SCRCP. If an objection is made, it must be specifically stated as to the reason and the request. Id. If objection is made to the requested form or forms for producing ESI, you must state the form or forms you intend to use, which may include the form in which the ESI is customarily maintained (i.e., native files). See id.

In responding to these document requests, you may produce responsive documents in lieu of permitting inspection and copying. You must produce or make available all documents, tangible items, and electronically stored information (ESI) subject to your reasonable access or control, including but not limited to all documents available to your counsel in this case, or any experts. See Rule 34(a), SCRCP. In producing documents, you are required to produce each document requested together with all non-identical copies and drafts of that document. If the original of any document cannot be located, a copy shall be provided in lieu thereof and shall be legible and bound or stapled in the same manner as the original. Documents shall either produced as they are kept in the usual course of business or organized and labeled to correspond to the categories in this request. See Rule 34(b), SCRCP. In making production of ESI, including data compilations, email, text messages, or documents kept in electronic format (e.g., Microsoft Outlook, Word, Excel,

PowerPoint, or any similar programs or platforms), produced them in their native format along with all passwords necessary to access the documents. If you choose to process ESI prior to production, produce single page images along with an accompanying load file, full OCR text, and metadata. Native files should also be produced.

Request to Admit

Each request to admit will be deemed admitted unless a written response or objection is served in 30 days. Rule 36(a), SCRCP. If objection is made, the reasons shall be stated. Id. An answer shall specifically deny the matter or set forth in detail reasons why you cannot truthfully admit or deny the matter and a denial must fairly meet the substance of the requested admission. Id. If good faith requires you admit part of the request, you must specify the portion admitted and deny the remainder. Id. You may not give a lack of information or knowledge as the reason for denying a requested admission unless you make a reasonable inquiry beforehand. Id.

Objections and Privilege

An objection should fairly apprise the requesting party of the information being withheld and the basis for the withholding. Interposing nonspecific, boilerplate objections while also making a limited disclosure "subject to" those objections is inconsistent with the rules and grounds to move the Court to waive the objection and compel disclosure.

Objections based on privilege must expressly make the claim and describe the nature of the information withheld in a manner that will allow the requesting party to assess the applicability of the privilege or protection. Rule 26(b)(5)(A), SCRCP. When documents are withheld, that should be done with a privilege log. However, unless expressly requested, Defendant does not require a privilege log detailing communications between Plaintiff and litigation counsel in this case. All other document withholdings based on privilege should be logged.

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Duty to Supplement

Pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure, you are under a duty to timely supplement your answers to discovery. See also Rule 33(b), SCRCP (same).

DEFINITIONS

The following definitions apply to the discovery requests that follow:

1. Unless specifically stated to the contrary, all words and phrases utilized here shall be given their ordinary, dictionary, and common-sense definitions. Additionally, unless another meaning is obvious from the context, the terms here shall have the same meaning as they have in the Complaint in this action.

2. The terms "Plaintiff," "Loveless," or "you" mean the plaintiff in this case, Kenneth B. Loveless.

3. The terms "Defendant" and "Stiles" mean the defendant and counterclaimant in this case, Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles.

4. The term "District 5" means the Lexington-Richland School District 5, including its administrators, teachers, and employees.

5. The term "District 5 school board" means the duly elected trustees of District 5, specifically, Jan Hammond, Loveless, Nikki Gardner, Catherine Huddle, Matt Hogan, Rebecca Blackburn Hines, and Tifani Moore.

6. The term "Facebook" means the social media platform at www.facebook.com, owned by Meta Platforms, Inc.

7. The term "social media" means internet-based forms of communication that allow users to converse, share information, and create online content. Examples include Facebook, Twitter, Instagram, Reddit, etc.

8. The term "S.C. Ethic Commission" means the South Carolina Ethics Commission and any commissioners, directors, lawyers, or staff employed by the commission.

9. The term "FOIA" means the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq.

10. As used in these requests, "person" shall include natural persons, proprietorships, corporations, public corporations, municipal corporations, state governments, local governments, governmental agencies, political subdivisions, partnerships, groups, associations or other business or public organizations.

11. To "identify" a person means to state the full name, home and business addresses, email addresses, and home and business telephone numbers. To "identify" a document means to state a description or name of it, the date, its author, each person to whom the document or any copy was sent, and every person having custody of the document.

12. The terms "relating to," "with respect to," and "refer to" shall mean embodying, containing, comprising, indicating, concerning, referring, identifying, describing, discussing, involving, evidencing or otherwise pertaining to.

13. The term "document" has the broadest meaning permitted under Rules 26 and 34 of the South Carolina Rules of Civil Procedure and includes, (but is not limited to) all writings, recordings (audio and visual), tapes, films, ESI, discs, memory drives, maps, diagrams, blueprints, pictures, and photos of any nature whatsoever (including drafts and copies). Examples of written documents include contracts, agreements, communications, correspondence, records, reports, studies, memoranda, notes, advertisements, notices, bills, cables, books, diaries, appraisals, forecasts, statistical statements, work papers, graphs, summaries, lists, tabulations, calendars, charts, tables, indices, accounts, minutes, brochures, pamphlets, circulars, letters, press releases,

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

checks and check stubs, receipts, or invoices.

14. The term "ESI" means electronically stored information, electronically stored data or electronic data, and is to be interpreted broadly to include all types of information, regardless of the storage media (e.g., hard drive, CD-ROM, DVD, disc, tape, thumb drive, etc.), that requires a computer or other machine to read or process it.

15. The term "communications" means the transmittal of information in any form. Written communications include letters, correspondence, notes, memoranda, emails, text messages, social media message, instant message, telegram, or other forms of word exchange whether through physical or electronic transmittal.

LIMITATION AS TO SCOPE

Unless expressly stated to the contrary, every interrogatory, document request, and request to admit below seeks information concerning the period of January 1, 2018, through the present.

INTERROGATORIES

Answer the following interrogatories under oath and in writing:

1. Give the names and addresses of persons known to you or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. For each person known to you or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

4. List the names and addresses of any expert witnesses you propose to use as a witness at the trial of the case.

5. State your username for all social media accounts. Your response should include the username or account handle, the platform, and the approximate date the account was created.

6. Detail all legal authority, whether statute, case law, treatise, or other, that you believe supports your allegation in Paragraph No. 6 of the Complaint that "even if the defendant contends they [the statements] were opinions, they are still actionable pursuant to controlling legal authority in the State of South Carolina and the United States of America.

7. Identify by name, date, and statement the "private Facebook groups" to which you are referring in Paragraph No. 7 of the Complaint.

8. Identify all Facebook groups to which you belong or have been granted access, state the approximate date you joined or were granted access, and identify the administrator of those groups.

9. With respect to Paragraph Nos. 9, 12, 13, and 15 in the Complaint, state the account name, identity of the speaker, date, time, and a complete quotation of every statement you allege Stiles made that was defamatory or libelous.

10. State with specificity the "terms of Facebook" referenced in Paragraph No. 10 and provide an internet address or URL link to those terms.

11. State with specificity the "terms of Facebook" that you allege Stiles violated as alleged in Paragraph No. 11 and provide an internet address or URL link to those terms.

12. Identify all legal authority that you believe supports the claim that a violation of the terms of Facebook gives rise to civil liability or a claim (such as this one) brought by an individual other than Facebook.

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

13. Identify the person referred to in Paragraph No. 13 of the Complaint.

14. As alleged in Paragraph No. 14, state with specificity each statement by Stiles that is defamatory *per se* (as opposed to *per quod*). Rather than repeating each statement, you may include your response in your response to Interrogatory No. 9.

15. Specifically state the action taken by Stiles that you believe constitutes "publishing, ratifying, and/or endorsing" as those terms are used in Paragraph 15 of the Complaint. For example, if you simply mean Stiles was administrator of the Facebook group where the statements were posted, explicitly say as much or specifically describe the conduct to which you are referring.

16. With respect to Paragraph No. 16 in the Complaint, state the account name, identity of the speaker, date, time, and a complete quotation of every statement you allege Stiles republished, ratified, or endorsed that was defamatory or libelous.

17. State the date, time, place, and persons involved in all Board Officer Meetings you have participated in as a District 5 board member.

18. State all of your telephone numbers (including cell phones) and email addresses.

19. State with specificity everything you have done to ensure perishable evidence, including ESI, is preserved during the pendency of this lawsuit.

20. Identify by year, make, and model number all smart phones, tablets, and laptops you own.

21. State the date and manner (i.e., telephone call, email, in-person meeting) of your first consultation with your lawyer in this case. Note: this interrogatory does not seek the substance of the communication, just a date and manner by which the consultation occurred.

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

22. Prior to filing suit, state whether you discussed this lawsuit in person or in writing with any member of the District 5 school board and, if so, identify the person(s), date(s), manner of communication, and state the substance of the communication.

23. Identify by name, case number, and jurisdiction all civil and criminal actions to which you or a company that you disclose as having an economic interest in on your Statement of Economic Interest filings with the S.C. Ethics Commission have/has been a party, state whether you or the company were/was the plaintiff or defendant, the nature of the claim, and briefly describe the resolution.

24. As to the news report authored by Bristow Marchant and published by The State Newspaper on September 18, 2020, titled, "Feud over new Midlands school leads to ethics accusations against school board member," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

25. As to the news report authored by Bristow Marchant and published by The State Newspaper on February 24, 2021, titled, "Can SC school board member still have say in $23M project? What ethics commission says," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

26. As to the news report authored by Bristow Marchant and published by The State Newspaper on March 30, 2021, titled, "SC school board members accused of illegally meeting at Waffle House," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

27. As to the news report authored by Bristow Marchant and published by The State Newspaper on April 7, 2022, titled, "LR5 school board vice chair faces ethics complaint over elementary school contractor," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

28. State whether you are paying or have paid to "promote" or advertise any material on Facebook and, if so, describe with specificity the nature of the information, the dates, the vendor placing the promotional or advertising, and the amount spent.

29. State whether you, your political campaign, or a company you have disclosed on your Statement of Economic Interest reports with the S.C. Ethics Commission are paying remuneration to anyone to administer, publish, or promote content on any social media and, if so, identify the recipient and the date and amount of any payment.

30. State all dates, times, methods of communication (phone, email, in-person, etc.), and substance of communications your counsel, Desa Ballard, had with Joel Collins, J.C. Nicholson, III, Paul Osmundson, Beth Hutchinson, Leslie Stiles or anyone else relating to filing a FOIA lawsuit against District 5 of the District 5 school board. Note: this interrogatory seeks information in the possession of your counsel, not just you.

REQUEST FOR PRODUCTION

Produce the following:

1. All documents or items you intend to introduce at trial.

2. All documents or items you may use at trial even if only for impeachment purposes and not for your case in chief.

3. All documents or items furnished to any expert consulted or retained in this case.

4. All documents identified or described in response to any interrogatory.

5. All documents you furnished to your counsel in this case prior to filing suit.

6. All communications relating to your service as a District 5 board member. This request includes (and is not limited to) all communications from constituents, members of the public, supporters, detractors, administrators, teachers, employees, and fellow members of the District 5 school board.

7. To the extent not already produced, all communications and documents relating to any Board Officer Meetings you attended or participated in as a District 5 board member. Examples of documents sought include (but are not limited to) agendas and meeting minutes.

8. All communications and statements that you, your lawyer, or someone acting on your behalf have disseminated to the media concerning any public news report about you, District 5, or the District 5 school board.

9. The "terms of Facebook" referred to in Paragraph Nos. 10 and 11 of the Complaint.

10. All social media posts and comments made by you or someone on your behalf.

11. All communications with any person relating to the Facebook group Learn About District 5.

12. All communications with Jason Valek.

13. All communications with Stacey Dillworth Price.

14. All communications and statements that you, your lawyer, or someone acting on your behalf have disseminated to the media relating to this lawsuit, Stiles, or Kevin Scully.

15. All communications between you and any officer, employee, or agent of Contract Construction.

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

16. All communications between you and any person concerning construction at Piney Woods Elementary School.

17. All communications between you or a lawyer acting on your behalf and the S.C. Ethics Commission.

18. All documents you or a lawyer acting on your behalf have furnished to or been furnished from the S.C. Ethics Commission.

19. Concerning the case styled Kenneth B. Loveless v. William T. Butler and Sprint, Inc., 2013-CP-32-00241, filed in the Lexington County Court of Common Pleas, produce:

a. Any settlement agreement,

b. All depositions, and

c. Your discovery responses.

20. Produce all communications between you and RJ "Rod" Shealy concerning this lawsuit, the subject matter of this lawsuit, or your re-election in November 2022.

21. Produce all public opinion polls or public opinion surveys that relate to you, District 5, the District 5 school board or your reelection in November 2022.

22. Since this lawsuit was filed, produce exemplars of all advertising or electioneering materials—including mailers, flyers, social media, electronic signs, Internet, radio, or TV ads—that you personally, your re-election campaign, or your campaign consultants have drafted, paid for, or intend to pay for.

23. Produce a copy of your campaign budget for your re-election in the November 2022 election.

24. Produce all communications between your counsel, Desa Ballard, and Joel Collins, J.C. Nicholson, III, Paul Osmundson, Beth Hutchinson, Leslie Stiles, or any other individual

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

relating to a possible FOIA lawsuit against District 5 or the District 5 school board. Note: this request seeks communications in the possession of your counsel, not just you.

25. Produce all documents received or in the possession of your lawyer, Desa Ballard, that were provided to her by Joel Collins, J.C. Nicholson, III, Paul Osmundson, Beth Hutchinson, Leslie Stiles, or any other individual in connection with a possible FOIA lawsuit against District 5 or the District 5 school board.

REQUEST TO ADMIT

Admit the following:

1. You are a public official.

2. Posts and comments on Deep Dive Into D5 are of and concerning District 5.

3. At all times relevant to the allegations in your Complaint, nothing prohibited you from posting or commenting on Deep Dive Into D5.

4. You are a member of a private Facebook group called "Learn About District 5."

5. You have made posts and submitted comments on Learn About District 5.

6. On February 8, 20, 2021, you voted on an item on the District 5 board discussion agenda that was not on the action agenda.

7. On March 1, 2021, you voted to strike items discussed and entered into the record by a District 5 board member on February 8, 2021, from the official board minutes, and the items stricken included an S.C. Attorney General opinion relating to FOIA and an opinion from the S.C. Ethic Commission.

8. On May 24, 2021, the District 5 board agenda item No. 3d for executive session described as "Legal Advice Regarding a Contractual Matter" failed to specify that the item was Superintendent Christina Melton's contract.

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

9. As to Request to Admit No. 8, you knew the nature of the "Legal Advice Regarding a Contractual Matter" prior to the meeting and had supported ending Superintendent Christina Melton's contract.

10. On June 14, 2021, the District 5 board agenda item No. 3d for executive session described as "Legal Advice Regarding a Contractual Matter" failed to specify that the item in question was the buy-out of Superintendent Christina Melton's contract.

11. As to Request to Admit No. 10, you knew the nature of the "Legal Advice Regarding a Contractual Matter" prior to the meeting and you debated and signed the agreement, on behalf of District 5, to terminate and buy-out Superintendent Christina Melton's contract while in executive session.

12. No public vote ever occurred prior to you signing the agreement, on behalf of District 5, to terminate and buy-out Superintendent Christina Melton's contract.

13. You conducted bi-weekly Board Officers Meetings without giving public notice, an agenda, or publishing meeting minutes.

14. Beginning in 2018 when you were elected to the District 5 school board, you were critical of the Piney Woods Elementary School construction project.

15. On February 11, 2020, Loveless Commercial Contracting, Inc., a company in which you have an economic interest, entered into a contract as a subcontractor for Contract Construction worth approximately $1 million.

16. You failed to disclose and recuse from matters concerning the Piney Woods Elementary School after Loveless Commercial Contracting, Inc. entered into the contract with Contract Construction and you continued to participate in discussion and take action, such as participate in inspections, concerning the Piney Woods Elementary School construction project.

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

17. A complaint has been filed against you with the S.C. Ethics Commission alleging you violated the state ethics law.

18. Admit that your lawyer, Desa Ballard, offered to "deputize" Stiles as a paralegal in her (Ballard's) law office to obtain Stiles' assistance in bringing a FOIA lawsuit against District 5 or District 5 board members.

Respectfully submitted,

Christopher P. Kenney (SC Bar No. 100147)
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
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April 13, 2022
Columbia, South Carolina.

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364 **CERTIFICATE OF SERVICE**

I, Heather Hardy, Paralegal to Richard A. Harpootlian, PA, hereby certify that on April 13, 2022, did serve a copy of the following, via U.S. Mail and Email, to the counsel listed below:

Document(s):

1. Defendant's First Set of Interrogatories and First Requests for Production; and
2. Answer and Counterclaim.

Counsel:

Desa Ballard, Esq.
Harvey M. Watson, III, Esq.
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29169
desab@desaballard.com
harvey@desaballard.com

Heather Hardy

ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

From: Chris Kenney
To: Desa Ballard
Cc: Beth Cogan
Subject: RE: Loveless v. Stiles
Date: Friday, May 27, 2022 8:50:05 AM

I oppose the motion. -cpk

From: Desa Ballard <desab@desaballard.com>
Sent: Friday, May 27, 2022 8:12 AM
To: Chris Kenney <cpk@harpootlianlaw.com>; Chris Kenney <cpk@harpootlianlaw.com>
Cc: Beth Cogan <Beth@desaballard.com>
Subject: Loveless v. Stiles

Chris:

I understand you expect to obtain some documentation from individuals upon whom you served subpoenas, primarily District 5 Board members. Would you be willing to enter into a confidentiality agreement regarding these materials to prevent the publication and/or distribution of the materials beyond the parties and counsel?

As we pointed out in our responses to RTA, the vast majority of the discovery you are seeking has nothing do with the defamation case against Ms. Stiles, but instead seems intended to gather information to be used to further defame Mr. Loveless and perhaps others and to continue the temper tantrums that arose when Dr. Melton resigned as superintendent, none of which has anything to do with the defamation.

I am going to file a motion for protective order, but if you would consent, I can do a consent order just as easily.

Please let me know.

Thank you.

db

[redacted]

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364 **MOTION TO COMPEL, DEEM MATTERS ADMITTED, AND FOR SANCTIONS (in-person hearing requested)**

Plaintiff Kenneth B. Loveless, a public official elected to serve as a board member for the School District Five of Lexington & Richland Counties (District 5), filed this libel action against Defendant Leslie Stiles (misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles), a stay-at-home mother of three young children in District 5 schools. Loveless seeks to hold Stiles liable for statements he claims she made on a Facebook group and for statements other people made.

On April 13, 2022, Stiles answered, joined affirmative defenses—including the defense of truth—and joined a counterclaim for abuse of legal process. She also served interrogatories, document requests, and requests to produce (**Exhibit A**). Those discovery requests included detailed instructions concerning the information sought and the need for specific objections that "fairly apprise the requesting party of the information being withheld and the basis for the withholding." See Ex. A at 15.

On May 13, 2022, Loveless served responses to interrogatories (**Exhibit B**), document requests (**Exhibit C**), and requests to admit (RTA) (**Exhibit D**) that failed to fairly respond to the substance, are replete with boilerplate and frivolous objections, and refuse to produce a single

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

document. Loveless' refusal to abide by the civil rules here are voluminous, unprofessional, and cannot be read as a good-faith effort to cooperate in the lawsuit *he filed*. Consider a few examples:

- Loveless disputes he is a public official (see Ex. D at RTA No. 1), even though he is an elected member of the Lexington-Richland District 5 school board.

- Loveless refuses to produce a single document, including documents or items he intends to introduce at trial. See Ex. C.

- Loveless refuses to identify any legal authority that supports specific complaint allegations about what he claims is "controlling legal authority in the State of South Carolina and the United States of America." Ex. B at Interrog. Resp. No. 6.

- Loveless refuses to identify a single speaker, date, time, or complete quotation of the statements he alleges are defamatory. Ex. B at Interrog. Resp. Nos. 9 (but claiming, "There are likely many others…") & 13.

- Loveless refuses to state the terms of Facebook he alleges Stiles violated ("if she can't find it, she can look at [hyperlink]"), or to identify legal authority establishing that a violation of Facebook's terms gives rise to civil liability. Ex. B at Interrog. Resp. Nos. 10–12.

- Loveless refuses to identify a person described in his Complaint and makes the bizarre assertion that he "will update [his] response when circumstances exist that will eliminate the ability of Defendant or others to harm that person, his family or his reputation." Ex. B at Interrog. Resp. Nos. 13.

- And in response to 13 interrogatories and 17 document requests, Loveless simply interposes bald claims like, "Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable. But what a good idea." See Ex. B at Interrog. Resp. Nos. 17–30; Ex. C at Resp. Nos. 6–8, 10–16 & 19–25.

This is bad-faith litigation conduct by the person who chose to file this lawsuit but is now unwilling to participate in discovery.

Accordingly, Stiles now moves under Rules 26, 33, 34, and 37 of the South Carolina Rules of Civil Procedure for an order that:

1. Deems all objections and claims of privilege to be improperly stated, unsupported, and now waived;

2. Requires Loveless to submit specific, verified written responses to each interrogatory and document request within 10 days of the Court's order;

3. Requires Loveless to produce all requested documents within 20 days of the Court's order;

4. Deems all requests to admit as admitted;

5. Sanctions Loveless and his lawyer for interposing frivolous objections;

6. Requires Loveless and his lawyer to pay attorneys' fees, costs, and court time for all proceedings related to this motion; and

7. Orders any such further relief the Court deems just and proper.

Stiles reserves the right to file a memorandum in support of this motion prior to a hearing on the matter.

Respectfully submitted,

s/Christopher P. Kenney
Christopher P. Kenney (SC Bar No. 100147)
RICHARD A. HARPOOTLIAN, P.A.
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May 27, 2022
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Exhibit A

(Stiles' service packet with interrogatories, document requests, and request to admit)

HARPOOTLIAN
ATTORNEYS AT LAW

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ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

April 13, 2022
VIA EMAIL & U.S. MAIL

Desa Ballard, Esq.
Harvey M. Watson, III, Esq.
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29169
desab@desaballard.com
harvey@desaballard.com

In re: Loveless v. Stiles, Civil Action No. 2022-CP-40-01364

Dear Counsel:

Enclosed please find Defendant's answer and counterclaim and first set of interrogatories, document requests, and request to admit to the Plaintiff, which I hereby serve on you.

If you should have any questions, please do not hesitate to contact me.

With warm regards, I am

Sincerely,

Christopher P. Kenney

/hmh
Enclosure(s)

ELECTRONICALLY FILED - 2022 May 13 11:34 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364 **ANSWER & COUNTERCLAIM** **(Jury Trial Demanded)**

Defendant Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles, is the parent of three young children in the Richland-Lexington School District 5 (District 5), who took an interest in her children's education and the public body responsible for the public school system they attend. She volunteers in her children's schools, participates in the parent teacher organization (PTO) and her school improvement council (SIC), and attends meetings of the District 5 school board—i.e., the public meetings of trustees elected by and accountable to the voters they represent. She also runs a Facebook page where approximately 2,500 public members post about and concerning District 5. Plaintiff Kenneth B. Loveless is a trustee of District 5—a public official engaged in matters of public concern—who brought this action complaining Stiles libeled him in Facebook posts about District 5 and because she did not censor speech of others on Facebook who posted and commented about Loveless and District 5.

This litigation is frivolous harassment of a private citizen by a public official designed to chill her speech and participation in matters of public concern. This lawsuit violates the First Amendment to the U.S. Constitution; Article I, Section 2 of the S.C. Constitution; Section 230 of the Communications Decency Act of 1934, as amended, and the common law of South Carolina.

ELECTRONICALLY FILED - 2022 May 13 11:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Judgment should be rendered in Stiles' favor, and she should be awarded fees, costs, and exemplary damages to punish this abusive use of process.

ANSWER TO COMPLAINT

Any allegation not specifically admitted is denied. Stiles demands strict proof of all allegations denied and specifically answers the Complaint as follows:

1. Stiles lacks sufficient information to admit or deny Paragraph No. 1, therefore it is denied.

2. In response to Paragraph No. 2, it is admitted that Defendant Leslie Stiles, misidentified here, is a citizen and resident of Richland County, South Carolina and that she is an administrator of a Facebook group with the name "Deep Dive Into D5."

3. Paragraph No. 3 is admitted.

4. Paragraph No. 4 is admitted.

5. Paragraph No. 5 is denied.

6. Paragraph No. 6 is denied.

7. Paragraph No. 7 is denied.

8. In response to Paragraph 8, it is admitted that Stiles created a Facebook group, not a page, sometime in October 2020 and that Stiles is the administrator of the group. It is admitted that the partial quotation contained in Paragraph 8 appears in the "About" section of the group.

9. In response to Paragraph No. 9, it is admitted that Stiles, as administrator of the group, is able to make posts, delete posts, make comments, delete comments, and block other users from posting or commenting. All other allegations in Paragraph No. 9 are denied.

10. Paragraph No. 10 is denied.

11. Paragraph No. 11 is denied.

ELECTRONICALLY FILED - 2022 May 13 11:37 AM - RICHLAND - COMMON PLEAS - CASE #2022CP4001364

12. Paragraph No. 12 is denied.

13. Paragraph No. 13 is denied.

14. Paragraph No. 14 is denied.

15. Paragraph No. 15, including all subparts, is denied. Further, as to any statements quoted or referenced in those subparts, Stiles craves reference to the full statement including all relevant content and context surrounding those statements.

16. Paragraph No. 16, including all subparts, is denied. Further, as to any statements quoted or referenced in those subparts, Stiles craves reference to the full statement including all relevant content and context surrounding those statements.

17. Paragraph No. 17 incorporates prior allegations in the Complaint; accordingly, Stiles incorporates all prior responses here as if set forth verbatim.

18. Paragraph No. 18 is denied.

19. Paragraph No. 19 is denied.

20. Paragraph No. 20 is denied.

21. Paragraph No. 21 is denied.

22. Paragraph No. 22 is denied.

23. Paragraph No. 23 is denied.

24. Paragraph No. 24 is denied.

25. Paragraph No. 25 demanding a trial by jury is admitted. Stiles also demands a trial by jury.

26. The prayer for relief on pages 7–8 of the Complaint beginning “WHEREFORE,” is denied, including as to all subparts.

ELECTRONICALLY FILED - 2022 May 13 11:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

FOR A FIRST DEFENSE:
FAILURE TO STATE A CLAIM

27. The Complaint should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure because it fails to state a claim for relief against Stiles.

FOR A SECOND DEFENSE:
PRIVILEGED SPEECH UNDER THE
FIRST AMENDMENT TO THE U.S. CONSTITUTION

28. Loveless's claim is barred because any statements by Stiles or any statements by others that the Complaint wrongly attempts to hold Stiles responsible for are privileged in whole or in part by the First Amendment to the U.S. Constitution.

FOR A THIRD DEFENSE:
PRIVILEGED SPEECH UNDER
ARTICLE I, SECTION 2 OF THE S.C. CONSTITUTION

29. Loveless's claim is barred because any statements by Stiles or any statements by others that the Complaint wrongly attempts to hold Stiles responsible for are privileged in whole or in part by Article I, Section 2 of the S.C. Constitution.

FOR A FOURTH DEFENSE:
PRIVILEGED SPEECH UNDER THE COMMON LAW

30. Loveless's claim is barred because any statements by Stiles or any statements by others that the Complaint wrongly attempts to hold Stiles responsible for are privileged in whole or in part by the common law.

FOR A FIFTH DEFENSE:
IMMUNITY FROM SUIT UNDER SECTION 230 OF
THE COMMUNICATIONS DECENCY ACT OF 1934, AS AMENDED

31. Loveless's claim is barred because Stiles is immune from civil liability under 47 U.S.C. § 230.

ELECTRONICALLY FILED - 2022 May 13 11:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

FOR A SIXTH DEFENSE:
TRUTH

32. Loveless's claim is barred because any statements by Stiles or any statements by others that the Complaint wrongly attempts to hold Stiles responsible for are true.

FOR A SEVENTH DEFENSE:
OPINION

33. Loveless's claim is barred because any statements by Stiles or any statements by others that the Complaint wrongly attempts to hold Stiles responsible for are opinions that are not actionable under the law of libel.

FOR AN EIGHTH DEFENSE:
RHETORICAL HYPERBOLE

34. Loveless's claim is barred because any statements by Stiles or any statements by others that the Complaint wrongly attempts to hold Stiles responsible for are rhetorical hyperbole that are not actionable under the law of libel.

FOR AN NINTH DEFENSE:
NO PROXIMATE CAUSE

35. Loveless's claim is barred because any purported harm to Loveless's reputation were the result of his own actions and were unrelated to and not caused by the conduct Stiles is alleged to have taken.

FOR A TENTH DEFENSE:
SELF-PUBLICATION

36. Loveless's claim is barred because he has self-published and/or disseminated the allegedly libelous statements to third parties.

ELECTRONICALLY FILED - 2022 May 13 11:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

FOR A ELEVENTH DEFENSE:
NOT ENTITLED TO DAMAGES

37. Loveless is not entitled to recover actual or punitive damages on his claim because he has not suffered any reputational harm because of the conduct alleged in the Complaint.

FOR AN TWELFTH DEFENSE:
PUNITIVE DAMAGES UNCONSTITUTIONAL

38. Loveless's claim for punitive damages is barred because an award of punitive damages would violate due process, equal protection, and privileges and immunities guaranteed by the U.S. Constitution and S.C. Constitution.

FOR A THIRTEENTH DEFENSE:
GOOD FAITH AND LAWFUL CONDUCT

39. Loveless's claim is barred because Stiles acted lawfully and in good faith at all times relevant to the Complaint and has not violated any statutory or legal right of Loveless's.

FOR A FOURTEENTH DEFENSE:
NO ACTUAL MALICE/GOOD-FAITH RELIANCE ON OTHERS

40. Loveless's claim is barred because Stiles did not make any statement with actual malice and relied upon information provided by others.

FOR A FIFTEENTH DEFENSE:
RESERVATION OF RIGHTS

41. Stiles hereby reserves her right to amend this Answer to join any further defense authorized by law or identified during the discovery of this action.

COUNTERCLAIM
FOR ACTUAL AND PUNITIVE DAMAGES

Stiles hereby brings the following counterclaims against Loveless:

42. The Court has personal jurisdiction over the parties to this action and venue is proper in Richland County.

ELECTRONICALLY FILED - 2022 May 13 11:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

43. Loveless is a member of the board of trustees for Richland-Lexington School District 5 (District 5) and has been since November 2018.

44. Loveless was elected as a District 5 trustee in November 2018.

45. Loveless is a public figure.

46. Loveless intends to run for re-election in November 2022.

47. Loveless filed this lawsuit against Stiles joining a single claim for libel.

48. Stiles is a private citizen.

49. Loveless's lawsuit alleges Stiles made libelous statements about him on Facebook.

50. The purportedly libelous statements that Loveless alleges Stiles made are set forth in Paragraph 15 of his Complaint in this lawsuit.

51. All statements in Paragraph 15 of the Complaint are either about or concerning District 5 or Loveless's service as a District 5 trustee.

52. Stiles' statements are not libelous and are not actionable in libel.

53. Loveless's lawsuit also alleges Stiles published, ratified, and/or endorsed libelous statements of others because she is an administrator of a Facebook group.

54. The purportedly libelous statements that Loveless alleges Stiles published, ratified, and/or endorsed are set forth in Paragraph 16 of his Complaint in this lawsuit.

55. Stiles is not liable for the statements of others on a Facebook group.

56. Nor are the statements that Stiles allegedly published, ratified, and/or endorsed libelous or actionable in libel.

57. Prior to filing his lawsuit, Loveless was the subject of public criticism and public news reports about or concerning his performance as a District 5 school board member.

ELECTRONICALLY FILED - 2022 May 13 11:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

58. Some of that public criticism has occurred on social media, including the Facebook group where Stiles is the administer.

59. Loveless filed this lawsuit to silence Stiles and his critics, including those on the Facebook group she administers.

60. Loveless intends to use this lawsuit to investigate Stiles, the Facebook group she administers, the people she has communicated with about him and District 5, and her participation in District 5 politics.

61. Loveless also hopes to discourage or "chill" other citizens interested in District 5 and its board from criticizing him, District 5, or the school board.

62. Eliminating or reducing public criticism of Loveless and District 5 will improve his forthcoming effort to win re-election in November 2022.

FOR A FIRST CAUSE OF ACTION:
ABUSE OF PROCESS

63. Each of the foregoing paragraphs is incorporated here verbatim.

64. Loveless has and continues to use legal process against Stiles through his prosecution of this lawsuit.

65. Loveless has an ulterior purpose, bad intent, or improper collateral purpose in filing and prosecuting this lawsuit against Stiles, including:

a. Silencing her speech about him, District 5, and the school board;

b. Coercing her into taking down the Facebook group she administers;

c. Investigating Stiles and the people she communicates with about Loveless and District 5;

d. Investigating his critics in the District 5 community, including parents and teachers;

ELECTRONICALLY FILED - 2022 May 13 11:34 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

e. Investigating Stiles' politics and discouraging her political participation in District 5;

f. Harassing Stiles and causing her to incur legal fees and costs to defend this action;

g. Discouraging or chilling others from speaking about him, District 5, and the school board; and

h. Improving his chances of winning reelection by silencing critics.

66. This is a misuse or perversion of legal process that is not a legitimate legal objective but an abuse of the legal system to achieve an illegitimate objective.

67. Stiles has suffered actual damages because of Loveless's conduct and is entitled to recover her damages.

68. Loveless's intentional, wrongful conduct should also be punished with an award of exemplary damages to punish him and discourage others from engaging in similar conduct.

JURY DEMAND

Stiles hereby requests trial by jury on all claims, defenses, and counterclaims.

PRAYER

WHEREFORE, Stiles prays for entry of judgment in her favor and against Loveless as to all claims, defenses, and counterclaims set forth above and that the Court enter a judgment awarding her:

i. Actual and punitive damages against Loveless in an amount to be determined by the jury;

ii. Statutory attorneys' fees and costs for filing frivolous litigation;

iii. All other fees and costs permitted by law; and

iv. Such other relief as the Court may deem just and proper.

Respectfully submitted,

s/Christopher P. Kenney

Christopher P. Kenney (SC Bar No. 100147)
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April 13, 2022
Columbia, South Carolina.

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ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364 **FIRST SET OF INTERROGATORIES, DOCUMENT REQUESTS, AND REQUESTS TO ADMIT TO THE PLAINTIFF**

Defendant Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles, pursuant to Rules 26, 33, 34, and 36 of the South Carolina Rules of Civil Procedure, hereby requires Plaintiff Kenneth B. Loveless to answer the following interrogatories, upon oath and in writing, to respond to document requests and make available certain documents, tangible things, and electronically stored information (ESI) specified below available for copying, photographing, inspecting, or measuring, and to answer the following requests to admit within 30 days of service.

INSTRUCTIONS

Please take notice that the following instructions and definitions are <u>not</u> boilerplate but were specifically drafted to explain the information sought and the way the rules require it be disclosed. You should expect Defendant to move the Court to compel disclosure and seek other appropriate relief if furnished with responses that interpose non-specific, boilerplate objections or otherwise depart from what the civil rules require.

Interrogatories

Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection must be stated in lieu of an answer. Rule

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

33(a), SCRCP. You must serve a copy of the answers and objections, if any, within 30 days of service. Id. The answers are to be signed by the person making them, and the objections signed by the attorney making them. Id.

An interrogatory is not objectionable merely because an answer involves an opinion or contention that relates to fact or the application of law to fact. Rule 33(d), SCRCP.

Document Requests

You are required to respond to each document request in writing within 30 days and either state that inspection and copying will be permitted or the reasons for any objection. Rule 34(b), SCRCP. If an objection is made, it must be specifically stated as to the reason and the request. Id. If objection is made to the requested form or forms for producing ESI, you must state the form or forms you intend to use, which may include the form in which the ESI is customarily maintained (i.e., native files). See id.

In responding to these document requests, you may produce responsive documents in lieu of permitting inspection and copying. You must produce or make available all documents, tangible items, and electronically stored information (ESI) subject to your reasonable access or control, including but not limited to all documents available to your counsel in this case, or any experts. See Rule 34(a), SCRCP. In producing documents, you are required to produce each document requested together with all non-identical copies and drafts of that document. If the original of any document cannot be located, a copy shall be provided in lieu thereof and shall be legible and bound or stapled in the same manner as the original. Documents shall either produced as they are kept in the usual course of business or organized and labeled to correspond to the categories in this request. See Rule 34(b), SCRCP. In making production of ESI, including data compilations, email, text messages, or documents kept in electronic format (e.g., Microsoft Outlook, Word, Excel,

PowerPoint, or any similar programs or platforms), produced them in their native format along with all passwords necessary to access the documents. If you choose to process ESI prior to production, produce single page images along with an accompanying load file, full OCR text, and metadata. Native files should also be produced.

Request to Admit

Each request to admit will be deemed admitted unless a written response or objection is served in 30 days. Rule 36(a), SCRCP. If objection is made, the reasons shall be stated. Id. An answer shall specifically deny the matter or set forth in detail reasons why you cannot truthfully admit or deny the matter and a denial must fairly meet the substance of the requested admission. Id. If good faith requires you admit part of the request, you must specify the portion admitted and deny the remainder. Id. You may not give a lack of information or knowledge as the reason for denying a requested admission unless you make a reasonable inquiry beforehand. Id.

Objections and Privilege

An objection should fairly apprise the requesting party of the information being withheld and the basis for the withholding. Interposing nonspecific, boilerplate objections while also making a limited disclosure "subject to" those objections is inconsistent with the rules and grounds to move the Court to waive the objection and compel disclosure.

Objections based on privilege must expressly make the claim and describe the nature of the information withheld in a manner that will allow the requesting party to assess the applicability of the privilege or protection. Rule 26(b)(5)(A), SCRCP. When documents are withheld, that should be done with a privilege log. However, unless expressly requested, Defendant does not require a privilege log detailing communications between Plaintiff and litigation counsel in this case. All other document withholdings based on privilege should be logged.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Duty to Supplement

Pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure, you are under a duty to timely supplement your answers to discovery. See also Rule 33(b), SCRCP (same).

DEFINITIONS

The following definitions apply to the discovery requests that follow:

1. Unless specifically stated to the contrary, all words and phrases utilized here shall be given their ordinary, dictionary, and common-sense definitions. Additionally, unless another meaning is obvious from the context, the terms here shall have the same meaning as they have in the Complaint in this action.

2. The terms "Plaintiff," "Loveless," or "you" mean the plaintiff in this case, Kenneth B. Loveless.

3. The terms "Defendant" and "Stiles" mean the defendant and counterclaimant in this case, Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles.

4. The term "District 5" means the Lexington-Richland School District 5, including its administrators, teachers, and employees.

5. The term "District 5 school board" means the duly elected trustees of District 5, specifically, Jan Hammond, Loveless, Nikki Gardner, Catherine Huddle, Matt Hogan, Rebecca Blackburn Hines, and Tifani Moore.

6. The term "Facebook" means the social media platform at www.facebook.com, owned by Meta Platforms, Inc.

7. The term "social media" means internet-based forms of communication that allow users to converse, share information, and create online content. Examples include Facebook, Twitter, Instagram, Reddit, etc.

8. The term "S.C. Ethic Commission" means the South Carolina Ethics Commission and any commissioners, directors, lawyers, or staff employed by the commission.

9. The term "FOIA" means the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq.

10. As used in these requests, "person" shall include natural persons, proprietorships, corporations, public corporations, municipal corporations, state governments, local governments, governmental agencies, political subdivisions, partnerships, groups, associations or other business or public organizations.

11. To "identify" a person means to state the full name, home and business addresses, email addresses, and home and business telephone numbers. To "identify" a document means to state a description or name of it, the date, its author, each person to whom the document or any copy was sent, and every person having custody of the document.

12. The terms "relating to," "with respect to," and "refer to" shall mean embodying, containing, comprising, indicating, concerning, referring, identifying, describing, discussing, involving, evidencing or otherwise pertaining to.

13. The term "document" has the broadest meaning permitted under Rules 26 and 34 of the South Carolina Rules of Civil Procedure and includes, (but is not limited to) all writings, recordings (audio and visual), tapes, films, ESI, discs, memory drives, maps, diagrams, blueprints, pictures, and photos of any nature whatsoever (including drafts and copies). Examples of written documents include contracts, agreements, communications, correspondence, records, reports, studies, memoranda, notes, advertisements, notices, bills, cables, books, diaries, appraisals, forecasts, statistical statements, work papers, graphs, summaries, lists, tabulations, calendars, charts, tables, indices, accounts, minutes, brochures, pamphlets, circulars, letters, press releases,

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

checks and check stubs, receipts, or invoices.

14. The term "ESI" means electronically stored information, electronically stored data or electronic data, and is to be interpreted broadly to include all types of information, regardless of the storage media (e.g., hard drive, CD-ROM, DVD, disc, tape, thumb drive, etc.), that requires a computer or other machine to read or process it.

15. The term "communications" means the transmittal of information in any form. Written communications include letters, correspondence, notes, memoranda, emails, text messages, social media message, instant message, telegram, or other forms of word exchange whether through physical or electronic transmittal.

LIMITATION AS TO SCOPE

Unless expressly stated to the contrary, every interrogatory, document request, and request to admit below seeks information concerning the period of January 1, 2018, through the present.

INTERROGATORIES

Answer the following interrogatories under oath and in writing:

1. Give the names and addresses of persons known to you or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. For each person known to you or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

4. List the names and addresses of any expert witnesses you propose to use as a witness at the trial of the case.

5. State your username for all social media accounts. Your response should include the username or account handle, the platform, and the approximate date the account was created.

6. Detail all legal authority, whether statute, case law, treatise, or other, that you believe supports your allegation in Paragraph No. 6 of the Complaint that "even if the defendant contends they [the statements] were opinions, they are still actionable pursuant to controlling legal authority in the State of South Carolina and the United States of America.

7. Identify by name, date, and statement the "private Facebook groups" to which you are referring in Paragraph No. 7 of the Complaint.

8. Identify all Facebook groups to which you belong or have been granted access, state the approximate date you joined or were granted access, and identify the administrator of those groups.

9. With respect to Paragraph Nos. 9, 12, 13, and 15 in the Complaint, state the account name, identity of the speaker, date, time, and a complete quotation of every statement you allege Stiles made that was defamatory or libelous.

10. State with specificity the "terms of Facebook" referenced in Paragraph No. 10 and provide an internet address or URL link to those terms.

11. State with specificity the "terms of Facebook" that you allege Stiles violated as alleged in Paragraph No. 11 and provide an internet address or URL link to those terms.

12. Identify all legal authority that you believe supports the claim that a violation of the terms of Facebook gives rise to civil liability or a claim (such as this one) brought by an individual other than Facebook.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

13. Identify the person referred to in Paragraph No. 13 of the Complaint.

14. As alleged in Paragraph No. 14, state with specificity each statement by Stiles that is defamatory *per se* (as opposed to *per quod*). Rather than repeating each statement, you may include your response in your response to Interrogatory No. 9.

15. Specifically state the action taken by Stiles that you believe constitutes "publishing, ratifying, and/or endorsing" as those terms are used in Paragraph 15 of the Complaint. For example, if you simply mean Stiles was administrator of the Facebook group where the statements were posted, explicitly say as much or specifically describe the conduct to which you are referring.

16. With respect to Paragraph No. 16 in the Complaint, state the account name, identity of the speaker, date, time, and a complete quotation of every statement you allege Stiles republished, ratified, or endorsed that was defamatory or libelous.

17. State the date, time, place, and persons involved in all Board Officer Meetings you have participated in as a District 5 board member.

18. State all of your telephone numbers (including cell phones) and email addresses.

19. State with specificity everything you have done to ensure perishable evidence, including ESI, is preserved during the pendency of this lawsuit.

20. Identify by year, make, and model number all smart phones, tablets, and laptops you own.

21. State the date and manner (i.e., telephone call, email, in-person meeting) of your first consultation with your lawyer in this case. Note: this interrogatory does not seek the substance of the communication, just a date and manner by which the consultation occurred.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

22. Prior to filing suit, state whether you discussed this lawsuit in person or in writing with any member of the District 5 school board and, if so, identify the person(s), date(s), manner of communication, and state the substance of the communication.

23. Identify by name, case number, and jurisdiction all civil and criminal actions to which you or a company that you disclose as having an economic interest in on your Statement of Economic Interest filings with the S.C. Ethics Commission have/has been a party, state whether you or the company were/was the plaintiff or defendant, the nature of the claim, and briefly describe the resolution.

24. As to the news report authored by Bristow Marchant and published by The State Newspaper on September 18, 2020, titled, "Feud over new Midlands school leads to ethics accusations against school board member," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

25. As to the news report authored by Bristow Marchant and published by The State Newspaper on February 24, 2021, titled, "Can SC school board member still have say in $23M project? What ethics commission says," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

26. As to the news report authored by Bristow Marchant and published by The State Newspaper on March 30, 2021, titled, "SC school board members accused of illegally meeting at Waffle House," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

27. As to the news report authored by Bristow Marchant and published by The State Newspaper on April 7, 2022, titled, "LR5 school board vice chair faces ethics complaint over elementary school contractor," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

28. State whether you are paying or have paid to "promote" or advertise any material on Facebook and, if so, describe with specificity the nature of the information, the dates, the vendor placing the promotional or advertising, and the amount spent.

29. State whether you, your political campaign, or a company you have disclosed on your Statement of Economic Interest reports with the S.C. Ethics Commission are paying remuneration to anyone to administer, publish, or promote content on any social media and, if so, identify the recipient and the date and amount of any payment.

30. State all dates, times, methods of communication (phone, email, in-person, etc.), and substance of communications your counsel, Desa Ballard, had with Joel Collins, J.C. Nicholson, III, Paul Osmundson, Beth Hutchinson, Leslie Stiles or anyone else relating to filing a FOIA lawsuit against District 5 of the District 5 school board. Note: this interrogatory seeks information in the possession of your counsel, not just you.

REQUEST FOR PRODUCTION

Produce the following:

1. All documents or items you intend to introduce at trial.

2. All documents or items you may use at trial even if only for impeachment purposes and not for your case in chief.

3. All documents or items furnished to any expert consulted or retained in this case.

4. All documents identified or described in response to any interrogatory.

5. All documents you furnished to your counsel in this case prior to filing suit.

6. All communications relating to your service as a District 5 board member. This request includes (and is not limited to) all communications from constituents, members of the public, supporters, detractors, administrators, teachers, employees, and fellow members of the District 5 school board.

7. To the extent not already produced, all communications and documents relating to any Board Officer Meetings you attended or participated in as a District 5 board member. Examples of documents sought include (but are not limited to) agendas and meeting minutes.

8. All communications and statements that you, your lawyer, or someone acting on your behalf have disseminated to the media concerning any public news report about you, District 5, or the District 5 school board.

9. The "terms of Facebook" referred to in Paragraph Nos. 10 and 11 of the Complaint.

10. All social media posts and comments made by you or someone on your behalf.

11. All communications with any person relating to the Facebook group Learn About District 5.

12. All communications with Jason Valek.

13. All communications with Stacey Dillworth Price.

14. All communications and statements that you, your lawyer, or someone acting on your behalf have disseminated to the media relating to this lawsuit, Stiles, or Kevin Scully.

15. All communications between you and any officer, employee, or agent of Contract Construction.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

16. All communications between you and any person concerning construction at Piney Woods Elementary School.

17. All communications between you or a lawyer acting on your behalf and the S.C. Ethics Commission.

18. All documents you or a lawyer acting on your behalf have furnished to or been furnished from the S.C. Ethics Commission.

19. Concerning the case styled Kenneth B. Loveless v. William T. Butler and Sprint, Inc., 2013-CP-32-00241, filed in the Lexington County Court of Common Pleas, produce:

a. Any settlement agreement,

b. All depositions, and

c. Your discovery responses.

20. Produce all communications between you and RJ "Rod" Shealy concerning this lawsuit, the subject matter of this lawsuit, or your re-election in November 2022.

21. Produce all public opinion polls or public opinion surveys that relate to you, District 5, the District 5 school board or your reelection in November 2022.

22. Since this lawsuit was filed, produce exemplars of all advertising or electioneering materials—including mailers, flyers, social media, electronic signs, Internet, radio, or TV ads—that you personally, your re-election campaign, or your campaign consultants have drafted, paid for, or intend to pay for.

23. Produce a copy of your campaign budget for your re-election in the November 2022 election.

24. Produce all communications between your counsel, Desa Ballard, and Joel Collins, J.C. Nicholson, III, Paul Osmundson, Beth Hutchinson, Leslie Stiles, or any other individual

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

relating to a possible FOIA lawsuit against District 5 or the District 5 school board. Note: this request seeks communications in the possession of your counsel, not just you.

25. Produce all documents received or in the possession of your lawyer, Desa Ballard, that were provided to her by Joel Collins, J.C. Nicholson, III, Paul Osmundson, Beth Hutchinson, Leslie Stiles, or any other individual in connection with a possible FOIA lawsuit against District 5 or the District 5 school board.

REQUEST TO ADMIT

Admit the following:

1. You are a public official.

2. Posts and comments on Deep Dive Into D5 are of and concerning District 5.

3. At all times relevant to the allegations in your Complaint, nothing prohibited you from posting or commenting on Deep Dive Into D5.

4. You are a member of a private Facebook group called "Learn About District 5."

5. You have made posts and submitted comments on Learn About District 5.

6. On February 8, 20, 2021, you voted on an item on the District 5 board discussion agenda that was not on the action agenda.

7. On March 1, 2021, you voted to strike items discussed and entered into the record by a District 5 board member on February 8, 2021, from the official board minutes, and the items stricken included an S.C. Attorney General opinion relating to FOIA and an opinion from the S.C. Ethic Commission.

8. On May 24, 2021, the District 5 board agenda item No. 3d for executive session described as "Legal Advice Regarding a Contractual Matter" failed to specify that the item was Superintendent Christina Melton's contract.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

9. As to Request to Admit No. 8, you knew the nature of the "Legal Advice Regarding a Contractual Matter" prior to the meeting and had supported ending Superintendent Christina Melton's contract.

10. On June 14, 2021, the District 5 board agenda item No. 3d for executive session described as "Legal Advice Regarding a Contractual Matter" failed to specify that the item in question was the buy-out of Superintendent Christina Melton's contract.

11. As to Request to Admit No. 10, you knew the nature of the "Legal Advice Regarding a Contractual Matter" prior to the meeting and you debated and signed the agreement, on behalf of District 5, to terminate and buy-out Superintendent Christina Melton's contract while in executive session.

12. No public vote ever occurred prior to you signing the agreement, on behalf of District 5, to terminate and buy-out Superintendent Christina Melton's contract.

13. You conducted bi-weekly Board Officers Meetings without giving public notice, an agenda, or publishing meeting minutes.

14. Beginning in 2018 when you were elected to the District 5 school board, you were critical of the Piney Woods Elementary School construction project.

15. On February 11, 2020, Loveless Commercial Contracting, Inc., a company in which you have an economic interest, entered into a contract as a subcontractor for Contract Construction worth approximately $1 million.

16. You failed to disclose and recuse from matters concerning the Piney Woods Elementary School after Loveless Commercial Contracting, Inc. entered into the contract with Contract Construction and you continued to participate in discussion and take action, such as participate in inspections, concerning the Piney Woods Elementary School construction project.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

17. A complaint has been filed against you with the S.C. Ethics Commission alleging you violated the state ethics law.

18. Admit that your lawyer, Desa Ballard, offered to "deputize" Stiles as a paralegal in her (Ballard's) law office to obtain Stiles' assistance in bringing a FOIA lawsuit against District 5 or District 5 board members.

Respectfully submitted,

Christopher P. Kenney (SC Bar No. 100147)
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ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364 **CERTIFICATE OF SERVICE**

I, Heather Hardy, Paralegal to Richard A. Harpootlian, PA, hereby certify that on April 13, 2022, did serve a copy of the following, via U.S. Mail and Email, to the counsel listed below:

Document(s):

1. Defendant's First Set of Interrogatories and First Requests for Production; and
2. Answer and Counterclaim.

Counsel:

Desa Ballard, Esq.
Harvey M. Watson, III, Esq.
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29169
desab@desaballard.com
harvey@desaballard.com

Heather Hardy

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Exhibit B

(Loveless responses to interrogatories)

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kenneth B. Loveless, Plaintiff vs. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Civil Action No.: 2022-CP-40-01364 **PLAINTIFF'S RESPONSE TO FIRST SET OF INTERROGATORIES**

TO: CHRISTOPHER KENNEY, ESQUIRE, ATTORNEY FOR DEFENDANT

1. Give the names and addresses of persons known to you or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

   A. Leslie Ann Stiles. No known statement other than those she made, sponsored or ratified on Deep Dive. Additional statements she made on Facebook are expected to be produced by parties and/or witnesses in discovery. Statements are in the possession of Stiles.

   B. Kenneth B. Loveless. No known statement other than as set forth in the complaint.

   C. Kevin Scully. No known statement other than statements made on Facebook. Additional statements are expected to be produced by parties and/or witnesses in discovery. Statements are presumed to be in the possession of Scully.

   D. Kristin Bayles Batchelor – No known statement other than statements made on Facebook. Plaintiff has copies of some statements made by Batchelor on Facebook.

   E. Beth Ricard Gossett – No known statements other than statements made on Facebook. Plaintiff has copies of some statements made by Gossett on Facebook.

RESPONSE:

2. For each person known to you or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

RESPONSE:

A. Stiles is believed to be the administrator of a Facebook group called Deep Dive that she created, monitors, has the ability to censor and may censor and has warranted that the information which appears on the site has been subjected to research and analysis.

B. Loveless is the subject of the defamatory and libelous *per se* statements made on Deep Dive published, ratified, hosted warranted by Stiles as having been researched and analyzed.

C. Kevin Scully has made statements on Facebook, including on Deep Dive, which are defamatory of Plaintiff and constitute libel *per se*. Stiles has republished and ratified the statements made by Scully and others.

D. Kristin Bales Batchelor has made statements on Facebook, including Deep Dive, which are defamatory of Plaintiff and constitute libel *per se*. Stiles has republished and ratified the statements made by Batchelor and others.

E. Beth Ricard Gossett has made statements on Facebook, including Deep Dive, which are defamatory of Plaintiff and constitute libel *per se*. Stiles has republished and ratified the statements made by Gossett and others.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

RESPONSE:

A. Facebook posts and comments

B. Newspaper articles

C. Facebook Help Center explanation of authority of administrators, editors, moderators, advertisers and analysts on classic Facebook pages, as identified in Response to

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Interrogatory No. 10.

D. Loveless letter to Courtney Laster dated September 21, 2020.

E. Staff advisory letter from Courtney Laster dated September 25, 2020.

F. Staff advisory letter from Courtney Laster dated February 22, 2021.

G. Letter from Ken Loveless to Janis Hammond, undated.

H. Loveless statements made on Learn About Your D5 School District.

I. Complaint form State Ethics Commission 2021-016 with attachments.

J. Bowers letter to Caldwell February 28, 2022.

4. List the names and addresses of any expert witnesses you propose to use as a witness at the trial of the case.

RESPONSE: None at this time. Fact witness with expertise in areas are expected to offer opinions in their areas of expertise as part of testimony.

5. State your username for all social media accounts. Your response should include the username or account handle, the platform, and the approximate date the account was created.

RESPONSE: Facebook: Ken Loveless, Ken Loveless for School Board

6. Detail all legal authority, whether statute, case law, treatise, or other, that you believe supports your allegation in Paragraph No. 6 of the Complaint that "even if the defendant contends they [the statements] were opinions, they are still actionable pursuant to controlling legal authority in the State of South Carolina and the United States of America.

RESPONSE: Objection. Plaintiff will not divulge his legal strategy nor the work product of his counsel. At the appropriate time, Plaintiff will submit legal authority as required by court rules.

7. Identify by name, date, and statement the "private Facebook groups" to which you are referring in Paragraph No. 7 of the Complaint.

RESPONSE: Plaintiff certainly does not know about all of the locations where Stiles' defamatory statements have been shared, but he believes that some of them are referred to or

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

repeated in statements which appear on a Facebook page, marked as private, called Learn About Lex/Rich D5 that appears to have 4.6k members. Plaintiff will learn more after Defendant properly responds to discovery, which she has not yet done.

8. Identify all Facebook groups to which you belong or have been granted access, state the approximate date you joined or were granted access, and identify the administrator of those groups.

RESPONSE: Learn About Lex/Rich D5. The page states "Gerrick and Jason are admins Stacey is a moderator." Plaintiff does not recall the date he was granted access to the page. The rules for the page indicate that the administrators monitor and censor to properly control the statements on the page.

9. With respect to Paragraph Nos. 9, 12, 13, and 15 in the Complaint, state the account name, identity of the speaker, date, time, and a complete quotation of every statement you allege Stiles made that was defamatory or libelous.

RESPONSE: See Paragraphs 15 and 16 of the complaint. Plaintiff cannot identify the identity of the speaker because users of Facebook can use pseudonyms, nor does he know date, time of any posted statement. There are likely many others; Defendant has been asked to produce those but has refused.

10. State with specificity the "terms of Facebook" referenced in Paragraph No. 10 and provide an internet address or URL link to those terms.

RESPONSE: This information is equally available to Defendant as to Plaintiff. However, if she can't find it, she can look at https://www.facebook.com/help/901690736606156.

11. State with specificity the "terms of Facebook" that you allege Stiles violated as alleged in Paragraph No. 11 and provide an internet address or URL link to those terms.

RESPONSE: See response to No. 10 above.

12. Identify all legal authority that you believe supports the claim that a violation of the terms of Facebook gives rise to civil liability or a claim (such as this one) brought by an individual other than Facebook.

RESPONSE: Objection. Plaintiff will not divulge his legal strategy nor the work product

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

of his counsel. At the appropriate time, Plaintiff will submit legal authority as required by court rules.

13. Identify the person referred to in Paragraph No. 13 of the Complaint.

RESPONSE: Defendant is unable to disclose that information at this time, but will update this response when circumstances exist that will eliminate the ability of Defendant or others to harm that person, his family or his reputation.

14. As alleged in Paragraph No. 14, state with specificity each statement by Stiles that is defamatory *per se* (as opposed to *per quad).* Rather than repeating each statement, you may include your response in your response to Interrogatory No. 9.

RESPONSE: See response to Interrogatory No. 9.

15. Specifically state the action taken by Stiles that you believe constitutes "publishing, ratifying, and/or endorsing" as those terms are used in Paragraph 15 of the Complaint. For example, if you simply mean Stiles was administrator of the Facebook group where the statements were posted, explicitly say as much or specifically describe the conduct to which you are referring.

RESPONSE: Defendant has far more ability to know what she has done to publish, ratify and/or endorse the statements posted to Deep Dive. On information and belief, she has failed to comply with obligations of administrators which she voluntarily undertook when she became an administrator of Deep Dive, warranted its content, and assumed responsibilities including deleting posts, deleting comments, remove and ban people from the page. After Stiles' deposition is taken, additional facts will be known.

16. With respect to Paragraph No. 16 in the Complaint, state the account name, identity of the speaker, date, time, and a complete quotation of every statement you allege Stiles republished, ratified, or endorsed that was defamatory or libelous.

RESPONSE: Some are set forth in Paragraph 16 of the complaint. Plaintiff is not certain it is possible to find all of the statements that are responsive to this request, and Defendant has failed to produce documents requested that would assist in answering this Interrogatory.

17. State the date, time, place, and persons involved in all Board Officer Meetings you have participated in as a District 5 board member.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

18. State all of your telephone numbers (including cell phones) and email addresses.

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

19. State with specificity everything you have done to ensure perishable evidence, including ESI, is preserved during the pendency of this lawsuit.

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

20. Identify by year, make, and model number all smart phones, tablets, and laptops you own.

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

21. State the date and manner (i.e., telephone call, email, in-person meeting) of your first consultation with your lawyer in this case. Note: this interrogatory does not seek the substance of the communication, just a date and manner by which the consultation occurred.

RESPONSE: Objection. Irrelevant. Privileged.

22. Prior to filing suit, state whether you discussed this lawsuit in person or in writing with any member of the District 5 school board and, if so, identify the person(s), date(s), manner of communication, and state the substance of the communication.

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

23. Identify by name, case number, and jurisdiction all civil and criminal actions to which you or a company that you disclose as having an economic interest in on your Statement of Economic Interest filings with the S.C. Ethics Commission have/has been a party, state whether you or the company were/was the plaintiff or defendant, the nature of the claim, and briefly describe the resolution.

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

24. As to the news report authored by Bristow Marchant and published by The State Newspaper on September 18, 2020, titled, "Feud over new Midlands school leads to ethics accusations against school board member," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

25. As to the news report authored by Bristow Marchant and published by The State Newspaper on February 24, 2021, titled, "Can SC school board member still have say in $23M project? What ethics commission says," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

26. As to the news report authored by Bristow Marchant and published by The State Newspaper on March 30, 2021, titled, "SC school board members accused of illegally meeting at Waffle House," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

27. As to the news report authored by Bristow Marchant and published by The State Newspaper on April 7, 2022, titled, "LR5 school board vice chair faces ethics complaint over elementary school contractor," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

28. State whether you, your political campaign, or a company you have disclosed on your Statement of Economic Interest reports with the S.C. Ethics Commission are paying remuneration to administer, publish or promote content on any social media and, if so, identify the recipient and the date and amount of any payment.

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable. But what a good idea.

29. State whether you are paying or have paid to "promote" or advertise any material on Facebook and, if so, describe with specificity the nature of the information, the dates, the vendor placing the promotional or advertising, and the amount spent.

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable. But what a good idea.

30. State all dates, times, methods of communication (phone, email, in-person, etc.), and substance of communications your counsel, Desa Ballard, had with Joel Collins, J.C. Nicholson, III, Paul Osmundson, Beth Hutchinson, Leslie Stiles or anyone else relating to filing a FOIA lawsuit against District 5 of the District 5 school board. Note: this interrogatory seeks information in the possession of your counsel, not just you.

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable. Reserving these objections, see Plaintiff's Response to Request to Admit No. 18, submitted this date.

Respectfully submitted,

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
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ATTORNEYS FOR PLAINTIFF

May 13, 2022

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Exhibit C

(Loveless responses to document requests)

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kenneth B. Loveless, Plaintiff vs. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Civil Action No.: 2022-CP-40-01364 **PLAINTIFF'S RESPONSE TO REQUEST FOR PRODUCTION**

TO: CHRISTOPHER KENNEY, ESQUIRE, ATTORNEY FOR DEFENDANT

1. All documents or items you intend to introduce at trial.

RESPONSE: Objection, calls for release of trial strategy.

2. All documents or items you may use at trial even if only for impeachment purposes and not for your case in chief.

RESPONSE: Objection, calls for release of trial strategy.

3. All documents or items furnished to any expert consulted or retained in this case.

RESPONSE: None.

4. All documents identified or described in response to any interrogatory.

RESPONSE: These will be provided after Defendant's Motion for Judgment on the Pleadings is heard and decided. Upon receipt of Defendant's Motion for Judgment on the pleadings, Plaintiff's counsel requested an extension of time to respond to discovery, since discovery is not admissible at a hearing on motion for judgment on the pleadings. Defendant's counsel refused the request.

5. All documents you furnished to your counsel in this case prior to filing suit.

RESPONSE: Objection. Privileged. Work Product. Prepared in anticipation of litigation.

6. All communications relating to your service as a District 5 board member. This request includes (and is not limited to) all communications from constituents, members of the public, supporters, detractors, administrators, teachers, employees, and fellow members of the District 5 school board.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

7. To the extent not already produced, all communications and documents relating to any Board Officer Meetings you attended or participated in as a District 5 board member. Examples of documents sought include (but are not limited to) agendas and meeting minutes.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

8. All communications and statements that you, your lawyer, or someone acting on your behalf have disseminated to the media concerning any public news report about you, District 5, or the District 5 school board.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

9. The "terms of Facebook" referred to in Paragraph Nos. 10 and 11 of the Complaint.

RESPONSE: This document is equally available to Defendant as it is to Plaintiff. Nonetheless, a link to this document is provided in Plaintiff's Response to Interrogatories served this date.

10. All social media posts and comments made by you or someone on your behalf.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

11. All communications with any person relating to the Facebook group Learn About District 5.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

12. All communications with Jason Valek.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

13. All communications with Stacey Dillworth Price.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

14. All communications and statements that you, your lawyer, or someone acting on your behalf have disseminated to the media relating to this lawsuit, Stiles, or Kevin Scully.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

15. All communications between you and any officer, employee, or agent of Contract Construction.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

16. All communications between you and any person concerning construction at Piney Woods

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Elementary School.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

17. All communications between you or a lawyer acting on your behalf and the S.C. Ethics Commission.

RESPONSE: See documents identified in Responses to Interrogatories served this date.

18. All documents you or a lawyer acting on your behalf have furnished to or been furnished from the S.C. Ethics Commission.

RESPONSE: See documents identified in Responses to Interrogatories served this date.

19. Concerning the case styled Kenneth B. Loveless v. William T. Butler and Sprint, Inc., 2013-CP-32-00241, filed in the Lexington County Court of Common Pleas, produce:

    a. Any settlement agreement,

    b. All depositions, and

    c. Your discovery responses.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

20. Produce all communications between you and RJ "Rod" Shealy concerning this lawsuit, the subject matter of this lawsuit, or your re-election in November 2022.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

21. Produce all public opinion polls or public opinion surveys that relate to you, District 5, the District 5 school board or your reelection in November 2022.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

22. Since this lawsuit was filed, produce exemplars of all advertising or electioneering materials- including mailers, flyers, social media, electronic signs, Internet, radio, or TV ads- that you personally, your re-election campaign, or your campaign consultants have drafted, paid for, or intend to pay for.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

23. Produce a copy of your campaign budget for your re-election in the November 2022 election.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

24. Produce all communications between your counsel, Desa Ballard, and Joel Collins,J.C. Nicholson, III, Paul Osmundson, Beth Hutchinson, Leslie Stiles, or any other individualrelating to a possible FOIA lawsuit against District 5 or the District 5 school board. Note: this request seeks communications in the possession of your counsel, not just you.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

25. Produce all documents received or in the possession of your lawyer, Desa Ballard, that were provided to her by Joel Collins, J.C. Nicholson, III, Paul Osmundson, Beth Hutchinson, Leslie Stiles, or any other individual in connection with a possible FOIA lawsuit against District 5 or the District 5 school board.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No.

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ATTORNEYS FOR PLAINTIFF

May 13, 2022

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Exhibit D

(Loveless responses to request to admit)

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless, Plaintiff	)	Civil Action No.: 2022-CP-40-01364
vs.	)	
Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant	)	**PLAINTIFF'S RESPONSE TO REQUESTS TO ADMIT**

TO: CHRISTOPHER KENNEY, ESQUIRE, ATTORNEY FOR DEFENDANT

PLAINTIFF'S GENERAL OBJECTION TO REQUESTS: Plaintiff objects to these requests, as they exceed the scope of allowable and appropriate discovery pursuant to Rule 26(b), SCRCP, and therefore are prohibited from forming the basis for requests under Rule 36. Plaintiff further objects on the grounds that most of requests are included so Defendant can publicize Plaintiff's answers for public consumption, furthering and demonstrating Defendant's continued improper and unlawful malice toward Plaintiff.

Subject to and reserving such objection as to each request hereinbelow, Plaintiff responds as follows:

1. You are a public official.

RESPONSE: Denied in part. Plaintiff admits he is a public official in his capacity as a member of the Board of Trustees of Lexington-Richland School District No. 5, but denies that designation justifies or excuses the malicious and defamatory statements made against him and published by Defendant. Plaintiff denies he is a public official in his personal and professional life, which are separate from his duties as a public official.

2. Posts and comments on Deep Dive Into D5 are of and concerning District 5.

RESPONSE: Denied in part. Plaintiff is neither an administrator nor editor of "Deep Dive," and therefore has no ability to monitor or control the content of comments and/or posts on "Deep Dive," nor is he otherwise able to review the totality of the same for purposes of evaluation as to the vague characterization mentioned in this request. On information and belief, the comments and posts on Deep Dive are characterized by its administrator, Lesley Stiles, as information that is "a result of much research and analysis..."). Plaintiff is informed and believes Stiles has authority to monitor, censor, and/or delete content which she determines is inappropriate. Plaintiff is further informed and believes that Plaintiff's failure to censor and/or delete defamatory statements made on Deep Dive constitutes her ratification and republication thereof.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

3. At all times relevant to the allegations in your Complaint, nothing prohibited you from posting or commenting on Deep Dive Into D5.

RESPONSE: Plaintiff incorporates and reserves the general objections stated above, but subject to the same states that he lacks sufficient knowledge to admit or deny this Request, which is therefore denied. Plaintiff further responds that he has not attempted to post or comment on Deep Dive, nor does he have any role on the page that permits him from monitoring, manipulating, or deleting content from the page, although others have such ability. Plaintiff admits he has never been notified that he is blocked from the page, but has no knowledge of what, if anything, Defendant or any other party may have done to affect his ability to interact on Deep Dive without notice thereof.

4. You are a member of a private Facebook group called "Learn About District 5."

RESPONSE: Admitted.

5. You have made posts and submitted comments on Learn About District 5.

RESPONSE: Admitted.

6. On February 8, 2021, you voted on an item on the District 5 board discussion agenda that was not on the action agenda.

RESPONSE: Plaintiff incorporates and reserves the general objections stated above, but subject to the same further objects to the request because it is ambiguous and lacks sufficient specificity and particularity as to any matters upon which any vote was taken at the referenced meeting.

7. On March 1, 2021, you voted to strike items discussed and entered into the record by a District 5 board member on February 8, 2021, from the official board minutes, and the items stricken included an S.C. Attorney General opinion relating to FOIA and an opinion from the S.C. Ethics Commission.

RESPONSE: Plaintiff incorporates and reserves the general objections stated above, but subject to the same further responds to admit the minutes of the March 1, 2021 meeting reflect that he voted during debate on a motion to approve official board minutes of February 8, 2021, and that "the attachment exceeds the ten (10) page limit rule...".

8. On May 24, 2021, the District 5 board agenda item No. 3d for executive session described as "Legal Advice Regarding a Contractual Matter" failed to specify that the item was Superintendent Christina Melton's contract.

RESPONSE: Plaintiff incorporates and reserves the general objections stated above, but subject to the same states that from his review of public records, the third item on the amended agenda item for executive session on May 24, 2021, was "Amicks Ferry Water/Sewer Tap Close Out Fees (Piney Woods Elementary)." Further responding as to what may have been discussed in executive session, Plaintiff's duties as a Board member do not permit him to disclose

discussions which may have occurred during executive session, and S.C. Code § 30-4-70(b) provides "the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated." Accordingly, Plaintiff denies that the agenda "failed" in any respect to comply with South Carolina law.

9. As to Request to Admit No. 8, you knew the nature of the "Legal Advice Regarding a Contractual Matter" prior to the meeting and had supported ending Superintendent Christina Melton's contract.

RESPONSE: Plaintiff incorporates and reserves the general objections stated above, but subject to the same further states that as to what may have been discussed in executive session, Plaintiff's duties as a Board member prohibit disclosure of discussions which may have occurred during executive session, with the exception of such matters as may be disclosed on the record when executive session concludes, and that S.C. Code § 30-4-70(b) provides "the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated."

10. On June 14, 2021, the District 5 board agenda item No. 3d for executive session described as "Legal Advice Regarding a Contractual Matter" failed to specify that the item in question was the buy-out of Superintendent Christina Melton's contract.

RESPONSE: Plaintiff incorporates and reserves the general objections stated above, but subject to the same further states that based on Plaintiff's review of public records, agenda item No. 3d for executive session for the referenced meeting was "Legal update Case No. 2020-CP-40-02158." To the extent it is relevant to this Request or what this Request is attempting to address, S.C. Code § 30-4-70(b) provides "the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated." As to what may have been discussed in executive session, Plaintiff's duties as a Board member prohibit disclosure of discussions which may have occurred during executive session, with the exception of such matters as may be disclosed on the record when executive session concludes. Accordingly, Plaintiff denies that the agenda "failed" in any respect to comply with South Carolina law.

11. As to Request to Admit No. 10, you knew the nature of the "Legal Advice Regarding a Contractual Matter" prior to the meeting and you debated and signed the agreement, on behalf of District 5, to terminate and buy-out Superintendent Christina Melton's contract while in executive session.

RESPONSE: See Response to Request No. 10 above, which is incorporated herein as fully as if restated verbatim herein. Subject to the objections included therein, Plaintiff further states that he is informed and believes that Christina Melton resigned as superintendent during the public portion of a board meeting on June 14, 2021.

12. No public vote ever occurred prior to you signing the agreement, on behalf of District 5, to terminate and buy-out Superintendent Christina Melton's contract.

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

RESPONSE: Plaintiff incorporates and reserves the general objections stated above, but subject to the same states that Plaintiff is unaware of any public vote regarding Christina Melton after she resigned as superintendent.

13. You conducted bi-weekly Board Officers Meetings without giving public notice, an agenda, or publishing meeting minutes.

RESPONSE: Plaintiff incorporates and reserves the general objections stated above, but subject to the same states that this request is denied. Subject to the same objections, Plaintiff further responds that he has attended board officer meetings during his service on the Board of Trustees, but lacks knowledge sufficient to enable him to admit or deny the remainder of this Request, and he therefore denies same.

14. Beginning in 2018 when you were elected to the District 5 school board, you were critical of the Piney Woods Elementary School construction project.

RESPONSE: Plaintiff incorporates and reserves the general objections stated above, but subject to the same states that this request is denied.

15. On February 11, 2020, Loveless Commercial Contracting, Inc., a company in which you have an economic interest, entered into a contract as a subcontractor for Contract Construction worth approximately $1 million.

RESPONSE: Plaintiff incorporates and reserves the general objections stated above, but subject to the same states that this request is denied.

16. You failed to disclose and recuse from matters concerning the Piney Woods Elementary School after Loveless Commercial Contracting, Inc. entered into the contract with Contract Construction and you continued to participate in discussion and take action, such as participate in inspections, concerning the Piney Woods Elementary School construction project.

RESPONSE: Plaintiff incorporates and reserves the general objections stated above, but subject to the same, denies this request.

17. A complaint has been filed against you with the S.C. Ethics Commission alleging you violated the state ethics law.

RESPONSE: Admitted.

18. Admit that your lawyer, Desa Ballard, offered to "deputize" Stiles as a paralegal in her (Ballard's) law office to obtain Stiles' assistance in bringing a FOIA lawsuit against District 5 or District 5 board members.

RESPONSE: Plaintiff incorporates and reserves the general objections stated above, but subject to the same, responds that he lacks knowledge or facts which to admit or deny this request. However, and still subject to the same objections, he is aware that Ms. Ballard had

meetings with multiple prospective clients in 2021, but that the nature and extent of such discussions by and between Ms. Ballard, those prospective clients, proposed witnesses, and other legal counsel involved are privileged and confidential. If such privilege and confidentiality were waived, Ms. Ballard would be free to share additional information with Plaintiff that would then enable Plaintiff to respond more fully to this request.

Respectfully submitted,

s/ Desa Ballard

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Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

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ATTORNEYS FOR PLAINTIFF

May 13, 2022

I, ***Beth Cogan***, an employee of the Ballard & Watson Attorneys at Law certify that I have this date served a copy of Response to RTA on all counsel of record and *Pro Se* parties by depositing a copy properly addressed, ~~with sufficient First Class postage affixed, to each, in the United States Mail.~~ via email

Date: 5/13/2022 Signed: Beth K Cogan

ELECTRONICALLY FILED - 2022 May 27 1:37 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364 **MOTION TO OVERRULE DISTRICT 5 CLAIMS OF ATTORNEY-CLIENT PRIVILEGE**

Defendant Leslie Stiles (misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles) hereby moves the Court for an order overruling claims of attorney-client privilege raised by School District Five of Lexington & Richland Counties (District 5). Specifically, the Court should hold that the documents marked JHammond_000069–000071, _000075, _000104, and _000110 are not protected by the attorney-client privilege and that Stiles has no obligation to return them, destroy them, or refrain from using them in this litigation. Further, as to JHammond_000104, the Court should also hold that the intentional disclosure of the information to a non-client third party waives the privilege as to this and all other communications on the same subject. The grounds for granting the motion are as follows.

PROCEEDURAL AND FACTUAL BACKGROUND

Plaintiff Kenneth B. Loveless, a public official elected to serve as a board member for District 5, filed this libel action against Stiles, a private citizen and stay-at-home mother of three young children in District 5 schools, over statements he claims she made on a Facebook group and for statements other people made on social media. Among the matters Loveless has placed at issue by alleging he was defamed are statements concerning "back room deals and public business

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

conducted in private," "FOIA violations," and a school board "trying to keep their misdeeds hidden" and "more concerned with settling personal vendettas than taking care of our district." Compel. ¶¶ 15(a), 16(e), (i), (m), (v).

Stiles affirmative defenses include the defense of truth. Accordingly, she subpoenaed District 5 and Loveless's colleagues on the school board for communications with him and about him. Through counsel, Andrea White, Esq., District 5 agreed to produce emails for the individual board members from their District 5 email accounts but left it to the members to produce emails and text messages from personal devices and email accounts. Some members have cooperated. Others have not.[1] Stiles' counsel received emails from Board Chair Jan Hammond, Board Member Rebecca Blackburn Hines, and Board Member Tifani Moore. While reviewing those documents, the undersigned identified communications that District 5's lawyer was a party to.

On June 3, 2022, Stiles' counsel wrote to Andrea White (**Exhibit A**) alerting her to six documents (19 pages total) from board members' personal email accounts to which White was either a communicant or a communicant on an earlier email forwarded to the board member who produced the document. The undersigned indicated these communications did not appear to be protected from disclosure by the attorney-client privilege, but nevertheless afforded White an opportunity to review them and make a claw back request within 10 days. Ex. A.

On June 9, 2022, District 5's counsel made a claw back request (**Exhibit B**) as to portions[2] of four of the six documents (identified above), claiming privilege because she "was providing legal advice to a Trustee or the Board regarding a specific matter." Ex. B. This motion followed.

[1] See Def's Mot. Rule to Show Cause (filed May 11, 2022).
[2] The undersigned sought to clarify whether the claw back request pertained to the entire document or just the pages cited in counsel's letter (**Exhibit C**); however, no clarification has been made.

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

LEGAL STANDARD

In South Carolina the attorney-client privilege applies where (1) legal advice is sought (2) from a professional legal adviser in her capacity as such, (3) the communications relating to that purpose (4) are made in confidence (5) by the client, (6) are at the client's instance permanently protected (7) from disclosure by the client or the legal adviser, (8) except when the protection is waived. In re Mt. Hawley Ins. Co., 427 S.C. 159, 164, 829 S.E.2d 707, 710 (2019). The burden of establishing the privileged is on the party asserting it. Id. Information—in and of itself—does not become privileged merely because it was communicated to an attorney, thus South Carolina courts strictly construe the privilege. Id. at 167–68, 829 S.E.2d at 712. "Any voluntary disclosure by a client to a third party waives the attorney-client privilege not only as to the specific communication disclosed but also to all communications between the same attorney and the same client on the same subject." Marshall v. Marshall, 282 S.C. 534, 538, 320 S.E.2d 44, 46–47 (Ct. App. 1984).

ARGUMENT

This motion should be granted and District 5's privilege claims should be overruled for two reasons.

First, there is no privilege because the communications are not with "the client"—i.e., the District 5 school board or a designee authorized to direct counsel. At all times relevant to this motion, the policy of District 5 was that attorneys were to be coordinated by the superintendent "except in unusual circumstances such as personnel matters pertaining to the superintendent." AR BDG-R School Attorney/Legal Services, District 5 (Issued 4/06). In those instances, "the attorneys will report directly to the board" and "[t]hose briefings will be *to the full board*, coordinated by the board chairman." Id. (emphasis added). That is not what was happening here. As demonstrated below, counsel was reporting to, being directed by, and giving substantive legal advice to a single

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

board member—Loveless—who was not the chair. Accordingly, Andrea White's communications were not with the client (i.e., the board), they were with Loveless and are not privileged.

Second, even assuming (for the sake of argument) Andrea White was engaged in attorney-client communications with Loveless on behalf of the district, one email (JHammond_000104) is not privileged because it is between White, Loveless, and Loveless's wife—a third party to the representation. Even under the most liberal and capacious understanding of what constitutes a privilege communication, this email can never be privileged and is the sort of voluntary disclosure that results in waiver as to that communication and "also to all communications between the same attorney and the same client on the same subject." Marshall, 282 S.C. at 538, 320 S.E.2d at 46–47. The Court should hold accordingly.

This motion proceeds with a non-substantive description of the disputed communications before turning to these two arguments.

I. The date, communicants, and nature of the disputed communications suggest they are probative of the issues joined.

The disputed communications will be submitted to the Court for *in camera* review. However, the date, communicants, and nature of the communication are relevant to this motion and are therefore briefly detailed here. Cf. Rule 26(b)(5), SCRCP. Also instructive are the two attorney-emails District 5 has chosen *not* to claw back (RHines_000179 and TMoore_000012 through _000013) notwithstanding their similarity to items the district maintains are privileged.

A. Communications District 5 contends are privileged.

Four emails are disputed here.

i. JHammond_000069 through _000071

On November 13, 2020, at 10:33 a.m., Andrea White sent Loveless an email to his business email address (ken@lovelesscontracting.com) with the subject "Monday meeting," the nature of

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

which is parliamentary and FOIA issues. District 5's then-superintendent, Dr. Christina Melton, is not a party to the communication, nor is any other board member. At the time of the email (and now), Hammond was serving as Chair. A few hours later, Loveless forwards White's message to Hammond's personal email with the message, "Please call me about this."

ii. JHammond_000072 through _000076

This email thread begins with the same email from Andrea White described above. On Sunday, November 15, 2020, at 12:15 p.m., Loveless replies to White. The nature of the communication is a parliamentary question. White responds at 1:32 p.m. Again, neither the superintendent nor any other member of the board is a party to the exchange.

On Monday, November 16, 2020, at 9:14 a.m., Loveless sends a message to the same thread; the nature of the communication appears to be an unrelated scheduling request. Andrea White responds the following day, November 17, 2020, at 1:17 p.m. A few minutes later, Loveless forwards the entire email thread to Hammond and Board Member Nikki Gardner with the message, "Jan and Nikki, give me your feedback on this. Thanks Ken." Loveless, Hammond, and Gardner's email addresses are all personal or business email accounts.

iii. JHammond_000104 through _000108

On January 6, 2021, at 2:50 p.m., Loveless emails Andrea White from his business email account with a copy to his wife, Jondy Loveless at jondy@lovelesscontracting.com, the nature of which is agenda items for a January 25, 2021, meeting of the board. The email includes an attachment. No other member of the board is a party to this email. On January 9, 2021, Andrea White responds. Notably, White is aware she is communicating with Loveless *and his wife*, addressing her email to both of them: "Hey Ken and Jondy, …." The following day, January 10,

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

2021, at 6:09 p.m., Loveless forwards this email exchange to the personal email accounts of Hammond, Gardner, and another individual whose identity is presently unknown.

This document is highly probative of the allegations and defenses joined. Some of the items before the board during the January 25, 2021, meeting resulted in the public criticisms Loveless complains of in this libel suit. According to official meeting minutes[3] there was a lengthy debate at the outset of that meeting on items raised by former-Board Member Ed White[4] who successfully moved (1) to move the discussion of the superintendent's goals and expectations to public session, and unsuccessfully moved to (2) add an action item to vote on whether the Board Officer's Meeting should be open to the public in accordance with the FOIA, (3) add a discussion item concerning Loveless's financial relationship with a vendor and recusal requirements, and (4) to postpone a revision of board policies until new board member received training and legal advice concerning board policies and practices.

The district's video of the January 25 meeting indicates that Ed White sought to move the discussion concerning the superintendent to public session due to ongoing concerns over whether certain board members were creating a "hostile environment" during closed sessions. See January 25, 2021 - Call to Order (6 PM), Approval of Agenda & Enter Executive Session at 0:50 et seq., YouTube.[5] In an affidavit filed in a FOIA lawsuit styled Osmundson v. District 5, 2021-CP-40-03694, pending Richland County Court of Common Pleas, Ed White details those facts before, during, and after the January 25 meeting. See generally, E. White Aff., Osmundson (filed Feb. 11,

[3] Available at: https://www.lexrich5.org/cms/lib/SC01916806/Centricity/domain/428/2020-2021%20board%20meeting%20information/minutes/Minutes%201.25.21.pdf

[4] Ed White is a member of the South Carolina Bar and a partner at Nelson Mullins in Columbia.

[5] Available at: https://www.youtube.com/watch?v=KPHu-mfZSno&list=PLI9eR_8HyUjBtK_N3ziD7Kvu5tT2-HDSK&index=1

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

2022).[6] According to Ed White's detailed, 18-page sworn statement, a December 14, 2020, executive session was held during which Loveless and Gardner "were visibly angry" and Melton was criticized for failing to follow the instructions of Loveless and other individual board members. E. White Aff. ¶ 8. Ed White understood this as an effort to bring Melton "into line obeying their individual directions outside of the public view" and was concerned Hammond, Loveless, and Gardner were using their Board Officers Meeting with Melton "to continue to secretly bully, intimidate and further harass the Superintendent to conduct the District's business the way they personally wanted it conducted." Id. ¶ 18. Ed White recounts one member of the December 14 executive session expressing concerns the board was creating a "hostile work environment." Id. ¶ 11. "During that meeting, Andrea White stated that the Board could not continue to sit in Executive Session and just talk about the Superintendent, or something to that effect, and that the Board either needed to go back into public session to continue this conversation or try to structure something along the lines of an evaluation of the Superintendent." Id. ¶ 9. Ed White's successful motion at the beginning of the meeting on January 25 appears to have forced a subsequent discussion of Superintendent Melton into public session.

However, this was not the end of the Melton matter. On June 14, 2021, the board executed a "Settlement Agreement" with Melton in executive session whereby she resigned her position in exchange for $226,368, even though Melton had just been named S.C. Superintendent of the Year, and "nothing was said about the matter during public Board meetings that would give the public any reason to believe that there was friction" between Loveless, Gardner, or Huddle and Melton.

[6] Available at: https://publicindex.sccourts.org/Richland/PublicIndex/PIImageDisplay.aspx?ctagency=40002&doctype=D&docid=1644607434451-955&HKey=82568098748210584801147011111675991031091057848112846978114478898681111217279121117906684110511021101107

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

See E. White Aff. ¶¶ 33–40. This abrupt resignation of a beloved superintendent caused Ed White to resign from the board in protest and surprised the District 5 community. See Bristow Marchant, "Superintendent of Lexington-Richland 5 resigns; school board member resigns in protest," THE STATE (Aug. 6, 2021) ("Vice chairman Ken Loveless, presiding over the meeting, accepted Melton's resignation …").[7]

The board's decision was and remains a subject of public criticism. For example, last week, The Post and Courier's editorial board called for school boards to explain why superintendents are being terminated at a cost to taxpayers, writing about District 5:

> And of course a year ago, Lexington-Richland 5 paid then-reigning S.C. Superintendent of the Year Christina Melton $226,000 for her "resignation."
>
> It wasn't hard to figure out what happened to Dr. Melton, *although the school board never had the intestinal fortitude to own up to what it had done*: Board members had fought with her for months, mainly because she insisted on following orders from S.C. Education Superintendent Molly Spearman that required students to wear masks during the pre-vaccine height of the COVID-19 pandemic, and the board wanted to give parents the right to send their unmasked children to school to infect other children.

See, e.g., "Editorial: Make SC school districts tell us why they're paying superintendents to go away," The Post and Courier (June 24, 2022) (emphasis added).[8] This episode (and others) prompted criticism of the board and Loveless over whether the public's business was being conducted behind closed doors. Cf. Campbell v. Marion Cnty. Hosp. Dist., 354 S.C. 274, 286, 580 S.E.2d 163, 169 (Ct. App. 2003) ("The purpose of the FOIA is to keep the public informed and to protect the public from secret government activity."). Ironically, Stiles spoke during the public participation portion of the January 25 meeting about the need for greater transparency by the

[7] Available at: https://www.thestate.com/news/local/education/article252102688.html.
[8] Available at: https://www.postandcourier.com/opinion/editorials/editorial-make-sc-school-districts-tell-us-why-theyre-paying-superintendents-to-go-away/article_1b01576e-f1a7-11ec-9d64-a73b319977b8.html.

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

board. See Jan. 25, 2021 – Approval of Minutes & Public Participation at 47:00, YouTube ("We all want more transparency and I believe some of the board members ran on transparency, because that is what the public is asking for—more information, not less.").[9] The nature of the communication between the district's lawyer, Loveless, and Loveless's wife is the board's agenda for this pivotal January 25 meeting, and it is therefore relevant to this litigation.

iv. J. Hammond_000110 through _000111

On February 25, 2021, at 11:42 a.m., White emailed Hammond at her District 5 email and Loveless and Gardner at their business and personal accounts, respectively. The nature of the communication is an upcoming agenda item. A few hours later, Loveless forwards the message to Hammond's personal email address.

This document is also probative of the allegations and defenses joined in this case. During the next board meeting, members discussed action regarding "the actions of a Trustee in relation to his/her relationships with current and potential District vendors." Agenda at Item No. 13, District 5 (Mar. 1, 2021).[10] The relationship in question, was Loveless's business relationship with Contract Construction, Inc. (CCI). CCI was performing work for District 5's Piney Woods Elementary School while Loveless's construction company, Loveless Commercial Contracting, Inc., was a subcontractor on a project CCI was doing for the S.C. Law Enforcement Division (SLED). After questions were raised about whether the S.C. Ethics Act required Loveless's recusal from discussions pertaining to the Piney Woods project, Loveless sought and received an opinion from the S.C. Ethics Commission advising him that "you must recuse yourself" and that he "should

[9] Available at: https://www.youtube.com/watch?v=yCry7BHhuVQ&list=PLI9eR_8HyUjBtK_N3ziD7Kvu5tT2-HDSK&index=4

[10] Available at: https://www.lexrich5.org/cms/lib/SC01916806/Centricity/domain/428/2020-2021%20board%20meeting%20information/Agenda%20March%201%202021.pdf.

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

not discuss the matter or take any action on it that could be perceived as an attempt to influence the governmental decision." See Ltr. C. Laster to Loveless (Feb. 22, 2021).[11]

Discussion of this matter during the March 1 board meeting laid bare the dysfunction of the District 5 board. One member, Hines, recounted about the discussion item:

> Specifically related to this discussion item on the agenda and professionalism, there have been several conversations about potential ethical concerns in regards to board members. Of note, one of the concerns that I have raised is the relationship of a board member and a vendor. I was unaware of this relationship until shortly prior to joining the board. Once on the board, I witnessed several emails requesting information which raised concerns for me. Policy changes have been made which could impact some of these ethical concerns. My concerns have been based upon fact. The fact is, we now have TWO advisory opinions that expressly state that a certain board member could not participate in conversations (or anything) relating to an ongoing project within our district. My actions have [been] made in an earnest attempt to both inform fellow trustees of the obligation we have to maintain the public's trust, and to also protect all my colleagues from potential infractions of this opinion that may lead to violations of ethics laws. …
>
> Unfortunately, by seeking to protect our district and by doing the right thing, (which has been validated by the Ethics Commission) I am be[ing] attacked by members of this board. …
>
> I have been told by a board member that I am "choosing the wrong side" by seconding motions. I have been cursed out by a board member's spouse. Instead of having reasonable conversations, a board member has taken to sending me screen shots of social media posts via text. By insinuating conversations that have not occurred. By maligning my integrity and character on social media with untrue statements. Flat out lies.

Hines Statement (March 1, 2021).[12] Given the Ethics Commission's advice and the divisive nature of the District 5 board as recounted by the members themselves (Hines was not alone in this

[11] Attachment No. 1, Board Minutes (Mar. 1, 2021), available at: https://www.lexrich5.org/cms/lib/SC01916806/Centricity/domain/428/2020-2021%20board%20meeting%20information/minutes/3-1-2021%20Minutes.pdf.
[12] Attachment No. 5, Board Minutes (Mar. 1, 2021), available at: https://www.lexrich5.org/cms/lib/SC01916806/Centricity/domain/428/2020-2021%20board%20meeting%20information/minutes/3-1-2021%20Minutes.pdf.

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

regard[13]), public criticism should come as no surprise to Loveless and the board he serves on. Nevertheless, for the purpose of this motion, the public record is clear that the March 1 board meeting and the issues surrounding it are central to this litigation. The email communications, the nature of which is the meeting agenda, are relevant and properly discoverable if not privileged.

B. Communications District 5 does not claim are privileged.

Before turning to reasons the emails are not privileged, two admittedly non-privileged emails are instructive because, while the subject matter is different from the four disputed emails, they are legally indistinguishable as to whether privilege should attach.

i. RHines_000179

On May 6, 2021, at 7:18 p.m., Gardner emailed Melton with the subject line, "Against the Will of the Board," to express a complaint over some purported action of the former superintendent pertaining to COVID-19 masking policy that Gardner claimed was "directly [ ] against the will of the board." RHines_000181. Gardner threatened, "I will be asking in our Exec. Session what repercussions and steps we must take to censure you. It may be in general session if you continue to undermine the will of the board." Id. It is not clear from the document whether others were copied on this email. The following day, on May 7, 2021, at 12:02 p.m., Melton responded, added Andrea White and Loveless to the email, and stated (in relevant part):

> Attorney White, Mrs. Hammond and I have worked since Wednesday on this issue. Mr. Loveless, I believe, has been kept apprised of this decision which led to the notification sent to the Board last evening and to our parents and staff.

[13] See generally March 1, 2021 - Action Agenda, Discussion Agenda & Adjournment at 0:59:00 et seq., YouTube (Hammond reporting on an executive session where the discussion became "heated" and "people said things that did not sound very nice toward each other…"), available at: https://www.youtube.com/watch?v=__VR_9RMM6I&list=PLI9eR_8HyUjB4oo-4_wH8wSHmAn52KUN1&index=6.

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

> Since your concerns may be shared by other board members, I have blind copied them on this reply to make them aware my actions were under advisement and with approval of the Chair.

RHines_000180. In response from his District 5 email account on May 10, 2021, at 9:38 a.m., Loveless claims it was "absolutely false" he was kept apprised and claims, "Further, I understand that other members of the school board have circulated the falsehood." Id. He threatens, "Rest assured I am not pleased about this and plan to make my displeasure known. I also plan to expose anyone who has falsely represented facts." Id.

Unlike the emails above, this communication includes the entire District 5 board, its superintendent, and the district lawyer, yet District 5 claims no privilege here.

ii. TMoore_000012 through _000013

On February 17, 2022, at 12:08 p.m., Loveless emailed Hammond, Gardner, Board Member Tifani Moore, the district's current superintendent, Akil Ross, and Andrea White a tirade (**Exhibit D**) about the affidavit filed by Ed White in Osmundson, in which Loveless states his opinion that Ed White is "a master provocateur." Ex. D.

Notably, District 5 is in active litigation in the Osmundson case, with this email being sent to litigation counsel in that case (Andrea White), the superintendent, and a quorum of the board. Nevertheless, District 5 maintains this document is not privileged.

II. Communications that include Loveless's wife are not privileged.

The email labeled JHammond_000104 through _000108 is not a privileged document because it includes a third-party: Loveless's wife.

It is black-letter law that privilege does not attach unless the communication is made "without the presence of strangers." Marshall, 282 S.C. at 538, 320 S.E.2d at 47. "Without question, any voluntary disclosure to a third person not covered by the privilege waives the

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

privilege." Wellin v. Wellin, No. 2:13-CV-1831-DCN, 2015 WL 12910907, at *3 (Sept. 23, 2015), R&R adopted, No. 2:13-CV-1831-DCN, 2015 WL 12907896 (D.S.C. 2015) (citing Marshall; Duplan Corp. v. Peering Milliken, Inc., 397 F. Supp. 1146 (D.S.C. 1975), U.S. v. Jones, 696 F.2d 1069 (4th Cir. 1982)). Voluntary disclosure not only waives the privilege as to the specific communication disclosed, "but also to all communications between the same attorney and the same client on the same subject." Id. (quoting Marshall, 282 S.C. at 538, 320 S.E.2d at 44). In Wellin, the district court applied this rule and held that all purportedly privileged communications concerning the issue were waived where a testator's lawyer freely communicated with the children at the direction of the testator. 2015 WL 12910907 at *2–3.

Here, the analysis is simple. Loveless and his wife communicated with a district lawyer about board business. Loveless's wife is not covered by the district's attorney-client privilege. Therefore, that communication constitutes a voluntary waiver on that email all others on that subject between Andrea White and the Lovelesses. The Court should hold accordingly.

III. Emails between the District 5 lawyer and individual members

Moreover, none of the emails disputed here are privileged because Loveless was not the "client" for the purpose of determining whether the privilege attaches.

Individual board members acting on their own are not the client. "All powers of the board lie in its action as a body. Board members acting as individuals have no authority over personnel or school affairs." Policy BB School Board Legal Status, District 5 (Issued 1/06) (**Exhibit D**). According to the policy in effect at the time of the emails, the decision to seek legal advice could be made by the superintendent or the board and, once counsel is retained, the attorney reports to the full board as facilitated either by the superintendent or the board chair:

> Board attorneys' briefings to the board are coordinated by the superintendent, except in unusual circumstances such as personnel matters pertaining to the

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

> superintendent. In those instances, the attorneys will report directly to the board. Those briefings will be to the full board, coordinated by the board chairman. The board chairman is the only member of the board authorized to provide direction to the attorneys on behalf of the board.

Policy AR BDG-R Board Attorney/Legal Services, District 5 (Issued 4/06) (**Exhibit E**) (emphasis added). Neither occurred here. Instead, what the emails show is Loveless communicating directly with the district's lawyer—on his own or with his wife and without a quorum of the board present. These communications do not implicate the board's privilege, because Loveless, acting alone, is not the client. Accordingly, the Court should overrule District 5's privilege claims as to all of the disputed items.

CONCLUSION

For these reasons, the Court should review the disputed emails and then hold that the emails marked JHammond_000069–000071, _000075, _000104, and _000110 are not protected by the attorney-client privilege. Further, as to JHammond_000104 through _000108, the Court should hold any privilege is waived as to all communications on that subject. Stiles reserves the right to file a memorandum to supplement this motion prior to a hearing on the matter.

Respectfully submitted,

s/Christopher P. Kenney
Christopher P. Kenney (SC Bar No. 100147)
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June 27, 2022
Columbia, South Carolina.

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

EXHIBIT A

(June 3, 2022, letter from C. Kenney to A. White regarding subpoena documents)

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ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

June 3, 2022
VIA U.S. MAIL & EMAIL

Andrea White, Esq.
White & Story LLC
3614 Landmark Drive, Suite EF
P.O. Box 7036 (29202)
Columbia, SC 29204
awhite@sodacitylaw.com

In re: Loveless v. Stiles, Civil Action No. 2022-CP-40-01364

Dear Andrea:

I appreciate your assistance in responding to my subpoenas seeking documents from Lexington-Richland District 5 and various school board members' District 5 email accounts. I look forward to receiving the first tranche of those documents soon. However, in the meantime, I am writing to seek District 5's view concerning some communications I have received from board members' personal email accounts to which you are a party.

Enclosed with this letter, please find documents Bates labeled:

- JHammond_000069 through _000071
- JHammond_000072 through _000076
- JHammond_000104 through _000108
- JHammond_000110 through _000111
- RHines_000179
- TMoore_000012 through _000013

You are either a communicant on these emails or on an email forwarded to the board member who produced the document to me.

I do not believe these communications are protected from disclosure by the attorney-client privilege. Further, I believe the individuals who furnished them to me did so in a good-faith effort to comply with compulsory legal process. Nevertheless, I wanted to afford you an opportunity to review them. I am willing to consider a claw back request as to these items. I respectfully request that you make any such request within 10 days and provide a brief explanation as for the basis of the claim so I can consider District 5's position and, if necessary, seek a ruling from the Court.

In the meantime, if I discover or receive any other similar items, I will forward them to your attention. Please do not hesitate to contact me if you have any questions.

With warm regards, I am

Sincerely,

Christopher P. Kenney

CPK:hmh
enclosures
cc (without enclosures, email only):
Desa Ballard, Esq.
Harvey M. Watson, III, Esq.
The Honorable Jan Hammond
The Honorable Nikki Gardner
The Honorable Rebecca Hines

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

EXHIBIT B

(June 22, 2022, letter from A. White to C. Kenney regarding clawback)

Andrea E. White
Ashley C. Story
J. Alexander Sherard
Michael D. Davidson

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ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

June 9, 2022

VIA EMAIL AND FIRST-CLASS U.S. MAIL
Mr. Christopher P. Kenney, Esq.
RICHARD A. HARPOOTLIAN, P.A.
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Re: Kenneth B. Loveless v. Lesley Ann Stiles a/k/a Leslie Lou Stiles
C/A No. 2022-CP-40-01364

Dear Chris:

Thank you for notifying me of the disclosure of certain emails sent to or from me by various members of the Board of Trustees for School District Five of Lexington and Richland Counties in response to your subpoena in the above case. I have reviewed those emails and believe that certain ones are protected by the attorney-client privilege based on the fact I was providing legal advice to a Trustee or the Board regarding a specific matter.

It is my position that the following pages contain attorney-client privileged information that is not subject to disclosure pursuant to your subpoena: **000069-70, 000075, 0000104 and 0000110.** I also would note that because the emails were produced by individual Trustees, who do not have the authority to waive the attorney-client privilege that belongs to the entire Board, the production does not amount to a waiver of the privilege.

If you have questions or would like to further discuss, please let me know. Otherwise, I would ask that you confirm your destruction of the specified emails.

Sincerely,

Andrea E. White

C: Desa Ballard, Esq. (Via Email)
Dr. Akil Ross, Superintendent (Via Email)
Jan Hammond, Board Chair (Via Email)

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EXHIBIT C

(June 22, 2022, email from C. Kenney to A. White)

ELECTRONICALLY FILED - 2022 Jun 27 5:14 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

From: Chris Kenney
To: Mendy Young
Cc: Andrea White
Subject: RE: LOVELESS v. STILES
Date: Thursday, June 09, 2022 3:59:00 PM
Attachments: image001.png

Andrea,
Thank you for the response. Just to clarify, are you asking to claw back just the pages cited in your letter or the entire document? For example, JHammond_000075 is part of a five-page document that runs from _000072 through _000076. If you can clarify that would help greatly.
Thanks,
Chris

From: Mendy Young <myoung@sodacitylaw.com>
Sent: Thursday, June 09, 2022 12:38 PM
To: Chris Kenney <cpk@harpootlianlaw.com>
Cc: Andrea White <awhite@sodacitylaw.com>
Subject: LOVELESS v. STILES

Good afternoon, Mr. Kenney:

Hope you are doing well. Attached please find correspondence from Andrea E. White, regarding the above-referenced matter.

Thank you.

WHITE & STORY LLC
ATTORNEYS AT LAW

Mendy Young
Paralegal
White & Story LLC
3614 Landmark Drive, Suite EF
P.O. Box 7036 (29202)
Columbia SC, 29204
O: 803-814-0993 | T: 803-626-1782
F: 803-814-1183
E: myoung@sodacitylaw.com
www.sodacitylaw.com

Please consider the environment before printing this email.

CONFIDENTIAL COMMUNICATION: The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is

intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

IRS CIRCULAR 230 NOTICE: Any federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing, or recommending any transaction or matter addressed in this communication.

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EXHIBIT D

(documents TMoore_000012 through 013)

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District Five OF LEXINGTON & RICHLAND COUNTIES

Tifani Moore <tnmoore@lexrich5.org>

Fwd: Old Times

1 message

Kenneth Loveless <kloveless@lexrich5.org> Thu, Feb 17, 2022 at 12:08 PM
To: Janis Hammond <jhammond@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Akil Ross <aross@lexrich5.org>, Andrea White <awhite@sodacitylaw.com>
Bcc: tnmoore@lexrich5.org

All,

I wanted each of you to see this. Ms. Hammond lived through it, so she can attest.

Please pay close attention to the portion about the buzzword **"intimidation"** and former board member Edward K. White's use of that word. Mr. White is an attorney with Nelson Mullins Riley and Scarborough who knows or should know the legal connotations of the words he chooses to emphasize. Compare it to the new term **"hostile work environment"** he uses in his Affidavit in the Osmundson case 2021CP4003694. In my opinion, when change is afoot, Mr. White becomes a master provocateur.

Note also the use of surrogates to file claims and project upon opposing members.

See also that political party discussions which are not allowed in our district since elections are nonpartisan were a topic then as they are now.

I am blind copying all board members for two reasons. First, this should be used as a case study in what not to do. Each of us must follow "due process" under law. Ms.Sloop believes her reputation was tarnished for life after her false arrest. She will openly tell you that that has affected her to this day. And, this was all because she simply wanted to serve and give something back to her community.

Second, both Ms. Huddle and I were approached by a reporter at the conclusion of the Facilities Committee meeting yesterday. I am not certain if Ms. Gardner was also approached. The reporter was from a Charleston newspaper saying that she wanted comments about Mr. White's affidavit accusing board members of numerous unsavory things. She said that the publication of a newspaper article will occur very soon. We both told her that we could not comment upon an active lawsuit.

Please note and be aware.

Thanks

Ken Loveless

The contents of this e-mail message and any attachments are confidential and are intended solely for addressee. The information may also be legally privileged. This transmission is sent in trust, for the sole purpose of delivery to the intended recipient. If you have received this transmission in error, any use, reproduction or dissemination of this transmission is strictly prohibited. If you are not the intended recipient, please immediately notify the sender by reply e-mail or phone and delete this message and its attachments, if any.

2 attachments

doc10386320220217104907.pdf
1454K

doc10384420220216105012.pdf
620K

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EXHIBIT E

(Policy AR-BDG-R, issued 1-06)

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AR BDG-R School Attorney/Legal Services

Issued 4/06

The board may retain attorneys for the purpose of systematically securing legal services in a timely and organized manner. The following administrative rule sets forth the board's expectations for its legal services. It also serves as a job description for the attorneys.

Qualifications

Attorneys will be licensed to practice law in South Carolina.

Attorneys will be sufficiently familiar with requirements of school laws of the state to enable them to offer the necessary advice.

Attorneys will possess any additional qualifications as the board finds appropriate.

Reports To

Board attorneys' briefings to the board are coordinated by the superintendent, except in unusual circumstances such as personnel matters pertaining to the superintendent. In those instances, the attorneys will report directly to the board. Those briefings will be to the full board, coordinated by the board chairman. The board chairman is the only member of the board authorized to provide direction to the attorneys on behalf of the board.

Appointment

The board will appoint attorneys to advise and represent the district. Attorneys will be the chief legal adviser and representative of the board and will serve at the will of the board.

Evaluation

The board and superintendent will annually evaluate the performance of the attorneys.

Compensation

Compensation for legal services will be negotiated with the board at the time an attorney is appointed or within 30 days of the appointment. The finalization of an appointment is subject to a compensation agreement between the board and the attorney.

Services

A decision to seek legal advice and assistance on behalf of the district may be made by the board or the superintendent. Other district employees will seek legal services through the superintendent. Employees will make such request consistent within standard procedures.

The board and administration will make all requests for legal services, including routine information and assistance, in a timely and organized manner and in accordance with board policy. The attorney will provide the board with periodic legal briefings and a status report on all requests for assistance that have not been provided or completed within 30 days of the request. The attorney will give the board a monthly status report on all litigation or potential litigation involving the district.

Issued 4/24/06

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EXHIBIT F

(Policy BB, issued 1-06)

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Policy BB School Board Legal Status

Issued 1/06

Purpose: To establish the legal foundation for board operations.

The legally constituted governing body of the school district is the Board of Trustees of School District Five of Lexington and Richland Counties. The board is composed of seven members, four of whom represent the Lexington County portion of the district, and three of whom represent the Richland County portion of the district. All trustees whose terms are expiring will be elected in nonpartisan elections held at the same time as the general election. State law has provided that each school district will be under the governance and control of its board of trustees.

The board's powers are derived from the state constitution and acts of the general assembly. Consequently, the board may perform only those acts for which some authority exists. This authority may be expressly stated or implied either in state law or in rules and regulations of the State Department of Education. The board's authority to exercise permissive powers within the framework of state laws and regulations allows for freedom of action.

The board is, by law and tradition, responsible to the community it serves and represents. It is, therefore, the duty of the board to carry out the will of the community in matters of public education, within the boundaries set by the laws and regulations of the state of South Carolina.

All powers of the board lie in its action as a body. Board members acting as individuals have no authority over personnel or school affairs.

The regular term of office for each trustee is four years. The term of office of every elected trustee of the school district must commence one week following the certification of his/her election.

Adopted 8/1/73; Revised 2/2/77, 11/16/81, 4/28/86, 6/17/91, 3/16/92, 1/9/06

Legal references:

S.C. Constitution:

Article II, Sections 3 & 4 - Definition of qualified electors.

Article XVII, Sections 1 & 1A - Qualifications for office and prohibition against dual office holding.

S.C. Code, 1976, as amended:

Section 7-5-120 - Qualifications for voter registration.

Title 8 - Deals with rights and responsibilities of public officers.

Section 59-15-50 - Oath of board members.

Section 59-17-10 through 59-17-90 - School district organization, consolidation, etc.

Section 59-19-10 - Each school district will be under the management of the board of trustees.

Section 59-19-315 - Commencement of trustee's term of office.

ROA 000206

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S.C. Acts and Joint Resolutions:

1970 Act 1016 - Change number of members of board from Lexington and Richland Counties.

1974 Act 1181, Section 1 - Trustees for Lexington 5.

1975 Act 114, Section 1 - Amends Act 1181 of 1974 to delete residency requirements for trustees.

1979 Act 279 - Conduct of board elections.

1987 Act 287 - Lexington 5 board members who reside in Richland County must be elected in nonpartisan elections; vacancies.

1993 Act 216 - Filling vacancies by special election.

1993 Act 218 - All members of boards in Lexington County must be elected in nonpartisan elections held at the time of the general election.

1994 Act 601 - Abolished the Lexington County Board of Education and devolved its duties and responsibilities on the respective district boards.

1994 Act 602 - Qualifications of candidates.

1996 Act 522 - Amends Act 218 of 1993 so as to revise filing period.

2004 Act 380 - Term of member.

Attorney General's Opinion:

1960-61, No. 1092, p. 164 - Any action taken by the board of trustees must be taken at a regularly called and assembled meeting with a quorum present.

School District Five of Lexington and Richland Counties

ELECTRONICALLY FILED - 2022 Jul 13 4:24 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless, Plaintiff	)	Civil Action No.: 2022-CP-40-01364
vs.	)	**MOTION TO QUASH**
Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant	)	

PLEASE TAKE NOTICE that Plaintiff Kenneth B. Loveless, by and through the undersigned counsel and specifically reserving and not waiving the defenses raised in the Motion to Dismiss the Complaint filed on April 26, 2022, will move this Court at such time and place as is convenient to the Court and counsel pursuant to Rules 26(c), and 45, SCRCP, for an Order quashing Defendant's subpoena to Contract Construction, Inc. issued on July 13, 2022, on the grounds that the information sought by Defendant is completely unrelated to the instant action and is not within the scope of discovery allowed by Rule 26(b)(1), SCRCP.

This is an action for defamation. This action is brought by a single individual against a second individual. Rule 26(b) permits discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party…" Rule 26(b), SCRCP.

On July 12, 2022, Defendant Stiles issued a subpoena to Contract Construction Inc. seeking to conduct an overly broad scope of discovery for purposes that are totally unrelated to this case. Defendant has requested communications between Contract Construction Inc. and Loveless Commercial Contracting Inc., the company which Plaintiff Loveless owns. However, Loveless Commercial Contracting Inc. is not a party to this action. Plaintiff Loveless brought this action in his capacity as an individual, and any communications between these business entities are in no

ELECTRONICALLY FILED - 2022 Jul 13 4:24 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

way relevant to the pending action or Defendant Stiles' defense. Plaintiff Loveless asserts that this is a continued effort by Defendant Stiles to engage in overly broad and abusive discovery which only serves to further her social media campaign against Plaintiff Loveless and is not related to the legal or factual issues at dispute in the case. Moreover, Plaintiff's Motion for Protective Order, filed on May 27, 2022, and attached herein as **Exhibit 1** seeks to prevent or limit such discovery and is already pending before the Court. Plaintiff requests that Defendant's subpoena to Contract Construction, Inc. either be quashed or, in the alternative, stayed until Plaintiff's Motion for Protective Order is heard.

Wherefore, Plaintiff moves for an Order quashing Defendant's subpoena to Contract Construction, Inc. pursuant to Rules 26(c) and 45, SCRCP.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

July 13, 2022

ELECTRONICALLY FILED - 2022 Jul 13 4:24 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364
ELECTRONICALLY FILED - 2022 May 27 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless, Plaintiff	)	Civil Action No.: 2022-CP-40-01364
vs.	)	**MOTION FOR PROTECTIVE ORDER OR CONFIDENTIALITY ORDER**
Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant	)	

Pursuant to Rule 26(b)(1), SCRCP, and Rule 26(c), SCRCP, Plaintiff Loveless moves for a protective order prohibiting Defendant and her counsel from engaging in discovery which seeks to inquire into matters which are completely unrelated to the instant action for personal and unrelated purposes, far beyond the scope of the issues in dispute in this matter.

This is an action for defamation. This action is brought by a single individual against a second individual. This is not a case brought by a school district or of the members of the administration or School Board of any District. It is a private matter. Rule 26(b) permits discovery "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party…" Rule 26(b), SCRCP.

Defendant Stiles has issued subpoenas to members of the Lexington/Richland School District Five and perhaps others seeking to conduct an overly broad scope of discovery (as evidenced by the subpoenas attached to the Rule to Show Cause filed in this matter on May 1, 2022), for purposes that are totally unrelated to this case. Stiles, who created a Facebook page approximately one year ago for purposes of airing her grievances about decisions made by the School Board and administration, where she began publishing "information" that was a "result of much research and analysis. . ." for the purpose of complaining about certain actions taken by the

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Lexington-Richland School District and related matters. (Complaint ¶ 8), which allegations she had admitted in her answer in this action. (Answer ¶ 9).

Stiles was sued by a member of the School Board, Kenneth B. Loveless, on March 16, 2022, for defamation and libel, based largely on statements posted on the Facebook group she created and for which she serves as administrator. Following the initiation of the suit until she filed her Answer, Stiles ceased activity on her Facebook group page. On April 13, 2022, Stiles filed an answer, reactivated her Facebook page, and notified the viewers of the page to make donations to a Go Fund Me page, seeking to solicit funds to defend herself in the action brought by Loveless. **Exhibit A.**

As is evident by her discovery, Stiles is continuing her self-described investigation into "how our District was being run" by serving discovery requests upon Defendant and subpoenas that have nothing to do with the allegations against her, but to further her investigation and publicize it to raise money for her defense and for whatever other reasons she chose to inject herself into and lead public debate. *Id.* The scope of the discovery she served on certain members of the School District Members, as described in Stiles' Rule to Show Cause, is radically abusive, and likely sanctionable.

When discovery is abusive a trial judge may issue an order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense." *Hollman v. Woolfson*, 384 S.C. 571, 683 S.E.2d 495, 498 (2009). It seems obvious that a private civil action for defamation is not a forum to allow a public fishing expedition into "how our District was being run" as Defendant Stiles describes.

A casual search of www.thestate.com reveals how Defendant Stiles and others have generated dissent and acted with malice toward the School District. Nonetheless, the School

ELECTRONICALLY FILED - 2022 May 23 4:23 PM - PROCHAIN - COMMON PLEAS - CASE#2022CP1003664

District has not taken action against Stiles, nor has it spoken out against her. Now, however, Stiles has begun a broad range of discovery that is clearly not related to the legal or factual issues at dispute in this case, apparently to further generate publicity and generate dissent regarding Plaintiff and others.

Stiles' Request for Admissions, Interrogatories and Requests to Produce demonstrate the bad faith in which Stiles and her counsel are engaged. **Exhibit B**. As established by those discovery requests, the vast majority of information sought is completely unrelated to the issues in this case and it is not likely to lead to discovery that is relevant in this action. Stiles wants discovery for publicity and to raise money. By using the discovery process for her own financial purposes, Stiles and her counsel are abusing the system.

Stiles and her counsel know full well that the discovery they are attempting is prohibited. They know full well that Stiles and others have publicly commented that litigation would enable them to conduct a deep dive into the operations of the school district, for whatever their purpose might be.

Rule 26(c), SCRCP, authorizes the Court, in appropriate circumstances, to issue a protective order which limits, in whole or in part, discovery related to a particular matter. *Doe v. American National Bank Cros,* 788 F.Supp. 884, 889 (D.S.C. 1992). Existing precedent from the appellate courts of this state provide a detailed framework for requiring a party who seeks to improperly abuse the discovery process to "come forward and show that the information sought 'is both relevant and necessary to the case." *Hamm v. SCPSC*, 312 S.C. 238, 439 S.E.2d 852, 854 (1994).

As evidenced by the Rule to Show Cause filed by Stiles and the wholesale irrelevant discovery propounded against Defendant, the intentions of Defendant Stiles are clear.

ELECTRONICALLY FILED 2022-May-23 4:23:37 PM FRONCHIA ANDO COMMON PLEAS CASE#2022CP4003664

Counsel for the school district objected to the subpoenas issued to the school board members, but that did not stop Stiles and her counsel from seeking punitive relief against the non-parties as evidenced in the Petition for Rule to Show Cause.

Defendant seeks an order strictly limiting discovery in this action to the issues raised by the pleadings and matters directly related thereto, in accordance with Rule 26.

ALTERNATIVE RELIEF

Should the Court nevertheless allow the discovery sought by Stiles, Defendant seeks a protective order to prevent Stiles and her counsel from disseminating the information they obtain in discovery and to restrict parties and counsel from using the information gained in discovery for any purpose other than legitimate purposes directly related to this litigation.

This lawsuit arose solely because Stiles proclaimed herself a watchdog for the public and created a broad-based social media brigade because she disagreed with actions taken by the School Board when it accepted the resignation of the former superintendent of the school district. Stiles paused her social media page "Deep Dive Into Five" when she was sued, but activated it again when she filed her answer and counterclaim, reactivating it and posting information about she intended to defend herself and to raise money to fund her defense. It is clearly Stiles' intent to escalate the media storm she began with her social media campaign, and her discovery in this case is clearly intended to continue Stiles' campaign to malign the School District and its members individually.

It is the clear intent of Stiles and her counsel to publicize whatever information they obtain in discovery to further Stiles' efforts at fund raising for her "defense" (which is more of an attack than a defense) and to perpetuate hostility and anger among persons for whom the actions of the Lexington Richland School District Five Board are of interest.

EFILED IN COMMON PLEAS COURT CASE # 2022CP4003664 ELECTRONICALLY FILED - 2022 May 23 4:23 PM - ROCHELLE ANDO - COMMON PLEAS - CASE # 2022CP4003664

Should the Court not see fit to totally prohibit Stiles' fishing expedition into the operations of the School District and decision-making of the Board in this purely private matter, this Court is requested, at a minimum, to issue an order imposing confidentiality upon the materials obtained by Stiles and her counsel in their wide-ranging discovery.

Plaintiff's counsel inquired of Stiles' counsel whether an agreement can be reached as to the issues raised here, but he opposed the motion. **Exhibit C**.

Wherefore, Defendant moves for a Protective Order prohibiting discovery beyond the scope of the issues in dispute in this action and/or an order of confidentiality prohibiting Stiles and her counsel from disseminating or publicizing the information they obtain in response to their abuse and wide-ranging discovery, which is clearly sought for improper purposes.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
Haley Hubbard (S.C. Bar No. 103195)

BALLARD & WATSON
226 State Street
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Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

May 27, 2022

EXHIBIT A tabbies

Deep Dive Into D5

Public group · 2.5K members

Join group

This Group is temporarily paused for 27 days

An admin paused this group on May 3, 2022. Group activity will resume on May 31, 2022 at 2:46 AM

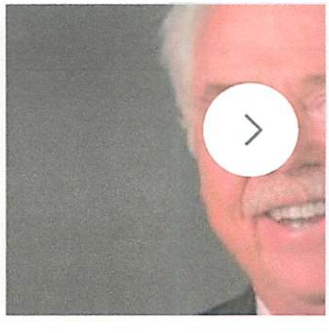
Featured

Leslie Anne shared a link.
April 13 ·

Dear Deep Dive Into D5 co...

Leslie Anne sh
March 16 ·

https://www.thestate.c
84.html



ROA 000215

EFILED IN COMMON PLEAS COURT 5TH JUDICIAL CIRCUIT 2022CP4001364 May 23 4:03 PM

Defense, organized by Leslie Stiles

constituent for criti

Newest Activity

Leslie Anne
April 13 ·

Please read the most recent post for more information

Leslie Anne shared a link.
April 13 ·

Discussion

Dear Deep Dive Into D5 community members:

This group page was paused on March 16, 2022, after I was sued by Kenneth B. Loveless, a trustee of our Lexington-Richland School District 5, who alleges that I defamed him and that, as administrator of this page, allowed others to defame him. Those allegations have no merit.

Today, I filed an answer with the Court officially disputing Mr. Loveless's claims. Court filings in this case are available to the public at the Richland County Public Index and can be located by searching for Case No. 2022CP4001364. (see link at the bottom of this post)

When I started this group page in October 2020, I wanted to share information about our schools, how our District was being run, and how we can improve our children's education. I am not a public official—I'm just a mom of three young children. Like many of you, I volunteer in our schools, I participate in our PTO, and I follow the work of our elected District trustees with great interest. Never in my wildest dreams did I imagine that a public official would sue me for exercising my First Amendment right to speak about our public schools or for the things other people said in a Facebook group I created.

Thank you to those who have extended words of support. Many of you have asked how you can help. Here are three things you can do:

- First, if you can support my legal defense financially, I have set up a GoFundMe page https://gofund.me/13adc36d where you can contribute. Unfortunately, it costs a lot of money to defend even a frivolous lawsuit. I am not a wealthy person and I do not know how long this lawsuit will drag on or what it will cost. This financial burden is a real concern for me and my family, and I

EFILED IN COMMON PLEAS COURT 5th JUDICIAL CIRCUIT 2022CP4001364 May 23 4:03 PM RICHLAND COUNTY SC

via check to Leslie Stiles - 7320 Broad River Rd Suite K Box#112, Irmo, SC 29063)

- Second, keep paying attention to what elected leaders are doing. This lawsuit is a bully tactic designed to shut me up and scare other parents from participating in our school district. That cannot stand. I urge you to pay attention and encourage friends and family to do the same. Sometimes it is tempting to throw up our hands in frustration, but we can't let the actions of others chill or discourage us from being involved in our children's education.
- Third, make your voice heard. Our government is elected by the people, for the people. We have a right to speak about it and about the public officials we elect. Americans never stand down or stand by when a bully is picking on someone, and I do not intend to do so here. If you believe what Mr. Loveless is doing is wrong, I encourage you to get involved and respectfully make your voice heard. Of course, one of the best ways to hold our public officials accountable is by voting and I do not believe it is a coincidence that Mr. Loveless filed this lawsuit the same year he is up for reelection in November 2022.

Thank you again for the support and kind words and for each of your commitment to our children in District 5.

Link to the Richland County Public Index (court cases)

https://publicindex.sccourts.org/.../Publ.../disclaimer.aspx

Choose Richland County. And agree to the terms. You can then search for case number 2022CP4001364

GOFUNDME.COM

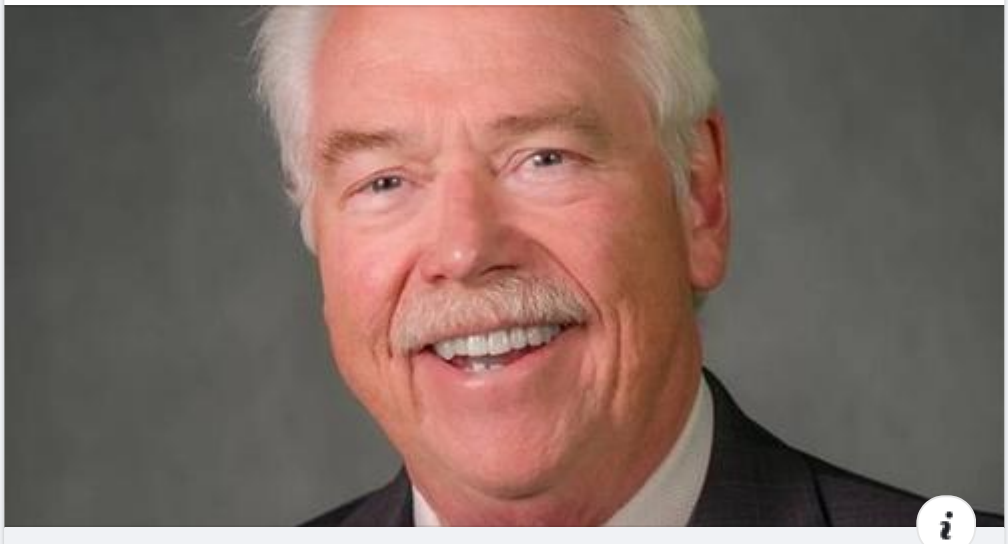
Leslie Stiles' 1st Amendment Legal Defense, organized by Leslie Stiles

ROA 000217

ELECTRONICALLY FILED 2022 May 23 4:23 PM FRONT RANGE COMMUNITY COLLEGE CASE #2022CV30364

Leslie Anne shared a link.
March 16 ·

https://www.thestate.com/article259425984.html



THESTATE.COM

LR5 school board member sues constituent for criticizing him on Facebook

14 18 Comments

Most recent

Brent Chitwood
Apparently the legal information about these type of suits that I have received was incorrect. I have been told that political free speech is the most protected kind.

I was recently called a liar on FB by an elected Town Councilman. I just laughed... **See more**

4

8w

Danielle Gray replied · 2 Replies

Catherine Williams

8w

ROA 000218

View 10 more comments

ELECTRONICALLY FILED 2022-May-23 4:23 PM RICHLAND COMMON PLEAS CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364 **FIRST SET OF INTERROGATORIES, DOCUMENT REQUESTS, AND REQUESTS TO ADMIT TO THE PLAINTIFF**

Defendant Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles, pursuant to Rules 26, 33, 34, and 36 of the South Carolina Rules of Civil Procedure, hereby requires Plaintiff Kenneth B. Loveless to answer the following interrogatories, upon oath and in writing, to respond to document requests and make available certain documents, tangible things, and electronically stored information (ESI) specified below available for copying, photographing, inspecting, or measuring, and to answer the following requests to admit within 30 days of service.

INSTRUCTIONS

Please take notice that the following instructions and definitions are <u>not</u> boilerplate but were specifically drafted to explain the information sought and the way the rules require it be disclosed. You should expect Defendant to move the Court to compel disclosure and seek other appropriate relief if furnished with responses that interpose non-specific, boilerplate objections or otherwise depart from what the civil rules require.

Interrogatories

Each interrogatory must be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection must be stated in lieu of an answer. Rule

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33(a), SCRCP. You must serve a copy of the answers and objections, if any, within 30 days of service. Id. The answers are to be signed by the person making them, and the objections signed by the attorney making them. Id.

An interrogatory is not objectionable merely because an answer involves an opinion or contention that relates to fact or the application of law to fact. Rule 33(d), SCRCP.

Document Requests

You are required to respond to each document request in writing within 30 days and either state that inspection and copying will be permitted or the reasons for any objection. Rule 34(b), SCRCP. If an objection is made, it must be specifically stated as to the reason and the request. Id. If objection is made to the requested form or forms for producing ESI, you must state the form or forms you intend to use, which may include the form in which the ESI is customarily maintained (i.e., native files). See id.

In responding to these document requests, you may produce responsive documents in lieu of permitting inspection and copying. You must produce or make available all documents, tangible items, and electronically stored information (ESI) subject to your reasonable access or control, including but not limited to all documents available to your counsel in this case, or any experts. See Rule 34(a), SCRCP. In producing documents, you are required to produce each document requested together with all non-identical copies and drafts of that document. If the original of any document cannot be located, a copy shall be provided in lieu thereof and shall be legible and bound or stapled in the same manner as the original. Documents shall either produced as they are kept in the usual course of business or organized and labeled to correspond to the categories in this request. See Rule 34(b), SCRCP. In making production of ESI, including data compilations, email, text messages, or documents kept in electronic format (e.g., Microsoft Outlook, Word, Excel,

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PowerPoint, or any similar programs or platforms), produced them in their native format along with all passwords necessary to access the documents. If you choose to process ESI prior to production, produce single page images along with an accompanying load file, full OCR text, and metadata. Native files should also be produced.

Request to Admit

Each request to admit will be deemed admitted unless a written response or objection is served in 30 days. Rule 36(a), SCRCP. If objection is made, the reasons shall be stated. Id. An answer shall specifically deny the matter or set forth in detail reasons why you cannot truthfully admit or deny the matter and a denial must fairly meet the substance of the requested admission. Id. If good faith requires you admit part of the request, you must specify the portion admitted and deny the remainder. Id. You may not give a lack of information or knowledge as the reason for denying a requested admission unless you make a reasonable inquiry beforehand. Id.

Objections and Privilege

An objection should fairly apprise the requesting party of the information being withheld and the basis for the withholding. Interposing nonspecific, boilerplate objections while also making a limited disclosure "subject to" those objections is inconsistent with the rules and grounds to move the Court to waive the objection and compel disclosure.

Objections based on privilege must expressly make the claim and describe the nature of the information withheld in a manner that will allow the requesting party to assess the applicability of the privilege or protection. Rule 26(b)(5)(A), SCRCP. When documents are withheld, that should be done with a privilege log. However, unless expressly requested, Defendant does not require a privilege log detailing communications between Plaintiff and litigation counsel in this case. All other document withholdings based on privilege should be logged.

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Duty to Supplement

Pursuant to Rule 26(e) of the South Carolina Rules of Civil Procedure, you are under a duty to timely supplement your answers to discovery. See also Rule 33(b), SCRCP (same).

DEFINITIONS

The following definitions apply to the discovery requests that follow:

1. Unless specifically stated to the contrary, all words and phrases utilized here shall be given their ordinary, dictionary, and common-sense definitions. Additionally, unless another meaning is obvious from the context, the terms here shall have the same meaning as they have in the Complaint in this action.

2. The terms "Plaintiff," "Loveless," or "you" mean the plaintiff in this case, Kenneth B. Loveless.

3. The terms "Defendant" and "Stiles" mean the defendant and counterclaimant in this case, Leslie Stiles, misidentified above as Lesley Ann Stiles a/k/a Leslie Lou Stiles.

4. The term "District 5" means the Lexington-Richland School District 5, including its administrators, teachers, and employees.

5. The term "District 5 school board" means the duly elected trustees of District 5, specifically, Jan Hammond, Loveless, Nikki Gardner, Catherine Huddle, Matt Hogan, Rebecca Blackburn Hines, and Tifani Moore.

6. The term "Facebook" means the social media platform at www.facebook.com, owned by Meta Platforms, Inc.

7. The term "social media" means internet-based forms of communication that allow users to converse, share information, and create online content. Examples include Facebook, Twitter, Instagram, Reddit, etc.

8. The term "S.C. Ethic Commission" means the South Carolina Ethics Commission and any commissioners, directors, lawyers, or staff employed by the commission.

9. The term "FOIA" means the South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10 et seq.

10. As used in these requests, "person" shall include natural persons, proprietorships, corporations, public corporations, municipal corporations, state governments, local governments, governmental agencies, political subdivisions, partnerships, groups, associations or other business or public organizations.

11. To "identify" a person means to state the full name, home and business addresses, email addresses, and home and business telephone numbers. To "identify" a document means to state a description or name of it, the date, its author, each person to whom the document or any copy was sent, and every person having custody of the document.

12. The terms "relating to," "with respect to," and "refer to" shall mean embodying, containing, comprising, indicating, concerning, referring, identifying, describing, discussing, involving, evidencing or otherwise pertaining to.

13. The term "document" has the broadest meaning permitted under Rules 26 and 34 of the South Carolina Rules of Civil Procedure and includes, (but is not limited to) all writings, recordings (audio and visual), tapes, films, ESI, discs, memory drives, maps, diagrams, blueprints, pictures, and photos of any nature whatsoever (including drafts and copies). Examples of written documents include contracts, agreements, communications, correspondence, records, reports, studies, memoranda, notes, advertisements, notices, bills, cables, books, diaries, appraisals, forecasts, statistical statements, work papers, graphs, summaries, lists, tabulations, calendars, charts, tables, indices, accounts, minutes, brochures, pamphlets, circulars, letters, press releases,

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checks and check stubs, receipts, or invoices.

14. The term "ESI" means electronically stored information, electronically stored data or electronic data, and is to be interpreted broadly to include all types of information, regardless of the storage media (e.g., hard drive, CD-ROM, DVD, disc, tape, thumb drive, etc.), that requires a computer or other machine to read or process it.

15. The term "communications" means the transmittal of information in any form. Written communications include letters, correspondence, notes, memoranda, emails, text messages, social media message, instant message, telegram, or other forms of word exchange whether through physical or electronic transmittal.

LIMITATION AS TO SCOPE

Unless expressly stated to the contrary, every interrogatory, document request, and request to admit below seeks information concerning the period of January 1, 2018, through the present.

INTERROGATORIES

Answer the following interrogatories under oath and in writing:

1. Give the names and addresses of persons known to you or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. For each person known to you or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

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4. List the names and addresses of any expert witnesses you propose to use as a witness at the trial of the case.

5. State your username for all social media accounts. Your response should include the username or account handle, the platform, and the approximate date the account was created.

6. Detail all legal authority, whether statute, case law, treatise, or other, that you believe supports your allegation in Paragraph No. 6 of the Complaint that "even if the defendant contends they [the statements] were opinions, they are still actionable pursuant to controlling legal authority in the State of South Carolina and the United States of America.

7. Identify by name, date, and statement the "private Facebook groups" to which you are referring in Paragraph No. 7 of the Complaint.

8. Identify all Facebook groups to which you belong or have been granted access, state the approximate date you joined or were granted access, and identify the administrator of those groups.

9. With respect to Paragraph Nos. 9, 12, 13, and 15 in the Complaint, state the account name, identity of the speaker, date, time, and a complete quotation of every statement you allege Stiles made that was defamatory or libelous.

10. State with specificity the "terms of Facebook" referenced in Paragraph No. 10 and provide an internet address or URL link to those terms.

11. State with specificity the "terms of Facebook" that you allege Stiles violated as alleged in Paragraph No. 11 and provide an internet address or URL link to those terms.

12. Identify all legal authority that you believe supports the claim that a violation of the terms of Facebook gives rise to civil liability or a claim (such as this one) brought by an individual other than Facebook.

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13. Identify the person referred to in Paragraph No. 13 of the Complaint.

14. As alleged in Paragraph No. 14, state with specificity each statement by Stiles that is defamatory *per se* (as opposed to *per quod*). Rather than repeating each statement, you may include your response in your response to Interrogatory No. 9.

15. Specifically state the action taken by Stiles that you believe constitutes "publishing, ratifying, and/or endorsing" as those terms are used in Paragraph 15 of the Complaint. For example, if you simply mean Stiles was administrator of the Facebook group where the statements were posted, explicitly say as much or specifically describe the conduct to which you are referring.

16. With respect to Paragraph No. 16 in the Complaint, state the account name, identity of the speaker, date, time, and a complete quotation of every statement you allege Stiles republished, ratified, or endorsed that was defamatory or libelous.

17. State the date, time, place, and persons involved in all Board Officer Meetings you have participated in as a District 5 board member.

18. State all of your telephone numbers (including cell phones) and email addresses.

19. State with specificity everything you have done to ensure perishable evidence, including ESI, is preserved during the pendency of this lawsuit.

20. Identify by year, make, and model number all smart phones, tablets, and laptops you own.

21. State the date and manner (i.e., telephone call, email, in-person meeting) of your first consultation with your lawyer in this case. Note: this interrogatory does not seek the substance of the communication, just a date and manner by which the consultation occurred.

ELECTRONICALLY FILED 2022-May-23 4:03:37 PM FRONCHIA ANDD COMMON PLEAS CASE#2022CP4003664

22. Prior to filing suit, state whether you discussed this lawsuit in person or in writing with any member of the District 5 school board and, if so, identify the person(s), date(s), manner of communication, and state the substance of the communication.

23. Identify by name, case number, and jurisdiction all civil and criminal actions to which you or a company that you disclose as having an economic interest in on your Statement of Economic Interest filings with the S.C. Ethics Commission have/has been a party, state whether you or the company were/was the plaintiff or defendant, the nature of the claim, and briefly describe the resolution.

24. As to the news report authored by Bristow Marchant and published by The State Newspaper on September 18, 2020, titled, "Feud over new Midlands school leads to ethics accusations against school board member," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

25. As to the news report authored by Bristow Marchant and published by The State Newspaper on February 24, 2021, titled, "Can SC school board member still have say in $23M project? What ethics commission says," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

26. As to the news report authored by Bristow Marchant and published by The State Newspaper on March 30, 2021, titled, "SC school board members accused of illegally meeting at Waffle House," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

ELECTRONICALLY FILED 2022-May-23 4:03:37 PM FRONCHIA ANDO COMMON PLEAS CASE #2022CP4003664

27. As to the news report authored by Bristow Marchant and published by The State Newspaper on April 7, 2022, titled, "LR5 school board vice chair faces ethics complaint over elementary school contractor," state whether you have read the article and, if so, state whether any factual claim in the article is untrue, and if you maintain there is one or more factual claim that is untrue, quote every purportedly untrue claim in your response to this interrogatory.

28. State whether you are paying or have paid to "promote" or advertise any material on Facebook and, if so, describe with specificity the nature of the information, the dates, the vendor placing the promotional or advertising, and the amount spent.

29. State whether you, your political campaign, or a company you have disclosed on your Statement of Economic Interest reports with the S.C. Ethics Commission are paying remuneration to anyone to administer, publish, or promote content on any social media and, if so, identify the recipient and the date and amount of any payment.

30. State all dates, times, methods of communication (phone, email, in-person, etc.), and substance of communications your counsel, Desa Ballard, had with Joel Collins, J.C. Nicholson, III, Paul Osmundson, Beth Hutchinson, Leslie Stiles or anyone else relating to filing a FOIA lawsuit against District 5 of the District 5 school board. Note: this interrogatory seeks information in the possession of your counsel, not just you.

REQUEST FOR PRODUCTION

Produce the following:

1. All documents or items you intend to introduce at trial.

2. All documents or items you may use at trial even if only for impeachment purposes and not for your case in chief.

3. All documents or items furnished to any expert consulted or retained in this case.

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4. All documents identified or described in response to any interrogatory.

5. All documents you furnished to your counsel in this case prior to filing suit.

6. All communications relating to your service as a District 5 board member. This request includes (and is not limited to) all communications from constituents, members of the public, supporters, detractors, administrators, teachers, employees, and fellow members of the District 5 school board.

7. To the extent not already produced, all communications and documents relating to any Board Officer Meetings you attended or participated in as a District 5 board member. Examples of documents sought include (but are not limited to) agendas and meeting minutes.

8. All communications and statements that you, your lawyer, or someone acting on your behalf have disseminated to the media concerning any public news report about you, District 5, or the District 5 school board.

9. The "terms of Facebook" referred to in Paragraph Nos. 10 and 11 of the Complaint.

10. All social media posts and comments made by you or someone on your behalf.

11. All communications with any person relating to the Facebook group Learn About District 5.

12. All communications with Jason Valek.

13. All communications with Stacey Dillworth Price.

14. All communications and statements that you, your lawyer, or someone acting on your behalf have disseminated to the media relating to this lawsuit, Stiles, or Kevin Scully.

15. All communications between you and any officer, employee, or agent of Contract Construction.

ELECTRONICALLY FILED 2022-May-23 4:23:37 PM FRONCHIA ANDD COMMON PLEAS CASE #2022CP4003664

16. All communications between you and any person concerning construction at Piney Woods Elementary School.

17. All communications between you or a lawyer acting on your behalf and the S.C. Ethics Commission.

18. All documents you or a lawyer acting on your behalf have furnished to or been furnished from the S.C. Ethics Commission.

19. Concerning the case styled Kenneth B. Loveless v. William T. Butler and Sprint, Inc., 2013-CP-32-00241, filed in the Lexington County Court of Common Pleas, produce:

a. Any settlement agreement,

b. All depositions, and

c. Your discovery responses.

20. Produce all communications between you and RJ "Rod" Shealy concerning this lawsuit, the subject matter of this lawsuit, or your re-election in November 2022.

21. Produce all public opinion polls or public opinion surveys that relate to you, District 5, the District 5 school board or your reelection in November 2022.

22. Since this lawsuit was filed, produce exemplars of all advertising or electioneering materials—including mailers, flyers, social media, electronic signs, Internet, radio, or TV ads—that you personally, your re-election campaign, or your campaign consultants have drafted, paid for, or intend to pay for.

23. Produce a copy of your campaign budget for your re-election in the November 2022 election.

24. Produce all communications between your counsel, Desa Ballard, and Joel Collins, J.C. Nicholson, III, Paul Osmundson, Beth Hutchinson, Leslie Stiles, or any other individual

ELECTRONICALLY FILED 2022-May-23 4:23:37 PM FRONCHIA ANDD COMMON PLEAS CASE #2022CP4003664

relating to a possible FOIA lawsuit against District 5 or the District 5 school board. Note: this request seeks communications in the possession of your counsel, not just you.

25. Produce all documents received or in the possession of your lawyer, Desa Ballard, that were provided to her by Joel Collins, J.C. Nicholson, III, Paul Osmundson, Beth Hutchinson, Leslie Stiles, or any other individual in connection with a possible FOIA lawsuit against District 5 or the District 5 school board.

REQUEST TO ADMIT

Admit the following:

1. You are a public official.

2. Posts and comments on Deep Dive Into D5 are of and concerning District 5.

3. At all times relevant to the allegations in your Complaint, nothing prohibited you from posting or commenting on Deep Dive Into D5.

4. You are a member of a private Facebook group called "Learn About District 5."

5. You have made posts and submitted comments on Learn About District 5.

6. On February 8, 20, 2021, you voted on an item on the District 5 board discussion agenda that was not on the action agenda.

7. On March 1, 2021, you voted to strike items discussed and entered into the record by a District 5 board member on February 8, 2021, from the official board minutes, and the items stricken included an S.C. Attorney General opinion relating to FOIA and an opinion from the S.C. Ethic Commission.

8. On May 24, 2021, the District 5 board agenda item No. 3d for executive session described as "Legal Advice Regarding a Contractual Matter" failed to specify that the item was Superintendent Christina Melton's contract.

ELECTRONICALLY FILED 2022 May 23 4:03 PM PROCHILD COMMUNITY PEERS CASE #2020CP4003664

9. As to Request to Admit No. 8, you knew the nature of the "Legal Advice Regarding a Contractual Matter" prior to the meeting and had supported ending Superintendent Christina Melton's contract.

10. On June 14, 2021, the District 5 board agenda item No. 3d for executive session described as "Legal Advice Regarding a Contractual Matter" failed to specify that the item in question was the buy-out of Superintendent Christina Melton's contract.

11. As to Request to Admit No. 10, you knew the nature of the "Legal Advice Regarding a Contractual Matter" prior to the meeting and you debated and signed the agreement, on behalf of District 5, to terminate and buy-out Superintendent Christina Melton's contract while in executive session.

12. No public vote ever occurred prior to you signing the agreement, on behalf of District 5, to terminate and buy-out Superintendent Christina Melton's contract.

13. You conducted bi-weekly Board Officers Meetings without giving public notice, an agenda, or publishing meeting minutes.

14. Beginning in 2018 when you were elected to the District 5 school board, you were critical of the Piney Woods Elementary School construction project.

15. On February 11, 2020, Loveless Commercial Contracting, Inc., a company in which you have an economic interest, entered into a contract as a subcontractor for Contract Construction worth approximately $1 million.

16. You failed to disclose and recuse from matters concerning the Piney Woods Elementary School after Loveless Commercial Contracting, Inc. entered into the contract with Contract Construction and you continued to participate in discussion and take action, such as participate in inspections, concerning the Piney Woods Elementary School construction project.

17. A complaint has been filed against you with the S.C. Ethics Commission alleging you violated the state ethics law.

18. Admit that your lawyer, Desa Ballard, offered to "deputize" Stiles as a paralegal in her (Ballard's) law office to obtain Stiles' assistance in bringing a FOIA lawsuit against District 5 or District 5 board members.

Respectfully submitted,

Christopher P. Kenney (SC Bar No. 100147)
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
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April 13, 2022
Columbia, South Carolina.

ELECTRONICALLY FILED 2022 May 23 4:23 PM RICHLAND COMMON PLEAS CASE# 2022CP4003664

ELECTRONICALLY FILED 2022-May-23 4:03:37 PM RICHLAND COUNTY COMMON PLEAS CASE#2022CP4000364

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	**FIFTH JUDICIAL CIRCUIT**
COUNTY OF RICHLAND	)	
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364 **CERTIFICATE OF SERVICE**

I, Heather Hardy, Paralegal to Richard A. Harpootlian, PA, hereby certify that on April 13, 2022, did serve a copy of the following, via U.S. Mail and Email, to the counsel listed below:

Document(s):

1. Defendant's First Set of Interrogatories and First Requests for Production; and
2. Answer and Counterclaim.

Counsel:

Desa Ballard, Esq.
Harvey M. Watson, III, Esq.
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29169
desab@desaballard.com
harvey@desaballard.com

Heather Hardy

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From:	Chris Kenney
To:	Desa Ballard
Cc:	Beth Cogan
Subject:	RE: Loveless v. Stiles
Date:	Friday, May 27, 2022 8:50:05 AM

I oppose the motion. -cpk

From: Desa Ballard <desab@desaballard.com>
Sent: Friday, May 27, 2022 8:12 AM
To: Chris Kenney <cpk@harpootlianlaw.com>; Chris Kenney <cpk@harpootlianlaw.com>
Cc: Beth Cogan <Beth@desaballard.com>
Subject: Loveless v. Stiles

Chris:

I understand you expect to obtain some documentation from individuals upon whom you served subpoenas, primarily District 5 Board members. Would you be willing to enter into a confidentiality agreement regarding these materials to prevent the publication and/or distribution of the materials beyond the parties and counsel?

As we pointed out in our responses to RTA, the vast majority of the discovery you are seeking has nothing do with the defamation case against Ms. Stiles, but instead seems intended to gather information to be used to further defame Mr. Loveless and perhaps others and to continue the temper tantrums that arose when Dr. Melton resigned as superintendent, none of which has anything to do with the defamation.

I am going to file a motion for protective order, but if you would consent, I can do a consent order just as easily.

Please let me know.

Thank you.

db

[redacted]

ELECTRONICALLY FILED - 2022 Aug 19 10:39 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
EX PARTE SOUTH CAROLINA PRESS ASSOCIATION, PROPOSED INTERVENOR	)	
IN RE.		
KENNETH B. LOVELESS, PLAINTIFF	)	CASE NO. 2022-CP-40-01364
	)	MEMORANDUM OF POINTS AND
	)	AND AUTHORITIES IN SUPPORT
VS.	)	OF MOTION TO INTERVENE, AND
	)	IN OPPOSITION TO CONFIDENTIALITY
LESLEY ANN STILES A/K/A LESLIE LOU STILES, DEFENDANT	)	ORDER SOUGHT BY PLAINTIFF

BACKGROUND

Plaintiff is an elected public official holding a position as a member of the Board of Trustees of Lexington/Richland School District 5. Plaintiff has recently announced his intention to run for re-election. Defendant is described by plaintiff as the administrator of a Facebook page which has published information and commentary regarding the school district for which plaintiff is a trustee, and which information and commentary plaintiff contends are personally defamatory. Plaintiff has moved to obtain an order to prevent defendant from disseminating information obtained in discovery in his libel action against her.

The South Carolina Press Association (Association) is organized under the laws of the state of South Carolina and has as its member 88 newspapers published in South Carolina. The Association seeks leave of the court to intervene in this matter for the purpose of contesting plaintiff's motion to prevent the dissemination of information obtained by defendant in discovery.

ELECTRONICALLY FILED - 2022 Aug 19 10:39 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ARGUMENT

Intervention is the mechanism endorsed by the Supreme Court of South Carolina to enable third-parties to challenge efforts to withhold from the public records and information relating to court proceedings. *Davis v. Jennings*, 304 S.C. 502, 405 S.E.2d 601 (1991).

Plaintiff contends in his motion that this litigation is a private matter, but inconsistently asserts that defendant's social media site was created to "air grievances" about the school district over which plaintiff has authority:

> Stiles, who created a Facebook page approximately one year ago for purposes of airing her grievances about decisions made by the School Board and administration, where she began publishing 'information' that was a 'result of much research and analysis…'for the purpose of complaining about certain actions taken by the Lexington-Richland School District and related matters.

Plaintiff's Motion for Protective Order, p. 2.

The Association leaves it to the defendant to argue that the requested prohibition on dissemination of information obtained in discovery is an unconstitutional prior restraint on her speech, *Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971), but asserts on its behalf that the First and Fourteenth Amendments to the United States Constitution prohibit the imposition of restrictions on speech that impede the ability of the public and press to receive information.

The right to receive information is protected under the First and Fourteenth Amendments as "an inherent corollary of the rights of freedom of speech and press." *Board of Ed. v. Pico,* 457 U.S. 853, 867 (1982). "[T]he Constitution protects the right to receive information and ideas." *Stanley v. Georgia,* 394 U.S. 557, 564 (1969).

As a government official, and as a candidate for public office, any information touching on plaintiff's performance in office or his fitness for office is appropriate for public discussion,

ELECTRONICALLY FILED - 2022 Aug 19 10:39 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

and the Constitution "protects the paramount public interest in a free flow of information to the people concerning public officials, their servants. *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868, 875 (2001). Information obtained by defendant in discovery in plaintiff's libel action necessarily relates to his performance as a public official, and his qualifications for office. As the United States Supreme Court announced in *Mills v. Alabama*, 394 U.S. 214, 218 (1966), a major purpose of the First Amendment is to protect the free discussion of governmental affairs:

> Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated and all such matters relating to political processes.

The imposition of the prior restraint sought by plaintiff can only be reconciled with the Constitution if the grounds advanced as justification for the restraint can meet a "strict scrutiny" analysis. This analysis requires plaintiff to demonstrate that the prior restraint he seeks serves a compelling governmental interest that would be irreparably harmed without the prior restraint, and that the restraint sought is the least restrictive alternative to preserve the governmental interest. *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221 (1987); *Minneapolis Star & Tribune Co. v. Minnesota Comm'r of Revenue,* 460 U.S. 575 (1983). Significantly, the application of this strict scrutiny analysis requires that the interest that is to be protected by a proposed prior restraint be a governmental interest as distinguished from plaintiff's personal interest in prohibiting public discussion of his performance, qualifications and fitness for office. Plaintiff chose to utilize a public resource, the court system, to seek redress for his claimed injuries, and since all courts are public under Article I, §9 of the South Carolina Constitution, he cannot now claim that this is a private matter.

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CONCLUSION

Plaintiff seeks the aid of the court in restraining speech and comment about his performance in public office and his qualification to hold office. The restraint plaintiff seeks is wholly inconsistent with the protection afforded by the First and Fourteenth Amendments to the means by which the public and press may obtain, disseminate, receive, and discuss information regarding governmental affairs and those who hold public office. Plaintiff's motion for an order of confidentiality must be denied.

Columbia, South Carolina

August 16, 2022

s/Jay Bender

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STATE OF SOUTH CAROLINA)) COUNTY OF RICHLAND)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT
EX PARTE SOUTH CAROLINA) PRESS ASSOCIATION,) PROPOSED INTERVENOR)	
IN RE.	
KENNETH B. LOVELESS,) PLAINTIFF)) VS.)) LESLEY ANN STILES A/K/A) LESLIE LOU STILES,) DEFENDANT))	CASE NO. 2022-CP-40-01364 NOTICE AND MOTION TO INTERVENE ON BEHALF OF SOUTH CAROLINA PRESS ASSOCIATION

TO: DESA BALLARD, ESQ. AND HARVEY M. WATSON, III, ESQ, ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE that ten (10) days hereafter, or as soon thereafter as counsel may be the South Carolina Press Association will move through the undersigned pursuant to Rule 24, SCRCP to intervene in the within action to oppose plaintiff's request that information obtained by defendant in discovery not be disseminated. This motion is supported by a Memorandum of Points and Authorities filed contemporaneously herewith. Consultation was had with respect to this motion. Defendant consented, but plaintiff did not consent to intervention.

Columbia, South Carolina

August 16, 2022

s/Jay Bender
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STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kenneth B. Loveless, Plaintiff vs. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant	)	IN THE COURT OF COMMON PLEAS FIFTH JUDICIAL CIRCUIT Civil Action No.: 2022-CP-40-001364 **PLAINTIFF'S OBJECTION TO MOTION TO INTERVENE**

Plaintiff Kenneth Loveless, by and through his undersigned counsel, hereby files an objection to the Motion to Intervene filed on behalf of the South Carolina Press Association. Plaintiff reserves the right to submit memorandum in support of this objection prior to or at the time of the hearing on this matter.

Respectfully submitted,

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
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August 26, 2022

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	)))	**IN THE COURT OF COMMON PLEAS** **FIFTH JUDICIAL CIRCUIT**
Kenneth B. Loveless, Plaintiff, v. Lesley Ann Stiles a/k/a Leslie Lou Stiles, Defendant.		C/A No.: 2022-CP-40-001364

Defendant's Omnibus Memorandum of Law for Motions Hearing

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November 23, 2022
Columbia, South Carolina.

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Table of Contents

INTRODUCTION 1

PROCEEDURAL BACKGROUND 6

STILES' MOTION FOR JUDGMENT ON THE PLEADINGS SHOULD BE GRANTED 8

I. Federal law immunizes Stiles from suit over the statements of others made in a social media group she administers. 9

II. Stiles did not publish the 26 statements attributed to others. 14

III. The statements attributed to Stiles are not actionable libel. 15

A. Statements about District 5 and its school board cannot serve as the basis for a libel claim by Loveless. 16

B. The statements are not defamatory 19

B. The statements are true as a matter of law. 23

LOVELESS'S MOTION TO DISMISS AND BIFURCATE SHOULD BE DENIED 26

I. Stiles has pled a cognizable claim for abuse of process. 27

II. .. Severance in not appropriate because it will require the same case to be prepared and tried twice. 28

STILES' MOTION TO COMPEL, DEEM MATTERS ADMITTED, AND FOR SANCTIONS SHOULD BE GRANTED 29

THE S.C. PRESS ASSOCIATION'S MOTION TO INTERVENE SHOULD BE GRANTED AND THEN LOVELESS'S MOTION FOR A PROTECTIVE OR CONFIDENTIALITY ORDER SHOULD BE DENIED 32

STILES' MOTION FOR RULE TO SHOW CAUSE TO THIRD-PARTIES NIKKI GARDNER AND JAN HAMMOND, AND TO COMPEL CATHERINE HUDDLE SHOULD BE GRANTED 35

STILES' MOTION TO OVERRULE DISTRICT 5 CLAIMS OF ATTORNEY-CLIENT PRIVILEGE SHOULD BE GRANTED 36

LOVELESS'S MOTION TO QUASH THE SUBPOENA TO CONTRACT CONSTRUCTION, INC. SHOULD BE DENIED 37

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

INTRODUCTION

This is a frivolous lawsuit that threatens the very core of what it means to be an American. It seeks to punish and chill speech by a private citizen on a social media website where members of the public shared information and opinions about their local school district. Speech about public officials, public bodies, and public concerns have long been protected by the First Amendment to the U.S. Constitution to ensure that the threat of suits like this one will not dampen the vigor or limit the variety of public debate. New York Times Co. v. Sullivan, 376 U.S. 254, 279 (1964).

Public criticism is rarely welcomed by public officials, yet the overwhelming number of Americans who offer for public service understand such criticism is part and parcel to holding elected office. Plaintiff Kenneth B. Loveless, a formerly[1] elected member of the board of trustees for Lexington-Richland School District 5 (District 5), is the extremely rare exception. Here, he has sued Defendant Leslie Stiles, a stay-at-home mother with three children in District 5 schools, for statements she is alleged to have made *and* the statements *other people* made on a Facebook page she created to share information about District 5.[2] In a separate lawsuit styled Loveless v. Scully, 2022-CP-40-01307 (hereafter, the "Scully action"), Loveless sued another parent[3] who purportedly made statements on the Facebook page for which he contends Stiles is liable.

The fact that Loveless should be a subject of public criticism should not come as a surprise. Since his November 2018 election to the board, Loveless has taken controversial actions and pursued vendettas against critics. Consider a few examples.

[1] Loveless lost his reelection bid in the November 8, 2022, general election. Nevertheless, at all times relevant to this action, he was a duly elected member of the District 5 board.
[2] **Exhibit A** is a list of the purportedly defamatory statements included for the Court's reference.
[3] That parent *won* his election to the District 5 board during the 2022 general election.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

In September 2020, a "long-simmering feud" over the construction of a new Piney Woods Elementary School in the district "boiled over into accusations of unethical conduct against" Loveless, a critic of the project. See Bristow Marchant, "Feud over new Midlands school leads to ethics accusations against school board member," THE STATE (Sept. 18, 2020).[4] As THE STATE Newspaper reported, then-board member Ed White challenged Loveless's ethics during a public meeting by raising questions about Loveless's company (Loveless Commercial Contracting) being awarded a $1 million subcontract by Contract Construction at the same time Contract Construction was overseeing the Piney Wood project. "He has turned his board seat into a money-making enterprise by submitting a bid to work for a contractor already doing business with the school district for which he serves as a board trustee," White is reported to have said. Id. Loveless is also reported to have said that he had spoken about the project with the S.C. Ethics Commission who assured him it did not raise legal issues (Id.), a false statement discussed in detail below. Loveless conceded during the public meeting that he discussed the subcontract work with Contract Construction's president during a June 18 tour of the Piney Woods site. Id.

Loveless had long been a critic of the Piney Woods project, questioning its cost and what he claimed were construction deficiencies, like the strength of concrete used to insulate electrical wiring buried at the site. The State explained:

> The dispute continued Monday over a July 16 letter, in which *Loveless claimed he had received an anonymous shipment of concrete delivery tickets* detailing conditions of the material. In trying to determine where the tickets had come from, *the board were told by the concrete supplier that they had provided the tickets at Loveless's request*. Board member Beth Hutchison criticized Loveless for trying to mislead his colleagues about how he had acquired the tickets and why they might have been sent.
>
> "He lied to us and he lied to the public," Hutchison said.

[4] Available at: https://www.thestate.com/news/local/education/article245771720.html.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

> Loveless later told The State he didn't want to "rat out my source" for the delivery tickets, although [Contract Construction president Greg] Hughes openly acknowledged Monday their concrete supplier had produced the tickets at the board member's request.

Id. (emphasis added).

In March 2021, Loveless and a majority of the board met at a Waffle House after a board meeting, prompting criticism the board was violating the S.C. Freedom of Information Act's (FOIA's) open meetings law. Bristow Marchant, "SC school board members accused of illegally meeting at Waffle House," THE STATE (March 30, 2021).[5]

In June 2021, the board shocked the community by announcing the departure of the school district's popular superintendent, Christina Melton (who won S.C. Superintendent of the Year just months earlier), and "approved" her $226,000 severance during a secret public meeting that prompted White's resignation from the board in protest. See Bristow Marchant, "The State files lawsuit against Lexington-Richland 5 over superintendent resignation," THE STATE (Aug. 6, 2021).[6] In a detailed 18-page affidavit filed in Osmundson v. District 5, No. 2021-CP-40-03694 (Feb. 11, 2022) (attached as **Exhibit B**), White, a member of the S.C. Bar and partner at Nelson Mullins in Columbia, describes how Loveless and other members orchestrated Melton's ouster and the hostile and tense working relationships that preceded. See also, Bristow Marchant, "Why did LR5 superintendent Melton resign? New affidavit provides behind-the-scenes details," THE STATE (Feb. 19, 2022).[7] After his departure, the board voted 4-2, with Loveless in the majority, to censure White for purportedly violating executive session policies and making false statements in

[5] Available at: https://www.thestate.com/news/local/education/article250285620.html.
[6] Available at: https://www.thestate.com/news/local/crime/article252983218.html.
[7] Available at: https://www.thestate.com/news/local/education/article258545733.html.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

his criticism of the board after his resignation. Lucas Daprile, "Lexington-Richland 5 school board censures outgoing member for breaching privacy rule," THE STATE (July 8, 2021).[8]

Meanwhile, when a former superintendent exercised his right to speak and questioned the hiring of an interim superintendent, Loveless bristled that the citizen "attacked our accreditation" and voted for the school district to sue the citizen in an effort to seek a "formal apology," only to later vote that District 5 would abandon the lawsuit "so that no other resources [were] spent[.]" Bristow Marchant, "LR5 school board votes to drop lawsuit against former superintendent," THE STATE (Sept. 27, 2022).[9]

On March 14, 2022, Loveless filed the Scully action. Two days later, he filed this action. On September 7, 2022, Loveless's lawyers issued a subpoena (**Exhibit B**) in the Scully action to Facebook seeking "all account activity" for 31 individuals and seven Facebook groups. The accounts subpoenaed belonged to Stiles; Scully; Kim Benson, who filed an ethics complaint against Loveless; former school board member Beth Hutchison; Mary Wood, a District 5 schoolteacher and daughter of former Chapin High School principal and school board candidate Mike Satterfield;[10] Tucker Player, an attorney who represented Wood and others in depositions in the lawsuit; Adam Benson, a reporter for THE SUN NEWS of Myrtle Beach who covered District 5 as a reporter for the Post and Courier's Columbia bureau; and reporter Bristow Marchant of THE STATE, among other parents and residents of District 5. See Bristow Marchant, "LR5's Loveless subpoenas Facebook for info on parents, teacher, attorney, media," THE STATE (Sept. 9, 2022).[11]

[8] Available at: https://www.thestate.com/news/local/education/article252417438.html.
[9] Available at: https://www.thestate.com/news/local/education/article266399881.html.
[10] Satterfield won a seat in the November 2022 election that Loveless lost.
[11] Available at: https://www.thestate.com/news/local/crime/article265542196.html#storylink=cpy.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Recently, the board renewed the Piney Woods dispute by voting to hire a New Mexico auditing firm to review five years of district financial records, including the Piney Woods project. The auditor's accusations of a "fraud red flag" caused Contract Construction to dispute the so-called audit as "filled with false information, lack of thoroughness, mathematical errors, and even some apparently spoon-fed irrelevant speculation, [and] display[ing] no knowledge of the specialized accounting required[.]" Bristow Marchant, "SC construction firm disputes LR5 audit that alleged overspending, 'fraud' in school build," THE STATE (Nov. 3, 2022).[12]

In June 2022, the district's lawyer made a noisy withdrawal from her representation of the board, explaining "a lawyer may withdraw where the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement." Bristow Marchant, "LR5's attorney resigns over 'dysfunctional' school board, cites concern for her reputation," THE STATE (July 13, 2022).[13] It is not (yet) clear what actions counsel was referring to when she raised concerns for her professional reputation and integrity while referencing legal decisions about which she was not consulted and "that could adversely impact the board or the school district" or advice that was "ignore[d]" and the client failing to "provide complete and accurate facts about a matter[.]" Id.

And this is just a brief overview of Loveless's tenure on the board. Suffice it to say, these are matters of public concern involving public officials about which the public has a constitutional right to speak. This lawsuit is an effort to silence critics, investigate Loveless's perceived enemies, and intimidate others from participating in civic life.

* * *

[12] Available at: https://www.thestate.com/news/local/article268176002.html#storylink=cpy.
[13] Available at: https://www.thestate.com/news/local/education/article263435508.html#storylink=cpy.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Loveless's defamation claim should proceed no further because it is defective on its face and incurable under federal and state law. Stiles' claim against Loveless, however, should proceed because this litigation is an abuse of civil process designed to intimidate and chill lawful public discourse and Stiles' participation in civil life. Loveless should have to account for this misconduct to a jury of his peers, but not before he is ordered to make a full and complete disclosure in response to Stiles' discovery. His blanket refusal to participate in discovery in a case *he filed* is further evidence this litigation was brought in bad faith. Sanctions are appropriate.

There are various other pending matters which are also addressed below. Stiles respectfully submits the Court should address those matters during the motions hearing in the following order:

1. Stiles' motion for judgment on the pleadings (filed May 10, 2022);
2. Plaintiff Kenneth B. Loveless's motion to dismiss and bifurcate (filed April 26, 2022);
3. Stiles' motion to compel, deem matters admitted, and for sanctions (filed May 27, 2022);
4. Loveless's motion for protective order or confidentiality order (filed May 27, 2022);
5. S.C. Press Association motion to intervene (filed Aug. 19, 2022);
6. Stiles' motion for rule to show cause as to third-parties Nikki Gardner and Jan Hammond, and to compel Catherine Huddle (filed May 11, 2022);
7. Stiles' motion to overrule District 5 claims of attorney-client privilege (filed June 27, 2022); and
8. Loveless's motion to quash (filed July 13, 2022).

PROCEEDURAL BACKGROUND

Loveless is a member of the District 5 board of trustees since November 2018 when he was elected by voters. Compare Counterclaim (CC) ¶¶ 43–44, with Reply ¶¶ 3–4 (admitting allegations). Loveless admits he is a public figure. CC ¶ 45; Reply ¶ 5.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

On March 16, 2022, Loveless sued Stiles for libel. See Compl. ¶¶ 17–25. Loveless alleges Stiles is "one of the administrators of a Facebook group titled 'Deep Dive Into D5.'" Id. ¶ 2. Loveless' theory of liability contends:

> This is not an action based in negligence. This is an action for intentional misconduct in the form of libel *per se* based on numerous and repeated defamatory statements voluntarily published on the internet by Stiles and by others with her consent, ratification, and endorsement which were intended by Stiles in her individual capacity and in her capacity as administrator of the Facebook site "Deep Dive Into D5" to be consumed by the public during the past year with specific knowledge they were false and/or with a reckless disregard for whether they were false or not.

Id. ¶ 5. Loveless alleges Stiles "acted with actual malice" in publishing seven (7) purportedly libelous statements set forth in part in Paragraph 15 of the Complaint. Loveless alleges further that Stiles "acted with actual malice" in allowing *others* to make 26 purportedly libelous statements in the Deep Dive group that are set forth in part in paragraph 16 of the Complaint. Attached as **Exhibit A** is a list of the statements in Paragraphs 15 and 16.

On April 13, 2022, Stiles answered, filed a counterclaim for abuse of process, and served interrogatories, document requests, and requests to admit. On April 26, 2022, Loveless filed a reply and moved to dismiss or bifurcate. On May 10, 2022, Stiles moved for judgment on the pleadings.

On May 10, 2022, Loveless requested an extension to answer discovery; Stiles declined. On May 13, 2022, Loveless served responses that failed to fairly respond to the substance, are replete with boilerplate and frivolous objections, and refused to produce a single document. On May 27, 2022, Stiles moved to compel, deem matters admitted, and for sanctions.

Meanwhile, on April 19, 2022, Stiles served subpoenas *duces tecum* on Loveless's school board colleagues for communications with and about him. District 5's then-lawyer, Andrea White, Esq., cooperated in providing emails to and from the board members district email accounts, but left it to the individual members to search and produce responsive information from their personal

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

emails and phones. On May 11, 2022, Stiles moved the Court for a rule to show cause as to board members Nikki Gardner and Jan Hammond, who failed to timely respond, and an order compelling Catherine Huddle, who refused to respond.

After the motion was filed, Hammond produced documents, some of which included Attorney White as a communicant on the email. Stiles disclosed the emails to Attorney White and indicated she does not believe they are privileged; White disagreed and attempted to claw back the documents, citing the attorney-client privilege. On June 27, 2022, Stiles moved the Court to overrule the privilege claims.

On May 27, 2022, Loveless moved for a protective order or confidentiality order claiming this lawsuit was "a private matter" and seeking "an order strictly limiting discovery" or alternatively an order "to prevent Stiles and her counsel from disseminating the information they obtain in discovery and to restrict parties and counsel from using the information gained in discovery for any purpose other than legitimate purposes directly related to this litigation." Aside from some outlandish and unsupported claims, the motion offers no explanation as to why the discovery Stiles seeks is not relevant to Loveless, the disputed statements, the defenses (such as truth), and Loveless's reputation. On August 19, 2022, the S.C. Press Association moved to intervene and be heard. Stiles consents to the Press Association's motion; Loveless opposes it.

On July 13, 2022, Stiles served a subpoena *duces tecum* on Contract Construction, Inc., seeking emails sent to or received from Loveless from January 1, 2018, through the present. Loveless moved to quash.

STILES' MOTION FOR JUDGMENT ON THE PLEADINGS SHOULD BE GRANTED

Stiles' motion for judgment on the pleadings should be granted and Loveless's defamation claim should be dismissed with prejudice. ***First***, Stiles cannot be held liable for the statements of

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

others because (§ I, infra) Section 230 of the CDA immunizes her from being held liable for third-party statements of others on a social media website and (§ II, infra) those statements were not published by Stiles. ***Second***, the statements Loveless attributes to Stiles are not actionable because (§ III.A, infra) they do not concern him, (§ III.B, infra) they are not defamatory and mere opinion or rhetorical hyperbole, and (§ III.C, infra) they are true as a matter of law. These arguments apply equally to the statements made by others.

"A judgment on the pleadings is proper where there is no issue of fact raised by the complaint that would entitle plaintiff to judgment if resolved in plaintiff's favor." Sapp v. Ford Motor Co., 386 S.C. 143, 146, 687 S.E.2d 47, 49 (2009) (citing Russell v. City of Columbia, 305 S.C. 86, 89, 406 S.E.2d 338, 339 (1991)). All well pleaded factual allegations are deemed admitted for purpose of considering the motion. Russell, 305 S.C. at 89, 406 S.E.2d at 339. The motion should be denied only if there is a controverted material fact that, if decided in favor of the non-moving party, would entitle him to judgment in his favor. Id. The motion should also be granted if the pleading is so defective that no cause of action is stated or whether "it appears that the plaintiff is entitled to any relief whatsoever." Pope v. Wilson, 427 S.C. 377, 384, 831 S.E.2d 442, 445 (Ct. App. 2019); Diminich v. 2001 Enters., Inc., 292 S.C. 141, 355 S.E.2d 275 (Ct. App. 1987).

In all respects, Loveless has not pled a cognizable defamation claim and he cannot plead such a claim. The Complaint should be dismissed with prejudice.

I. Federal law immunizes Stiles from suit over the statements of others made in a social media group she administers.

Section 230 of the Communications Decency Act (CDA) of 1934, 47 U.S.C. § 230, immunizes Stiles from civil liability for the statements of others on the Facebook group she administers because (1) she is a provider or user of an interactive computer service, (2) the claim is based on information provided by another information content provider, and (3) the claim would

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

treat her as the publisher or speaker of that information. The CDA forbids such a claim. Accordingly, Stiles is entitled to judgment as to *all* the 26 statements in paragraph 16 of the Complaint, which Loveless alleges other people made on the Deep Dive page.

Section 230 of the CDA provides a blanket immunity that disallows claims against persons protected by the Act: "No cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section." 47 U.S.C. § 230(e)(3). The Act prohibits liability for anyone other than the actual speaker, explaining: "No provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider." Id. § 230(c)(1). An "information content provider" under the CDA is "any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service." Id. § 230(f)(2). An "interactive computer service" is "any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server…." Id. § 230(f)(2). Here, Facebook is the interactive computer service. Stiles is an information content provider, as are the unnamed individuals who allegedly made the statements described in Paragraph 16 of the Complaint. Section 230 prohibits Loveless from holding Stiles liable for these statements. Stated in the parlance of this case, Subsection 230(c)(1) reads: Stiles, a user of Facebook, shall not be treated as the publisher or speaker of any information provided by another Facebook user. Subsection 230(e)(3) gives this rule effect by prohibiting suit here because Loveless's claims contravene Subsection 230(c)(1).

This conclusion, and the dismissal all claims predicated on Paragraph 16 of the Complaint, comports with congressional intent in enacting Section 230. The CDA "is something of a misnomer; the Act does not promote decency so much as it acts as a bulwark against 'intrusive

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

government regulation of speech.'" Bennett v. Google, LLC, 882 F.3d 1163, 1165 (D.C. Cir. 2018) (quoting Zeran v. Am. Online, Inc., 129 F.3d 327, 330 (4th Cir. 1997)). The Act recognizes that the internet is a forum for diverse political discourse, cultural development, and intellectual activity. 47 U.S.C. § 230(a)(3). To that end, one of Congress's policy goals in adopting Section 230 was "to preserve the vibrant and competitive free market that presently exists for the Internet and other interactive computer services, unfettered by Federal or State regulation[.]" Id. § 230(b)(2). Twenty-five years ago, the U.S. Court of Appeals for the Fourth Circuit expounded on the critical role the CDA plays in internet speech when rejecting a negligence claim alleging America Online (AOL) unreasonably delayed in removing defamatory messages posted by an unknown third party:

> The amount of information communicated via interactive computer services is ... staggering. The specter of tort liability in an area of such prolific speech would have an obvious chilling effect. It would be impossible for service providers to screen each of their millions of postings for possible problems. Faced with potential liability for each message republished by their services, interactive computer service providers might choose to severely restrict the number and type of messages posted. Congress considered the weight of the speech interests implicated and chose to immunize service providers to avoid any such restrictive effect.

Zeran, 129 F.3d at 331. The same rationale holds true for users like Stiles who create or host a forum where others gather to speak. Section 230 immunity extends to Stiles no differently than to AOL, Twitter, Reddit, Facebook, any other social media site. See 47 U.S.C. § 230(c)(1) ("No provider *or* user… (emphasis added)).

Nevertheless, here Loveless advances the argument that Stiles is liabile for the statements of others because those statements were "voluntarily published" with her "consent, ratification, and endorsement" because she is administrator of the Deep Dive page. See Compl. ¶ 5. This exact argument was advanced by the plaintiff in Zeran, who argued that AOL was not a "publisher" (and therefore immune under the CDA), but a "distributor" exempt under the act. See 129 F.3d at 331–

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

32. The Fourth Circuit found this distinction meaningless and "foreclosed by § 230." Id. at 332. The court reasoned that, notwithstanding the plaintiff's "attempts to artfully plead" negligent distribution, the claim was "indistinguishable" from "garden variety defamation" because the publication of the statement, the failure to remove, and every repetition of it were all "publication" in the traditional sense of defamation. Id. ("AOL falls squarely within this traditional definition of a publisher and, therefore, is clearly protected by § 230's immunity."). There is nothing distinguishable about Loveless's claim here—it is foreclosed by Section 230 and that has been the clear and unambiguous law of this circuit for 25 years.

Moreover, federal courts across the nation routinely apply Section 230 to dismiss social media defamation claims identical to this one.

For example, in Monsarrat v. Newman, "a moderator of a neighborhood's online forum, copied the forum's discussion threads and then reposted them to a new online platform[,]" which included defamatory comments about the plaintiff by anonymous users accusing the plaintiff of being a "sexual predator" and "child predator." 28 F.4th 314, 316–17 (1st Cir. 2022). The district court granted a motion to dismiss, and the court of appeals affirmed, explaining a defendant is shielded from state law liability when he is a provider or user of an interactive computer service, the claim is based on information provided by another information content provider, and the claim would treat the defendant as the publisher or speaker of that information. Id. at 318 (quoting Universal Commc'n Sys., Inc. v. Lycos, Inc., 478 F.3d 413, 418 (1st Cir. 2007) (citing 47 U.S.C. § 230(c)(1))). Looking to the second prong, the federal appeals court reasoned the key to Section 230 immunity was that the information in question was created by another user. See id. at 318–19. Unlike Stiles (who is alleged to have failed to censor posters comments), the Monsarrat defendant copied content generated by another user on another website and re-posted it on the neighborhood

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

forum. The court reasoned that this did not matter for the purpose of determining whether the claim was based on information provided by another information content provider because the defendant "did nothing to contribute to the posts' unlawfulness beyond displaying them on the new Dreamwidth website." Id. at 319. Similarly with the third prong—whether the claim sought to treat the defendant as the publisher of the information—the answer was plainly "yes." Id.

Similarly, in Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc., 591 F.3d 250 (4th Cir. 2009), the court rejected car dealers' argument that a consumer affairs website was an information content provider that could be sued for defamation. The car dealers sought to evade CDA immunity by arguing the website "contacted the consumer to ask questions about the complaint and to help her draft or revise her complaint." Id. at 258 (quotations omitted). Like Loveless's bald claim that third-party statements were published with Stiles "consent, ratification, and endorsement" (Compl. ¶ 5), the car dealers alleged "upon information and belief" that the website "participated in the preparation" of the offensive consumer complaints posted to the website. Nemet Chevrolet, 591 F.3d at 256. After noting that no facts were pled to support this conclusion, the court reasoned that, even if true, the website contacting the consumer to ask some unknown question would not render the website the information content provider within the meaning of the CDA. Id. at 258. "Moreover, in view of our decision in Zeran, [the car dealer] was required to plead facts to show any alleged drafting or revision by [the website] was something more than a website operator performs as part of its traditional editorial function. Id. (citing Zeran, 129 F.3d at 330).

So too in Bennett, the plaintiff sued Google for defamation (among other claims) for failing to remove a third-party blog post. 882 F.3d at 1164. Relying on Section 230, the district court granted the motion to dismiss, and the D.C. Circuit affirmed, applying Zeran's three-part test. See id. 1166–68. The circuit court summarized Google's immunity by explaining, "the decision to

print or retract is fundamentally a publishing decision for which the CDA provides explicit immunity." Id. at 1168.

Like the threadbare allegations in Nemet Chevrolet, there are no well-pled facts here to suggest Stiles is anything other than a provider or user entitled to CDA immunity. Artful pleading that attempts to place responsibility on her for policing the content of the Facebook group fails to change the result—it places her squarely within the province of Bennett. And were there any question that CDA immunity is intended to be broad to protect the broadest possible swath of internet communication, the Court should look to Monsarrat where the forum moderator was held immune even though he copied and re-posted the statement from another posting. Here the Court should apply the plain language of the CDA to hold Stiles is immune from suit for the statements of others and that granting her judgment as a matter of law comports with congressional intent as articulated in Zeran.

II. Stiles did not publish the 26 statements attributed to others.

Alternatively, the Court should grant Stiles judgment on the pleadings as to all claims arising from Paragraph 16 because she is not even alleged to be the publisher of those statements. Publication is a necessary element of libel. See Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 464–65, 629 S.E.2d 653, 664 (2006). However, this essential element is admittedly absent for these 26 statements. Under Loveless's formulation, Stiles is liable because she undertook some unstated, ill-defined duty to monitor and delete posts that offend him. See Compl. ¶ 16 ("By not doing so, Stiles *republished*, thus ratifying and endorsing, statements of others…." (emphasis added)). This monitoring/republication theory not only contravenes the CDA, but the common law, which requires publication by the defendant. There is no precedent holding otherwise.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

III. The statements attributed to Stiles are not actionable libel.

The Court should conclude that all the statements attributed to Stiles (Compl. ¶ 15) are not actionable because (a) they do not concern Loveless, (b) they are not defamatory but mere opinion or rhetorical hyperbole, and (c) they are true as a matter of law.

The essential elements of a claim for defamation are (1) a false and defamatory statement, (2) unprivileged publication to a third party, (3) fault on the part of the publisher, and (4) actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. Erickson, 368 S.C. at 464–65, 629 S.E.2d at 664. Under the common law, "libel is actionable *per se* if it involves written or printed words which tend to degrade a person, that is, to reduce his character or reputation in the estimation of his friends or acquaintances, or the public, or to disgrace him, or to render him odious, contemptible, or ridiculous." Id. at 465–66, 629 S.E.2d at 664 (quoting Holtzscheiter v. Thomson Newspapers, Inc. (Holtzscheiter II), 332 S.C. 502, 510–11, 506 S.E.2d 497, 502 (1998)).

In most defamation cases, the statement is presumed false, while truth is an affirmative defense. Fountain v. First Reliance Bank, 398 S.C. 434, 442, 730 S.E.2d 305, 309 (2012); accord Haulbrooks v. Overton, 295 S.C. 380, 383, 368 S.E.2d 676, 678 (Ct. App. 1988). However, when the purportedly defamatory statement involves a public figure or public official, the Free Speech Clause of the First Amendment to the U.S. Constitution abrogates the common law presumption of falsity and the plaintiff must prove by clear and convincing evidence that the statement was false *and* that it was made with knowledge of falsity or reckless disregard of whether it was false or not—i.e., with actual or constitutional malice. N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964); Beckham v. Sun News, 289 S.C. 28, 30–31, 344 S.E.2d 603, 604–05 (1986); Parker v. Evening Post Pub. Co., 317 S.C. 236, 243, 452 S.E.2d 640, 644 (Ct. App. 1994). Speech

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

concerning elected public official "must be protected with special vigilance" because electing members of the government and debating their qualifications therefore touches on "the essence of a free and responsible government." George v. Fabri, 345 S.C. 440, 455, 548 S.E.2d 868, 875 (2001) (quoting Harte–Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 686 (1989) (quoting James Madison, 4 J. Elliot, Debates on the Federal Constitution 575 (1861))). Those who choose public life must reasonably expect that our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open" will at times "include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials." Sullivan, 376 U.S. at 270.

The question of whether a plaintiff is a public official, public figure, or private figure is a matter of law for the court. Cruce v. Berkeley Cnty. Sch. Dist., 435 S.C. 7, 19, 865 S.E.2d 391, 397 (Ct. App. 2021), cert. granted (Sept. 7, 2022). A plaintiff is a public official if his position invites public scrutiny and discussion of the plaintiff unrelated to the current controversy. Id. An elected official is the quintessential public official and, here, Loveless is a public official as an (former) elected member of the District 5 school board, thus, he has the burden of pleading and proving a false statement made with constitutional malice. He cannot meet this standard.

This point is considered below after Stiles explains why the statements do not concern Loveless and are not defamatory. These arguments also serve as alternative grounds to dismiss the claims based on Paragraph 16 of the Complaint.

A. Statements about District 5 and its school board cannot serve as the basis for a libel claim by Loveless.

Statements about the school board that do not specifically identify or refer to Loveless are not actionable as a matter of law. For example, Paragraph 15(a) simply states that persons against government conspiracy, "the appearance of corruption," "rewarding friends," and "back room

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

deals and public business conducted in private" should be interested in the way "your current school board" and board trustees are "doing business." The statement makes no mention of Loveless and therefore does not "concern" him. This is an essential ingredient of any defamation claim that is missing here and in Paragraph 16(c), (f), (i), (j), (m), (p), (v), (w), and (x). All these statements concern *the board*, not Loveless, and therefore are not actionable by him. Loveless appears to presume that simply because he is a member of the board, criticism of the board is criticism of him over which he can sue. That has unequivocally *not* been the law in this country for almost 60 years.

In N.Y. Times v. Sullivan, one of three elected commissioners responsible for supervising the police department sued a newspaper and advertisers for publishing a full-page ad stating that peaceful civil rights protestors in the South were being met with "an unprecedented wave of terror" by those who would deny them freedom. 376 U.S. at 256–57. The purportedly defamatory text claimed students were expelled from school by armed police and that "Southern violators" answered peaceful protest "with intimidation and violence." Id. at 257–58. Although neither statement mentioned the plaintiff by name, he argued the work "police" referred to him as the commissioner who supervised the police. Id. at 258. It was conceded some of the statements in the two paragraphs were not accurate descriptions of the events, and the plaintiff was allowed to prove he "had not participated in the events described." Id. at 258–59. The Alabama Supreme Court credited the proposition it was "common knowledge" that criticism of a public body inured to the detriment of the plaintiff commissioner. See id. at 291. The U.S. Supreme Court disagreed:

> This proposition has disquieting implications for criticism of governmental conduct. For good reason, no court of last resort in this country has ever held, or even suggested, that prosecutions for libel on government have any place in the American system of jurisprudence. The present proposition would sidestep this obstacle by transmuting criticism of government, however impersonal it may seem on its face, into personal criticism, and hence potential libel, of the officials of

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

> whom the government is composed. There is no legal alchemy by which a State may thus create the cause of action that would otherwise be denied for a publication which, as respondent himself said of the advertisement, 'reflects not only on me but on the other Commissioners and the community.' Raising as it does the possibility that a good-faith critic of government will be penalized for his criticism, the proposition relied on by the Alabama courts strikes at the very center of the constitutionally protected area of free expression. We hold that such a proposition may not constitutionally be utilized to establish that an otherwise impersonal attack on governmental operations was a libel of an official responsible for those operations.

Id. at 291–92 (quotation and citation omitted).

The statement in Paragraph 15(a) is nothing more than impersonal criticism of the school board for which no cause of action exists. To overcome the bar in Sullivan, Loveless would have to plead that this statement was specifically directed at him, and the Court would have to conclude that it was reasonable to construe the statement as such. Compare Miller v. Sawant, 18 F.4th 328, 338 (9th Cir. 2021) (allowing suit over statement that police were "murderers" where statement "suggests that [the defendant's] words refer specifically to the officers who shot [the victim]" and allegations indicated persons who heard the statement understood it referred to plaintiff police officer), with Donald J. Trump for President, Inc. v. The N.Y. Times Co., No. 152099/2022 (Sup. Ct. N.Y. Mar. 9, 2021)[14] (opinion columnist's assertion of quid pro quo was not "of and concerning" the plaintiff-campaign but directed at candidate's former associates and family members). Here, the statement is, at most, a conditional one ("If you… then you…"). Conditional statements are not actionable because they relate to situations that may never exist. See Warner v.

[14] Available at: https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwi4g4qZn8T7AhU_oWoFHR46BMYQFnoECDIQAQ&url=https%3A%2F%2Fwww.loeb.com%2F-%2Fmedia%2Ffiles%2Fpdfs%2Ftrump-v-nyt-defamation.pdf&usg=AOvVaw1JCzm5NB_LTfHmz6F3-8tt.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Rudnick, 280 S.C. 595, 313 S.E.2d 359 (Ct. App. 1984). And criticism of a public body comprised of seven (7) members is never actionable by one disgruntled member.

The Complaint fails to connect many of the purportedly offending statements specifically to Loveless; therefore, the Court should apply the rule in Sullivan and hold it is a total bar to any claim based on the statements in Paragraphs 15(a) and 16(c), (f), (i), (j), (m), (p), (v), (w), and (x).

B. The statements are not defamatory.

A statement is defamatory only if it tends to reduce a person's character or reputation in the estimation of friends, acquaintances, or the public, or disgrace him and render him odious, contemptible, or ridiculous. Erickson, 368 S.C. at 465–66, 629 S.E.2d at 664. "It is the trial court's function to determine initially whether a statement is susceptible of having a defamatory meaning." White v. Wilkerson, 328 S.C. 179, 183, 493 S.E.2d 345, 347 (1997) (citing Pierce v. Northwestern Mut. Life Ins. Co., 444 F. Supp. 1098 (D.S.C.1978)). Here, the Court should conclude that all the statements Stiles is alleged to have made are not libel *per se*, but merely unfavorable, opinion, or hyperbole, and that Loveless has failed to plead extrinsic facts that would support libel *per quod*.

i. The statements are not libel *per se*.

The Complaint alleges libel *per se* (see ¶¶ 5, 7, 11, 14, 21, 23), meaning the defamatory nature of the statements must be plain on their face. However, language "naturally displeasing" or "of an unfavorable nature" to a plaintiff does not render it libelous, merely unfavorable. See Dauterman v. State-Rec. Co., 249 S.C. 512, 514, 519, 154 S.E.2d 919, 919–22 (1967) (statements plaintiff had been "drinking quite a bit Monday" and disciplined child by slapping his bottom held not actionable); see also Costas v. Florence Printing Co., 237 S.C. 655, 663, 118 S.E.2d 696, 700 (1961) ("We know of no precedent, … which makes the publication of the fact that a fight took place between parties at the place of business of a merchant libelous *per se* as to him."). Here,

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

none of the statements in Paragraphs 15 are libel *per se*, nor are many in Paragraph 16. At most, they are unfavorable.

Consider a few examples. Paragraph 15(e) states, "Mr. Loveless uses his position to influence decisions." Similarly, Paragraph 15(f) states, "Mr. Loveless participates in deliberations and attempts to use his position to influence decisions." These statements are not injurious—Loveless is (or was) an elected member of a school board. He participated in deliberations and used his position to influence decisions. Such language would not even qualify for what precedent deems unfavorable (and nonactionable). The same is true with respect to sub-Paragraph 15(b), (c), (d), and (g). There are oblique statements concerning Loveless's refusal to recuse himself from board decisions (more on that below). At most, this is some tepid criticism, not statements lending to an odious, contemptible, or ridiculous reputation, and therefore not libel *per se*. The Court should draw the same conclusions as to Paragraph 16(c), (d), (f), (g), (j), (m), (p), (q), (r), (s), (v), and (x), and then hold that none of these statements are not actionable as libel *per se*.

ii. The Complaint does not plead facts supporting libel *per quod*.

A statement that is not ordinarily defamatory can become so if its meaning is affected by extrinsic circumstances, making it a libel *per quod*. Notably, the Complaint does *not* claim to allege libel *per quod*—it explicitly claims libel *per se*.

However, even under the most liberal construction, there are no allegations of libel *per quod* because, when making such a claim, extrinsic facts and circumstances must be specifically pled and connected with the words used.[15] Costa, 237 S.C. at 661, 118 S.E.2d at 699. There is no

[15] This is referred to as the "inducement," meaning extrinsic circumstances that affect the statement's construction and render it actionable, and the "innuendo," meaning the point or meaning the defendant intended. See Bell v. Clinton Oil Mill, 129 S.C. 242, 251, 124 S.E. 7 (1924); Mains v. K Mart Corp., 297 S.C. 142, 375 S.E.2d 311 (Ct. App. 1988).

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

presumption of defamation, and a court will not hunt for a defamatory innuendo where, by their plain meaning, the words themselves are not. See Drakeford v. Dixie Home Stores, 233 S.C. 519, 525–26, 105 S.E.2d 711, 715 (1958). Additionally, allegations of special damages must also be pled, the absence of which fails to state a claim. See Costas, 237 S.C. at 663, 118 S.E.2d at 700

The Complaint pleads no inducement, innuendo, or special damages, so the Court should simply review the statements and conclude they are not libel *per se*.

iii. Opinions and rhetorical hyperbole are not actionable.

Some statements cannot reasonably be interpreted as stating facts about an individual, such as opinions, satire, epithets, or rhetorical hyperbole, none of which can serve as the basis for defamation. Garrard v. Charleston Cnty. Sch. Dist., 429 S.C. 170, 199, 838 S.E.2d 698, 713 (Ct. App. 2019) (citing Milkovich v. Lorain Journal Co., 497 U.S. 1, 20 (1990)). This is because there is no such thing as a false idea under the First Amendment, Gertz v. Welch, 418 U.S. 323, 339–40 (1974), and this First Amendment protection thereby "provides assurance that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation." Milkovich, supra.

Opinions are not actionable unless they assert a provably false fact. Chapin v. Knight-Ridder, Inc., 993 F.2d 1087, 1093 (4th Cir. 1993) (citing Milkovich, 497 U.S. at 19). "However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." Id. For example, our court of appeals recently reasoned that use of the term "racist douchebag" could not reasonably be interpreted as stating a fact but was opinion and rhetorical hyperbole. Garrard, 429 S.C. at 200, 838 S.E.2d at 713–14. A federal appeals court has held that a tweet suggesting the plaintiff's claims of intimidation were a "con job" would not be understood by a reasonable reader as an accusation that the plaintiff

literally committed the crime of fraud and that, even though it *could* be read to accuse her of lying, it was still non-actionable opinion. Clifford v. Trump, 818 F. App'x 746, 749–50 (9th Cir. 2020). Likewise, the statement a charity was charging a "hefty markup" was non-actionable opinion because "hefty" was just "too subjective a word to be proved false." Chapin, 993 F.2d at 1093. Similarly, pointed questions, even those designed to arouse suspicion, are not defamatory unless reasonably read to assert a false fact because "inquiry itself, however embarrassing or unpleasant to its subject, is not accusation." Id. at 1094. Accordingly, where an article questioned who would benefit more from a charitable endeavor—the soldier-beneficiaries or the charity's organizer—the Fourth Circuit reasoned the question could not reasonably be read to imply the defamatory fact (pocket-lining) it simply provoked public scrutiny of the plaintiff's activities: "Voluntary public figures must tolerate such examination." Id.

The Court should conclude many of the disputed statements are not actionable because they are mere opinion or rhetorical hyperbole. One of these statements attributed to Stiles is Paragraph 15(a), which merely offers the opinion that members of the public concerned about government conspiracy (i.e., a secret agreement), the "appearance" of corruption and rewarding friends, and public business conducted in private, "should" take interest in what the school board is doing. See also Compl. ¶ 15(d) (stating how he "makes it appear…"). Many courts look to rhetorical indicators like "'appeared to be," "might well be," "could well happen," and "should be" to signal presumptions and predictions rather than facts. Bellavia Blatt & Crossett, P.C. v. Kel & Partners LLC, 151 F. Supp. 3d 287, 293 (E.D.N.Y. 2015), aff'd, 670 F. App'x 731 (2d Cir. 2016); see also Levin v. McPhee, 119 F.3d 189, 197 (2d Cir. 1997) (statements, read in context, understood as conjecture, hypothesis, or speculation signal what is said is opinion, not fact). These

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

signals are present in Paragraph 15(a) and (d). But what is absent is any specific, articulable fact, making this statement pure opinion offered about the board writ large.

Many of the other statements made by others, specifically Paragraph 16(a), (b), (c), (d), (e), (f), (g), (j), (k), (m), (n), (p), (q), (r), (s), (t), (u), (v), (w), (x), (z), also fall under the opinion or hyperbole rubric. Stiles will not take the time to address each one (given the CDA renders Stiles immune from liability as to all of them) but suffice it to say that calling Loveless or the board "crooked," a "loser," and "incompetent," while perhaps impolite, is the same sort of rhetoric deemed opinion and hyperbole in Garrard. Likewise, many of the statements asserting the public should be concerned about ethics or that the board cannot be trusted with the public's money, or that the board is only concerned with settling personal vendettas cannot be proven false—they are classic matters of opinion.

B. The statements are true as a matter of law.

Because the Constitution requires Loveless to plead and prove falsity, the Court can conclude based on the pleadings there is no constitutional malice because the disputed statements refer to public and publicly reported ethics violation by Loveless resulting in a pending case before the S.C. Ethics Commission. This negates Loveless's ability to prove Stiles had actual knowledge she was making a false statement or that she acted with reckless disregard when she commented on widely available public information. This renders the statements in Paragraph 15(b), (c), (d), and (g) true as a matter of law.

i. The S.C. Ethics Commission warned Loveless he was required to recuse himself and, after he refused, concluded there is probable cause he violated the S.C. Ethics Act.

The public record is clear and has resulted in a formal S.C. Ethics Commission finding that there is probable cause Loveless violated the Ethics Act. A complete copy of the Ethics

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Commission's file is attached as **Exhibit D** (SCEC_Subpoena_000001–0292). The commission file is being attached in its entirety because it demonstrates that the commission's probable cause determination is not the product of some clandestine inquiry but based on public records. Many of these documents were included as exhibits during board meetings that the public is privy to and they were used by a citizen to file a complaint the commission found had merit.

After questions were raised about Loveless's affiliation with Contract Construction (see above), Loveless requested an opinion for the Ethics Commission. On September 25, 2020, a lawyer from the commission wrote in response that while nothing prevented his company from subcontracting with Contract Construction, "you must recuse yourself from that matter following the instructions in [S.C. Code] Section 8-13-700(B). SCEC_Suboena_000051–053. Accordingly, Loveless told the board chair he was recusing himself due to his affiliation. SCEC_Suboena_000050. On February 18, 2021, Loveless requested a second informal advisory opinion seeking further clarification and February 22, 2022, commission counsel reiterated he should refrain from any action regarding the associated business, including site visits or reviewing documents related to the project. SCEC_Subpoena_000240.

A citizen, Kim Benson (one of the people whose Facebook account was subpoenaed in Scully), filed a complaint with the Ethics Commission. SCEC_Suboena_000001–06. The commission opened an investigation on February 23, 2021. SCEC_Suboena_000062. In response, Loveless's lawyer *conceded* his client took official action on the Piney Wood matter. See SCEC_Subpoena_000067–071. On July 11, 2022, the Ethics Commission issued a hearing notice finding probable cause as to four counts that Loveless violated S.C. Code Ann. § 8-13-700(B) by failing to recuse from a governmental decision in which a business with which he was associated (i.e., Contract Construction) had an economic interest. SCEC_Subpoena_000230–0234. The

commission's summary of the investigation confirms the facts supporting its conclusions were drawn entirely from the public record. See SCEC_Subpoena_000236–0241.

ii. Constitutional malice requires knowledge of falsity.

To prove fault in a defamation action, a public official plaintiff must plead and prove by clear and convincing evidence that the defendant acted with actual or constitutional malice in publishing the false and defamatory. Erickson, 368 S.C. at 467–68, 629 S.E.2d at 665–66 (collecting cases). This means the defamatory falsehood must be made with knowledge that it was false or with reckless disregard of whether it was false or not. Sullivan, 376 U.S. at 279–80. Reckless conduct means evidence "to permit the conclusion that the defendant in fact entertained serious doubt as to the truth of his publication." St. Amant v. Thompson, 390 U.S. 727, 731 (1968).

iii. The public record forecloses Loveless's ability to plead or prove that Stiles spoke with constitutional malice.

Stiles' statements about ethics, Loveless's Ethics Commission opinion, and his recusal are true as a matter of law because the public record does not allow a pleading or proof that her statements were knowingly false or made with reckless disregard.

There is a voluminous public record concerning Loveless's affiliation with Contract Construction and his official actions in the Piney Woods project. As this public record was unfolding, Loveless was the subject of intense criticism by fellow board members at public meetings. The Ethics Commission concluded there is probable cause he violated the Ethics Act on four occasions. The outcome of that proceeding is immaterial. Even if Loveless is exonerated, the public record and the commission's probable cause determination renders it impossible to allege Stiles' statements were knowingly false. Indeed, the State's premiere ethics body has concluded the complaints have merit.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

The Court should hold that Paragraph 15(b), (c), (d), (e), (f), and (g) are true as a matter of law. For example, the statement that the Ethics Commission opinion says Loveless could not use his position to influence decisions, but then concludes "Sadly, he has not [complied with this requirement]" is *true*. It draws the same conclusion as Loveless's former board colleagues and the Ethics Commission. Stiles' conclusion is not invented from whole cloth, nor did she bury her head in the sand. She, like many others, was merely commenting on matters of public concern for which there is ample evidence. This cannot constitute actual malice.

Any errors in Stiles' alleged statements are not enough to change this result because errors "are inevitable" and "punishment of error runs the risk of inducing a cautious and restrictive exercise of the constitutionally guaranteed freedoms of speech and press. Erickson, 368 S.C. at 467, 629 S.E.2d at 665 (quoting Gertz v. Robert Welch, Inc., 418 U.S. 323, 340 (1974)). The question for the Court is whether these statements could be knowingly false or reckless given the public record. They cannot. Since Stiles had access to the same public record as everyone else Loveless cannot plead and will never prove recklessness or knowing falsity. The Court should hold the statements are true as a matter of law.

* * *

For these reasons, Loveless's claim should be dismissed in its entirety and the Court should hold that it is not founded on any established principle of law or well-pled fact that would allow a reasonable litigant in Loveless's position to conclude there was a good-faith basis to hail a private citizen into court to answer such a claim. The claim is frivolous, and the Court should so state.

LOVELESS'S MOTION TO DISMISS AND BIFURCATE SHOULD BE DENIED

Loveless has moved under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure to dismiss Stiles' abuse of process claim arguing no relief can be granted. Additionally, Loveless

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

seeks to bifurcate Stiles' counterclaim under Rule 42(b) of the civil rules, arguing it is a "permissive" claim that introduces "irrelevant issues" that will "unnecessarily complicate[ ]" the litigation of his claim. Both contentions should be rejected, and the motions should be denied.

I. Stiles has pled a cognizable claim for abuse of process.

This litigation is abusive of legal process because the purpose is to intimidate and chill criticism of a public official. That notion is anathema to the First Amendment and what it means to be an American. Stiles has pled a colorable claim that should proceed to discovery and trial.

"The tort of abuse of process is intended to compensate a party for harm resulting from another party's misuse of the legal system." Pallares v. Seinar, 407 S.C. 359, 370, 756 S.E.2d 128, 133 (2014). "To successfully maintain an abuse of process claim, the plaintiff must show an ulterior purpose and a willful act in the use of the process that is not proper in the regular conduct of the proceeding." McBride v. Sch. Dist. of Greenville Cnty., 389 S.C. 546, 564, 698 S.E.2d 845, 854 (Ct. App. 2010). "The tort centers on events occurring outside the process; the improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as … use of the process as a threat or club." Pallares, 407 S.C. at 371, 756 S.E.2d at 134. Thus, the "willful act" element consists of three components: (1) a willful or overt act, (2) in the use of the process, (3) that is improper because it is either (a) unauthorized or (b) aimed at an illegitimate collateral objective. Id.

Because the claim turns on an improper purpose, the possibility of an innocent explanation does not preclude the claim provided there are allegations (and eventually evidence) to support bad motive. For example, escalating a "bad neighbor" dispute to the point of seeking the mental commitment of the plaintiff has been held evidence of both an ulterior motive and a willful act sufficient to create a jury question, even if there was cause to make some of the complaints. Id. at

372–73, 756 S.E.2d at 134. Similarly, evidence of a teacher's bad relationship with her principal, the principal's close relationship with the teacher's arresting officer, the officer and principal's repeated communication during the interrogation of a student, and the student's testimony that the officer pressured him into implicating his teacher in his delinquency was sufficient evidence to allow a jury to conclude the principal was working in concert with the officer to obtain her arrest and dismissal from the high school. McBride 389 S.C. at 564–65, 698 S.E.2d at 854–55.

Here, Stiles' claim is simple: this is a frivolous lawsuit Loveless filed to harass a private citizen, "silence Stiles and his critics," and chill her speech and the speech of others on the Deep Dive Facebook group. See CC ¶¶ 43–62. Stiles alleges "Loveless intends to use this lawsuit to investigate Stiles, the Facebook group she administers, the people she has communicated with about him and District 5, and her participation in District 5 politics." Id. ¶ 60. That is precisely what has happened thus far as evidenced by the Scully subpoena seeking 38 Facebook accounts of individuals and groups who either criticized Loveless or are suspected Loveless critics. Those individuals have nothing to do with Stiles' (or Scully's) statements. Instead, what Loveless seeks to do here is investigate Stiles and others who might be critical of him. That is improper.

There are allegations and evidence to support an overt act and illegitimate purpose. The motion to dismiss should be denied.

II. Severance in not appropriate because it will require the same case to be prepared and tried twice.

The civil rules permit a court to conduct separate trials on any issue or claim "in furtherance of convenience or to avoid prejudice" or where separate trials improve the efficiency of the court. Rule 42(b), SCRCP. "A trial should be bifurcated only if the issues are so distinct that trial of each alone would not result in injustice." Creighton v. Coligny Plaza Ltd. P'ship, 334 S.C. 96, 108, 512 S.E.2d 510, 516 (Ct. App. 1998). The decision to sever claims and order separate trials is a matter

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

of discretion for the trial court. Senter v. Piggly Wiggly Carolina Co., 341 S.C. 74, 77, 533 S.E.2d 575, 577 (2000). Here, Loveless's motion should fail for three reasons.

First, the issues are not distinct at all. Loveless brought this claim to silence a critic. Stiles' defenses, Loveless's reputation, and the abusive nature of his claim are all part of the same factual background. The same documents and witnesses that prove the truth of the statements will also demonstrate the frivolity of Loveless's claim and his penchant to pursue vendettas against perceived enemies. Moreover, considering the broad scope of discovery to which Stiles is entitled to pursue to investigate the defense of truth and whether Loveless, in fact, has suffered any reputational harm, discovery on her abuse of process claim fits neatly within that otherwise broad scope that will require him to turn over personal documents and correspondence.

Second, Loveless's motion makes no effort to allege or show any convenience that might be derived or prejudice he would suffer by having Stiles' claim tried alongside his own. It is not enough to simply claim "complicat[ion]"—Rule 42(b) requires convenience or prejudice and Loveless has identified neither.

Third, what Loveless seeks is to have his cake and eat it too. There is nothing "just" about allowing him to proceed with his suit while disallowing Stiles from being able to prepare and present her own claim challenging the propriety of his lawsuit and the litigation costs he has caused her to incur. He chose to bring this case and must participate in defending Stiles' counterclaim.

The motion for severance should be denied.

STILES' MOTION TO COMPEL, DEEM MATTERS ADMITTED, AND FOR SANCTIONS SHOULD BE GRANTED

Stiles' motion to compel should be granted, objections should be deemed waived, and matters deemed admitted. The Court should also impose sanctions because Loveless's responses

here are such a flagrant departure from Rules 26, 33, 34, and 36 of the South Carolina Rules of Civil Procedure such that some punitive consequence should attach.

A trial court's rulings on discovery matters will not be disturbed on appeal absent a clear abuse of discretion. Arthur v. Sexton Dental Clinic, 368 S.C. 326, 333, 628 S.E.2d 894, 898 (Ct. App. 2006). An abuse of discretion occurs when the ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support. Id.

Stiles respectfully urges the Court to review Loveless's discovery responses attached to her motion to compel (a copy of which will be submitted with this memorandum) as the best evidence and argument as to why this motion should be granted. Her discovery requests were specific, tailored to the claims and defenses joined, and included detailed instructions concerning the information sought and the need for specific objections that "fairly apprise the requesting party of the information being withheld and the basis for the withholding." See MTC, Ex. A at 15. Loveless's responses and objections fail to fairly respond to the substance, are replete with boilerplate and frivolous objections, and refuse to produce a single document. Loveless's violations of the civil rules are voluminous, unprofessional, and cannot be read as a good-faith effort to cooperate in a lawsuit *he filed*. Consider just a few examples from Loveless's responses and objections:

- He disputes he is a public official (see MTC, Ex. D at RTA No. 1), even though he is (was) an elected member of the District 5 school board.
- He refuses to produce a single document, including documents or items he intends to introduce at trial. See MTC, Ex. C.
- He refuses to identify any legal authority that supports specific complaint allegations about what he claims is "controlling legal authority in the State of South Carolina and the United States of America." MTC, Ex. B at Interrog. Resp. No. 6.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

- He refuses to identify a single speaker, date, time, or complete quotation of the statements he alleges are defamatory. MTC, Ex. B at Interrog. Resp. Nos. 9 (but claiming, "There are likely many others…") & 13.

- He refuses to state the terms of Facebook he alleges Stiles violated ("if she can't find it, she can look at [hyperlink]"), or to identify legal authority establishing that a violation of Facebook's terms gives rise to civil liability. MTC, Ex. B at Interrog. Resp. Nos. 10–12.

- He refuses to identify a person described in his Complaint and makes the bizarre assertion he "will update [his] response when circumstances exist that will eliminate the ability of Defendant or others to harm that person, his family or his reputation." MTC, Ex. B at Interrog. Resp. Nos. 13.

- And in response to 13 interrogatories and 17 document requests, Loveless simply interposes bald and sarcastic claims like, "Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable. But what a good idea." See MTC, Ex. B at Interrog. Resp. Nos. 17–30; MTC, Ex. C at Resp. Nos. 6–8, 10–16 & 19–25.

This is bad-faith litigation conduct by the person who chose to file this lawsuit but is unwilling to participate in discovery. Stiles requests a discovery order that:

1. Deems all objections and claims of privilege to be improperly stated, unsupported, and now waived;

2. Requires Loveless to submit specific, verified written responses to each interrogatory and document request within 10 days of the Court's order;

3. Requires Loveless to produce all requested documents within 20 days of the Court's order;

4. Deems all requests to admit as admitted;

5. Sanctions Loveless and his lawyer for interposing frivolous objections;

6. Requires Loveless and his lawyer to pay attorneys' fees, costs, and court time for all proceedings related to this motion; and

7. Orders any such further relief the Court deems just and proper.

Concerning the request for sanctions: The courts of this state are cluttered with discovery motions made necessary solely because one side or another refuse to follow longstanding and well-

understood rules governing what a litigant must disclose and how objections should be interposed. Rules 33 and 34 require specific objections, the purpose of which is to apprise the requesting party of what is being withheld and the basis for it. When this procedure is followed, it minimizes the need for court intervention by allowing the requesting party to evaluate the merit of the objection and respond accordingly. Too often, the rules are not strictly followed, prompting the requesting party to press for clarification or further disclosure. That is not the case here.

Loveless's position is a blanket refusal to participate in discovery. In 11 years of practicing law, it is the worst example of a litigant flouting the discovery rules the undersigned has seen. It should be punished, particularly since the offending party is the one who filed this case. To discourage further proliferation of motions to compel the civil rules provide that if a motion is granted "the court *shall*, after opportunity for hearing, require the party ... whose conduct necessitated the motion ... to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust." Rule 37(a)(4), SCRCP (emphasis added). Fees and costs are warranted here because Loveless's responses are deliberate, repeated violations of the rules with no justification.

Further, the Court should also retain jurisdiction of this discovery dispute to ensure any disclosure order is strictly followed.

THE S.C. PRESS ASSOCIATION'S MOTION TO INTERVENE S HOULD BE GRANTED AND THEN LOVELESS'S MOTION FOR A PROTECTIVE OR CONFIDENTIALITY ORDER SHOULD BE DENIED

Loveless demands a protective order limiting the scope of discovery or a confidentiality order restricting Stiles use of material produced in discovery. The motion should be denied.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

A court can enter a protective order as justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden but only upon "good cause shown." Rule 26(c), SCRCP. Applying this rule entails burden-shifting and then balancing by the trial court. First, the person seeking the protective order must "*show*[ ] a particularized harm which will be caused by allowing the discovery[.]" Hollman v. Woolfson, 384 S.C. 571, 578, 683 S.E.2d 495, 498 (2009) (emphasis added). Then, "the opposing party has the burden of showing the information sought is 'relevant and necessary' to the case." Id. Finally, the trial judge weighs the relevance and necessity of the information against the particularized harm. Id.

Loveless fails to meet his burden as a threshold matter because there is no showing of anything, let alone a particularized harm that would require the Court to shift the burden back to Stiles and then conduct a balancing inquiry. Indeed, Loveless's bizarre, rambling motion fails to state specifically what discovery the Court should protect him from. He claims Stiles seeks to inquire into matters "completely unrelated" but never says *what* matters are purportedly unrelated. See Mot. Protect. Order, 1. He claims this is a "personal" and "private" matter (id.) even though this is a public lawsuit filed by Loveless in an open court about statements made on a public Facebook page about a public body and him serving as a public official. Moreover, if Loveless did not want to answer interrogatories and produce documents about his service on the board, his reputation, and his reasons for filing this lawsuit, he should have restrained himself from suing one of his (former) constituents.

Loveless claims subpoenas to his (former) board colleagues are overly broad and "totally unrelated" to this case (Mot. Protect. Order, 1–2), but by filing this lawsuit, he has placed his performance as a member of the board and his reputation—including among his colleagues—squarely at issue. See Holtzscheiter II, 332 S.C. at 517, 506 S.E.2d at 505 (Toal, J., concurring).

("Thus, the focus of defamation is not on the hurt to the defamed party's feelings, but on the injury to his reputation."). Further, Stiles is entitled to discovery on her abuse of process claim, which turns here largely on Loveless's motive for filing this frivolous suit. These claims entitle Stiles to conduct broad discovery, but she respectfully submits her discovery to Loveless and others has been restrained and targeted. This conclusion is borne out by that fact that Loveless's motion has not pointed to one, single item as a specific example of a discovery request for which he needs protection. All he offers are broad, unsupported claims that the discovery sought is "completely unrelated" and sought in "bad faith." Mot. Protect. Order, 3.

The motion is also ignores Loveless's obligation under the rule and as the movant to come forward first with a *showing* of particularized harm. Instead, he misleadingly cites Hamm v. SCPSC, 312 S.C. 238, 439 S.E.2d 852, 854 (1994), for the proposition that a party seeking "to improperly abuse the discovery process" must "'come forward and show that the information sought is both relevant and necessary to the case.'" Mot. Protect. Order, 3. This is a misstatement: no precedent provides a procedure to "improperly abuse" discovery. More to the point; however, Loveless ignores the burden-shifting procedure described above. Under that well-established rule, *he must go first* and explain why discovery should not be had, which he has not done and cannot do here. If the Court so requires, Stiles welcomes the opportunity to discuss every one of her discovery requests to which Loveless has refused to properly respond.

Finally, for reasons explained, the Court should also decline to enter a confidentiality order. Loveless offers no legitimate reason a confidentiality order is required. All Stiles can glean from his papers is that he is concerned that public court filings in this case will result in a "media storm" of some sort. See Mot. Protect. Order, 4. That is not grounds for a secret court proceeding. Loveless's opportunity to weigh the possible press implications was *before* he sued a parent for

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

exercising a constitutionally protected right to speak. Loveless's press problems are not the Court's concern, nor are they grounds for a confidentiality order.

The S.C. Press Association seeks to intervene to be heard on Loveless's motion for a protective or confidentiality order and Stiles consents to the request. As the Press Association's motion to intervene notes, the information Loveless seeks to keep secret necessarily relates to his performance as a public official and his qualifications for office. Press Asso. MIS Mot. Int., 3. Any prior restraint on Stiles' ability to use that information in a public court proceeding would constitute a prior restrain subject to strict scrutiny, an exacting burden Loveless has not met. See id. Stiles agrees and adopts the Press Association's arguments here.

For these reasons, Loveless's motion should be denied.

STILES' MOTION FOR RULE TO SHOW CAUSE TO THIRD-PARTIES NIKKI GARDNER AND JAN HAMMOND, AND TO COMPEL CATHERINE HUDDLE SHOULD BE GRANTED

Stiles subpoenaed from District 5 board members correspondence with Loveless and about him. District 5 provided their district email accounts but left it to the individual board members to produce communications from personal emails and cell phones. Based on documents produced by others, these communications do, in fact, exist. Many of the members cooperated; some did not.

After the motion was filed, board member Jan Hammond provided responsive documents, thus the motion is *withdrawn* as to Hammond.

Stiles has not received a response from board member Nikki Gardner but would gladly withdraw the motion in exchange for her cooperation. In lieu thereof, the Court should issue a rule to show cause requiring Gardner to appear to explain why she is yet to comply with the subpoena.

Board member Catherine Huddle is another matter. Huddle submitted a timely objection claiming the subpoena was "overly broad" because she is "friends" with Loveless (and his wife)

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

and she believes she has a "reasonable expectation of privacy" in communications she contends are "irrelevant." See Mot. Rule to Show Cause, Ex. E. Huddle is mistaken for two reasons.

First, the subpoena is not overly broad—it seeks communications from personal emails and cell phones with Loveless and about Loveless. Regardless of whether they are friends, communications between two school board members and communications about the Plaintiff are two discrete categories of documents that Huddle should reasonably be able to produce. On a motion to compel discovery or quash a subpoena, the burden is on the person from whom discovery is sought to *show* the information sought is not reasonably accessible because of undue burden or cost. Rule 45(d)(1)(D), SCRCP. Huddle has made no showing or offered any representation that such a showing could be made. If there are *specific* objections to specific communication (between Huddle and her spouse, for example) those should be stated, so Stiles can consider their merit, and all other non-objectionable communications should be produced. However, a blanket claim of overbreadth without any articulable fact supporting that claim should not prevail.

Second, the requested documents are relevant. Two central issues in this case are (1) Loveless's performance on the school board and (2) Loveless's reputation and whether it has been harmed. Communications from a colleague on the school board are likely to speak to both issues.

Accordingly, the Court should overrule the objections and order Huddle to produce the documents within 20 days of the Court's order.

STILES' MOTION TO OVERRULE DISTRICT 5 CLAIMS OF ATTORNEY-CLIENT PRIVILEGE SHOULD BE GRANTED

Stiles respectfully refers the Court to her motion (a copy of which will be submitted with this memorandum), which fully sets forth the rationale for overruling District 5's claims of attorney client privilege as to the documents bearing the Bates labels JHammond_000104 through _000108. For the reasons explained in the motion, it should be granted.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

LOVELESS'S MOTION TO QUASH THE SUBPOENA TO CONTRACT CONSTRUCTION, INC. SHOULD BE DENIED

Finally, for reasons discussed above, the subpoena to Contract Construction is relevant to the litigation and Loveless offers no specifically articulable reason as to why it should be quashed. The motion should be denied.

Respectfully submitted by,

s/Christopher P. Kenney
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ATTORNEY FOR
DEFENDANT LESLIE STILES

November 23, 2022
Columbia, South Carolina.

EXHIBIT A

(Statements included within the Complaint)

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Compl. ¶	**Statement Attributed to Stiles**
15.a	"If you are against government conspiracy, if you are against the appearance of corruption, if you are against the appearance of rewarding friends, if you are against back room deals and public business conducted in private - then you should be interested in the way your current school board or [*sic*] Trustees is doing business."
15.b	"Mr. Loveless had an EC opinion requiring his recusal from certain matters and refused for a length of time."
15.c	"My apologies to Mr. Ken Loveless - I didn't know he was a reader but am happy to make a correction to a comment I made in error stating there was an AG opinion regarding him and I meant an Ethics Commission. . . opinion that he should recuse himself from certain discussion and voting."
15.d	"Loveless says he will no longer recuse himself from topics related to construction. Likely bc (*sic*) his financial relationship with Contract Construction has ended, although he makes it appear that he has just decided to end it be he wants to."
15.e	"Mr. Loveless uses his position to influence decisions."
15.f	"Mr. Loveless participates in deliberations and attempts to use his position to influence decisions."
15.g	"This SEC Ethics Opinion . . . further states that Mr. Loveless may not in any way attempt to use his position to influence decisions. Has Trustee Loveless complied with these requirements? Sadly, he has not."
Compl. ¶	**Statement Attributed to Others**
16.a	"Crooked Ken is an unethical hypocrite and a liar."
16.b	". . . Don't let it be lost that as per usual, Crooked Ken goes after a woman. He continues to demonstrate contempt and disrespect for women."
16.c	"What do you get when you elect the dumbest people in the district to be in charge of education? If you're tired of these incompetent imbeciles embarrassing our district and wasting our time and money. . ."
16.d	"Wow, he is a loser."
16.e	"Be it Ken's ethics violations, waffle house quorums or other FOIA violations, this board isn't much for following rules."

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

16.f	". . . we absolutely do not currently have a board that we can trust to determine how best to spend our money and through what means."
16.g	"But then again, with Ken on the board, you HAVE to always be concerned about ethics."
16.h	"Nothing is out of the question with corrupt Ken Loveless. He's already proven to lie and ignore ethics guidelines."
16.i	"This reeks of desperation from a crooked board trying to keep their misdeeds hidden. They desperately want to squash these suits b/c they know the discovery process will bring their corruption to light."
16.j	"This is what you get with an incompetent, micromanaging board majority and an ineffective and weak superintendent."
16.k	"CALL THEIR BLUFF!!! Think about it . . . what is the last place Ken or Jan want to be? On the witness stand or in a deposition where they HAVE TO TELL THE TRUTH. They are not used to that. They'll stumble and bumble themselves into a perjury charge within the first ten minutes."
16.l	"Ken and Jan are proven liars, ethics violators, and remarkably untrustworthy."
16.m	"The board seems to be more concerned with settling personal vendettas than taking care of our district."
16.n	"Crooked Ken strikes again!!!"
16.o	"As far as I am aware, he's the only one with an ethics violation. . ."
16.p	"They came after me. That's why I am rarely contributing. Don't want to lose my license. Don't know if that is possible but don't want to take the chance."
16.q	"Ken used his money to blow smoke up the citizens. I suspect he can and will do it again."
16.r	"Ken has been at DO [district office] meddling in their employee issues. . ."
16.s	"Do you ya'll see the animosity that built by Ken Loveless . . after he was served the Cease and Desist order issued because he was continuing to show up daily at the new school being built. . . he was constantly showing up unannounced and slowing up work."
16.t	"I'm glad you didn't hold up Mr. Loveless as an example, what with his ethics violations and all."

16.u	"yeah we do [know where your money goes]... To buy yours and other board members seats. Buying himself some yes-women."
16.v	"I am no longer surprised by anything this board does. They spend more time on vendettas than on education . . ."
16.w	"They are all crooked as a creek."
16.x	"That would be a comedy show. They can't even tell the same lie."
16.y	"Nothing is out of the question with corrupt Ken Loveless. He's already proven to lie and ignore ethics guidelines."
16.z	"But then again, with Ken on the board, you HAVE to always be concerned about ethics."

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

EXHIBIT B

(Ed White Affidavit)

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2021CP4003694

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
	)	
COUNTY OF RICHLAND	)	**FIFTH JUDICIAL CIRCUIT**
Paul Roy Osmundson,	)	**Civil Action No.: 2021CP4003694**
	)	
Plaintiff,	)	
	)	
v.	)	**AFFIDAVIT OF EDWARD K. WHITE**
	)	
School District 5 of Lexington and Richland Counties,	)	
	)	
Defendant.	)	
	)	

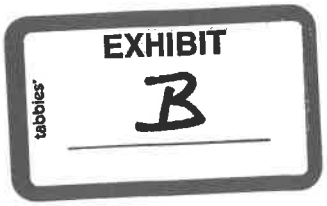
PERSONALLY, APPEARED BEFORE ME, Edward K. White, who upon being duly sworn deposes and states as follows:

1. I am a citizen and resident of Richland County. I am a member in good standing of the South Carolina Bar. I was admitted to practice in 1988. I am a partner in the law firm of Nelson Mullins Riley& Scarborough.

2. For eighteen (18) years, I served as a Trustee of School District 5 of Lexington and Richland Counties of South Carolina. Other than my law practice, my work as a School Board Trustee consumed more of my time and attention than anything else outside of my family.

3. During my tenure on the board, the district grew substantially. Its current annual budget is approximately $201,694,166.

4. In 2017, our School Board hired Dr. Christina Sullivan Melton to serve as our Superintendent. She was well-qualified for the job, having most recently served as the District's Chief Instructional Officer. Prior to that time, she was the Principal of Nursery Road Elementary School and before that a teacher.



ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003684

5. As a School Board Member, I was taught that School District 5 is a "public body" as that term is used in S.C. Code, Ann. §30-1-20.

6. Upon information and belief, the School Board is obligated to comply with the South Carolina Freedom of Information Act as codified in §30-4-90 of the South Carolina Code of Laws.

7. Ken Loveless and Nikki Gardner were elected to the School Board in 2018. In November 2020, a slate of candidates that Ken Loveless financially supported and promoted were also elected. These new Board Members were Rebecca Hines, Catherine Huddle and Matt Hogan. During November 2020, the Board elected new Board officers (the Chair, Vice Chair and Secretary). Jan Hammond was elected to serve as Chair, Ken Loveless was elected Vice Chair and Nikki Gardner was elected Secretary. After these changes were implemented, I noticed substantial differences in the way our Board conducted its business and interfaced with our Superintendent, our staff and our outside advisors, including legal counsel approved by the Board.

8. At a Board meeting on December 14, 2020, the Board Officers placed an item on the Agenda for the Board to meet in Executive Session to discuss Dr. Melton's role as Superintendent. Andrea White, an attorney who had previously represented the District, but had not advised Board Members for a number of years, attended the Executive Session portion of the meeting. Chair Jan Hammond communicated that the objective of the session was for the Board Members to comment on what they thought about Dr. Melton. What resulted was a rambling, awkward and confusing session where several Board Members complained about Dr. Melton. Most of these complaints were centered on her failure to follow instructions of Mr. Loveless and other individual Board Members, not her communications with the Board as a whole. Ken Loveless and Nikki Gardner were visibly angry and hostile to Dr. Melton. I concluded that the

meeting was an attempt by the Board Officers to bring Dr. Melton into line obeying their individual directions outside of the public view and to tell Dr. Melton how they expected her to change. This was particularly disturbing to me because the prior Board had given Dr. Melton glowing reviews just a few months earlier and this Board with new Board Members had only worked with Dr. Melton for a few meetings.

9. Upon information and belief, Dr. Melton was unaware of the purpose of the meeting and that Andrea White would be at the meeting. Dr. Melton appeared surprised because she, as the Superintendent, had not engaged Andrea White to meet with the Board. One of Dr. Melton's first statements was to Andrea White in which Dr. Melton said that she was not aware Andrea White was going to be there. Dr. Melton stated that she felt like she should have been informed of Andrea White's presence at the meeting so that she could have brought her own counsel to the meeting. At that time it was my impression that one or more of the Board Officers hired Andrea White to participate in the meeting without Dr. Melton's knowledge.

10. During that meeting, Andrea White stated that the Board could not continue to sit in Executive Session and just talk about the Superintendent, or something to that effect, and that the Board either needed to go back into public session to continue this conversation or try to structure something along the lines of an evaluation of the Superintendent. I interpreted this statement to mean that the conversations to that point were not properly in Executive Session. The discussion was then modified to be consistent with a discussion that the attorney felt was proper for an Executive Session conversation.

11. At the December 14, 2020 meeting, I also recall Trustee Rebecca Hines making the remark she believed the Board had created a "hostile work environment" for Dr. Melton. This meeting was clearly an ambush by the Board Officers of Dr. Melton in private with legal counsel

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003684

present to attempt to exert control over Dr. Melton and her decisions as a Superintendent. These communications indicated those individuals wanted Dr. Melton to follow their individual directives.

12. There are a number of e-mail communications that have been made public that demonstrate that these members viewed her as their individual employee under their personal supervision and threatened consequences if she failed to carry out their personal – not board – instructions.

13. Sometime after this meeting I asked Dr. Melton who had engaged Andrea White and asked her to come to the meeting that night to advise the Board. Dr. Melton confirmed to me that she had not engaged Andrea White to advise the Board and she thought it was Jan Hammond or one of the other Board Officers who engaged Andrea White.

14. In my 18 years on the Board I am not aware of any time legal counsel was engaged to represent the Board except by the Superintendent working with the Board Officers. I remember being concerned after witnessing the hostile Executive Session on December 14, 2020 because Andrea White had obtained her engagement and financial relationship, as counsel to the Board directly through these hostile Board Members. My concern was whether Andrea White would be completely objective in her legal advice to the Board, as a whole, rather than giving advice in a manner to satisfy the objectives of the Board Officers since they created and controlled her financial relationship with the District.

15. An email was made public that showed on December 7, 2020, Catherine Huddle sent an email to the Board Chair, Jan Hammond, directing Jan Hammond to choose an attorney and ask that person to serve as the Board's attorney and meet with the Board during the Executive Session on December 14, 2020. Catherine Huddle conveyed to Jan Hammond in that email that

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003684

she was copying Ken Loveless and Nikki Gardner as Board Officers. This email shows that since December 14, 2020, Catherine Huddle and the Board Officers were acting in concert to bully, intimidate and harass Dr. Melton until they ultimately forced her out of her position as Superintendent.

16. I also recall around the time of the December 14, 20220 meeting that Rebecca Hines conveyed to me that Ken Loveless told her prior to the November 2020 election that he wanted to get rid of Dr. Melton as the Superintendent and that he had someone specifically in mind that he wanted to take Dr. Melton's place. When I asked Rebecca Hines who Ken Loveless wanted to put in Dr. Melton's place, she declined to tell me the name of the person.

17. I recall seeing an email which Mr. Loveless sent to Dr. Melton stating, "you have been warned."

18. I have never served as a Board Officer while serving on the Board of School District 5. I am aware that Board Officers in School District 5 routinely met with the Superintendent the week before a Board meeting to set the agenda and receive information about the issues that the Board will ultimately preside over. As a result of witnessing the hostile meeting on December 14, 2020 (described above), I became concerned that the Board Officers would use the Board Officer meetings to continue to secretly bully, intimidate and further harass the Superintendent to conduct the District's business the way they personally wanted it conducted.

19. There is legal authority that states that Board Committees are open to the public, specifically, §30-1-10(B) of the South Carolina Code of Laws extended the FOIA requirements to "any committees, subcommittees, advisory committees, and the like of any such body by whatever name known and includes any quasi-governmental body of the state and its political subdivisions."

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003604

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003604

20. As of December 2020, many School Boards across South Carolina were no longer having Board Officer meetings with the Superintendent in sessions closed to the public, as School District Five continued to do, because of the concern that the modern legal precedents would require that these meetings be conducted in public.

21. At the January 25, 2021 school board meeting, I requested in the public portion of the meeting that the Board make the Board Officer meetings public and called to the attention of the Board the legal precedents that indicated these meetings very likely would be considered public meetings under the Freedom of Information Act. Andrea White, serving as legal counsel to the Board, was in attendance at the meeting. In the public session portion of the meeting, Jan Hammond, as the Chair, asked Ms. White to comment on my request. In a live recorded meeting, with no discussion, I recall attorney Andrea White expressing her opinion that if the Board Officer meetings were only used to set the meeting agenda with the Superintendent then the meetings were not within the scope of the Freedom of Information Act and were not required to be open to the public.

22. Upon information and belief, the newly constituted School Board Officers continued having meetings with the Superintendent at times and places which were not announced to the public.

23. In the Jan. 25, 2021 meeting, I recall Mrs. Hammond stating that other districts did not have public Board Officer meetings and she did not feel the need to do so, or words to that effect. I recall the Vice Chair, Trustee Loveless, stating, "I don't really see the need in it and there is no precedent for it," or words to that effect. I also recall Nikki Gardner saying that "we have to continue with the way we are doing the things and we inherited the processes," or words to that effect.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003684

24. At the Board Meeting on February 8, 2021, I submitted a written opinion of the South Carolina Attorney General dated August 26, 2019, which found that a similar committee of the Richland One School Board in Columbia, South Carolina was found to be within the scope of the Freedom of Information Act. Prior to that meeting on February 8, 2021, I sent an email to all the Board Members and Dr. Melton which I understand is attached as Exhibit B to the Amended Complaint filed by Plaintiff Paul Roy Osmundson against the School Board. The email referenced the Attorney General's opinion which is attached to the Amended Complaint as Exhibit C.

25. I requested several times in writing that we discuss the Attorney General's opinion as a Board with legal counsel present. As a member of the Board, I wanted to be able to directly ask my questions to our legal counsel about the risks and consequences to the District if the Board Officers meetings violated the Freedom of Information Act. One of my concerns was the legal precedents that stated that if Board Officers meet and receive District information from a District employee then the meeting is a public meeting. It is my understanding that the Board Officers received District information from the Superintendent and were briefed on the issues and based on the legal precedents these actions would make the Board officers meeting a public meeting.

26. Pursuant to §30-4-90 of the South Carolina Code of Laws a Board Member has an absolute right to have any document attached and made part of the Minutes. I submitted the Attorney General's Opinion and other documents to the School Board's secretary, Erin Strange. to be made part of the minutes of the February 8, 2021 Board meeting. My intention in putting the Attorney General's Opinion into the minutes was to make it readily available to the members of the public who reviewed our Board minutes and to see my handwritten notes on the face of the Opinion highlighting the legal precedents which suggested the Board Officer's meetings were subject to the Freedom of Information Act.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003684

27. At the next meeting of the School Board on March 1, 2021, Mrs. Huddle made a motion to exclude the first attachment from the minutes which I submitted to the Board Secretary for inclusion in the minutes of the February 8, 2021 meeting. This motion was approved with a 4-2 vote, and resulted in the Attorney General Opinion being removed from the minutes. The removal from the minutes of the documents I submitted for inclusion in the minutes violated § 30-4-90 of the South Carolina Code of Laws.

28. § 30-4-90 of the South Carolina Code of Laws and a Board Member's right to put documents on the Minutes had been discussed openly with many of the members of the current Board. These discussions occurred in June 2020 when I put documents in the Minutes and Ken Loveless objected and tried to modify the submission. I emailed all the Board Members at that time outlining the rights afforded to a Board Member pursuant to §30-4-90 of the South Carolina Code of Laws. The next time was the first meeting of the newly constituted Board in November 2020, when Ken Loveless asked me whether §30-4-90 of the South Carolina Code of Laws or the District's Policy controlled the length of a document submitted to be made part of the Minutes. I relayed, in front of the entire Board, that the statute controlled and had no limits on the number of pages in a submission even though our policy limited individual submissions to a certain number of pages.

29. Catherine Huddle's motion to remove documents I submitted to the Board Secretary on February 8, 2021 and the Board's vote to remove those documents removed the Attorney General Opinion from the Minutes and kept this legal precedent from the public's view.

30. In April of 2021, the Board, without any advance notice, hastily voted to approve removing the mask policy that had been in place for the entire school year. I was not in attendance at this meeting, but I was told that subsequent to that meeting Andrea White expressed concerns

that the Board's modification to the mask policy could create insurance coverage issues for the District. I understand that this advice was given to Board Chair Jan Hammond and Dr. Melton and that Andrea White asked them to delay implementing the policy change until she could speak to the entire Board.

31. At the next Board meeting in Executive Session, Andrea White explained to the Board the insurance issues and the reason she had asked that the change to the mask policy be delayed. Trustees Huddle and Gardner were particularly loud and angry and speaking in a hateful and hostile manner toward Dr. Melton. Their anger was directed at Dr. Melton for delaying the modification to the mask policy. Their comments appeared to have been coordinated and were delivered in hostile and angry tones.

32. I recall that when I mentioned to Trustee Huddle that Andrea White had recommended the delay in the modification of the masking policy, Trustee Huddle responded by casting a nasty, glaring scowl in the direction of Dr. Melton and stated "The insurance is not the issue. You directly disobeyed this Board's motion. You work for us. We do not work for you. You overturned our mask policy change, and you made us look bad" or words to that effect. I recall Trustee Huddle then demanding Christina Melton resign. Right after Catherine Huddle stopped speaking, I recall Trustee Gardner began her own tirade directed at Dr. Melton stating that "we tried to work with you" and making it clear through her angry demeanor that it would be impossible for Dr. Melton to co-exist as the Superintendent with her and her cohorts on the Board. Trustee Gardner then demanded that Superintendent Melton resign. I recall Trustee Loveless smiling as he looked at Dr. Melton stating, "I agree with everything Trustee Huddle and Trustee Gardner said" or words to that effect.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003604

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003604

33. From December 2020 until my last Board meeting on June 14, 2021, nothing was said about the matter during public Board meetings that would give the public any reason to believe that there was friction between Trustees Ken Loveless, Nikki Gardner or Catherine Huddle and Superintendent Melton. No one in the public was aware that efforts were being made to remove Dr. Melton from her office.

34. In the Spring of 2021, Dr. Melton was named South Carolina Superintendent of the Year, an honor which reflected very favorably upon our entire School District.

35. From my point of view Dr. Melton did everything within her power to keep her position as District Superintendent. She never indicated any desire to leave the employ of District Five. She is the consummate team player and was particularly concerned about her staff and the District. I could tell the meetings and negotiations were very stressful for her. The Board Officers did everything that they could to keep their efforts to replace her out of the public view.

36. At the next Board meeting, the Board met in Executive Session to discuss a potential settlement with Dr. Melton. I recall Nikki Gardner stating she wanted to fire Dr. Melton and pay her nothing. Andrea White explained that there was no basis for terminating Dr. Melton's contract. Andrea White explained there was a substantial payout to Dr. Melton if she was terminated without cause. At that time Catherine Huddle looked at Ken Loveless, as if the rest of us were not in the room, and stated "we are going to be criticized when the public finds out about this." I also recall Catherine Huddle speaking in a very demeaning manner toward Jan Hammond when Mrs. Hammond was expressing her desire to retain Dr. Melton. I interpreted Catherine Huddle's comments as more of the bullying and harassment to Jan Hammond to intimidate her to go along with the stated objective of Ken Loveless, Nikki Gardner and Catherine Huddle to oust

Dr. Melton. I recall Catherine Huddle speaking in a similar manner to Rebecca Hines in Executive Session that night.

37. At the June 14, 2021 school board meeting, the School Board went into Executive Session. We were presented with a "Settlement Agreement" (the "Agreement") which I had never seen or heard about. The Agreement was the most unorthodox contract between the District and a Superintendent I had ever seen in my 18 years on the Board.

38. The Agreement included a secrecy pact for the signers which provided that "Dr. Melton and each member of the board agree that they will not make any negative or disparaging statement or remarks concerning each other to any third person entity or organization..." The breach of this provision provided for a $20,000 payment of liquidated damages individually by the Superintendent and the Board Members.

39. I asked why the Agreement was not being voted upon in public session. Attorney Andrea White stated that the Board did not have to vote on an agreement to modify the Superintendent's contract because "no court has ever ruled that a School Board could not execute an agreement to modify a superintendent's contract without a public vote" or words to that effect. Andrea White stated that the Board Members only needed to execute the document in Executive Session. I was struck by the fact Andrea White offered no legal analysis of the risks that the signing of the document in Executive Session could be interpreted as a secret vote, or the consequences if a court later determined that the signing of the document was a secret vote. In the 18 years I served on the Board, I do not recall the Board ever signing a document in Executive Session nor do I recall the Board Members signing a contract without a prior vote on the document in public session. I do not recall any attorney ever advising the Board that it was legal to sign a contract in Executive Session without a public vote. I refused to sign the Agreement.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003604

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003684

40. The Agreement had been negotiated prior to the June 14, 2021 meeting. I assumed the Agreement had been negotiated by Andrea White, working in consultation with the Board Officers, who all seemed familiar with its contents and pleased with the terms of the Agreement. The Agreement stated that Dr. Melton would resign as Superintendent, that no public announcement would be made, that she would go out on personal leave time immediately, that she would preside at the high school graduation ceremonies scheduled for the latter part of June, that she would receive from the District approximately $226,368 and on June 21, 2021, she would publicly announce she was resigning as the District Superintendent. The Agreement contained language obligating both the Trustees and Dr. Melton to make no disparaging remarks about the other, and as I understood it, obligating Dr. Melton to say only that she was resigning. She was not to say anything about the intense pressure created by the hostile working environment which had been created by the others on the Board of Trustees.

41. While explaining the Agreement to the Board, Andrea White stated, "The Agreement reads as if Dr. Melton had a change of life decision and decided to resign after the completion of the school year and was not forced-out, even though we all know that is what is happening," or words to that effect. Upon hearing those words, I made a decision I was not going to participate in this scheme to mislead the public about why the District was severing its relationship with Dr. Melton and paying $226,368 to do so.

42. S.C. Code Ann. §30-4-70(c) provides that "No action may be taken in executive session except to (a) adjourn or (b) return to public session. The members of a public body may not commit the public body to a course of action by a polling of members in executive session." The Board Officers by presenting a proposed contract and requiring members to sign the agreement in Executive Session to get everyone's agreement, clearly were deceiving the public

about the Superintendent's departure and committing the District to a course of action and large financial obligation without a public vote. The six Board Members' signatures on the contract evinced that they were polled and agreed to the plan to force Dr. Melton out of office and hide the fact she was forced out of office. While the Board Chair subsequently tried to assert that there was no vote, the language of the agreement concludes, "IN WITNESS WHEREOF, and **intending to be legally bound hereby** the parties have executed the foregoing Settlement Agreement and Mutual Release as of June 14, 2021, the effective date" [Emphasis added]. The legal effect of the signing of the Agreement in the Executive Session is that the Agreement was immediately binding as of the date it was signed – with no public notice and no public vote.

43. This District later argued that because Dr. Melton had a legal window to revoke acceptance that the Board did not enter an agreement. The fallacy of this argument is that the Board bound the School District by signing the Agreement – it had no out.

44. Before we left the Executive Session, I witnessed all of the other six Board Members execute the Agreement. The simultaneous execution of the Agreement in Executive Session by the six other Board Members constituted their votes of approval for the Agreement.

45. I recall Catherine Huddle asking, "what about Ed not signing the Agreement?" Andrea White responded by saying "Don't worry about Ed not signing the Agreement." Catherine Huddle then looked at me and smiled as she said "Remember, we are in Executive Session and you cannot repeat anything we say or do in here" or words to that effect.

46. I realized that I just witnessed the completion of the Board officers and Catherine Huddle working together with legal counsel to create an environment that forced Dr. Melton to leave the district in a dishonest way. My interpretation of those events is that those Board Members wanted to install a more compliant Superintendent who might abrogate his/her responsibilities and

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003684

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003684

allow these Board Members to run the School District rather than the Superintendent. Chair Hammond, Vice Chair Loveless, Secretary Gardner and Board Member Catherine Huddle acted together to construct a narrative to conceal their nefarious conduct and crafted an agreement that they approved by a "signing vote" in Executive Session with a contractual covenant of secrecy on the signers.

47. Their plan is illustrated by the fact that they published the meeting item in the agenda with a false narrative. They listed it as "legal advice regarding a contractual matter." The board wasn't getting legal advice. The Executive Session item was to approve and execute a binding contract paying the Superintendent almost a quarter million dollars because they wanted her gone – and then covering their tracks with secrecy and misrepresentation. The Executive Session was to further their plan by trying to wipe their fingerprints off of the action. When I objected and brought their activities out in public, they later voted to censure me in retaliation.

48. The fact that this action was already planned is reflected by the special-called Board meeting the very next week on June 22, 2021 to name the Interim Superintendent. There was not a public Board meeting held between June 14 and June 22 nor a publicized Board officers meeting that would let the public know the Board was discussing the selection of an Interim Superintendent.

49. Further proof that Dr. Melton did not want to leave her position is the fact that upon her resignation, she had to surrender her title as Superintendent of the Year she had been awarded a few weeks earlier, return all prize money and other recognition items and tributes.

50. I was so disgusted by what the Board had done, I not only refused to sign the document, I also publicly resigned and immediately left the meeting. Before I left, I made the comment that I did not agree with the way the Board handled Dr. Melton's contract. The next day,

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003604

having received requests from several people and the press, I issued a statement which read as follows:

> Last night I resigned from the School Board of District 5 for Lexington and Richland Counties. I felt it was the only action that I could take to express the serious nature of my objection to the way our Board has decided to conduct the public's business. My fellow Board members signed a secret Settlement Agreement with Dr. Melton to terminate the Superintendent's contract without a public vote. They wanted to present the false facade that she had resigned and keep it from the public until after the school year adjourned, ostensibly to avoid the criticism they would receive for their actions. I refused to sign the Agreement.
>
> The truth is that Mr. Loveless, Mrs. Gardner, and Mrs. Huddle forced Dr. Melton to resign. I witnessed the hostile and abusive work environment these three created for her that would make it impossible for any Superintendent to succeed. Then, they demanded that Dr. Melton, the Superintendent of the Year, resign. There was no basis for terminating her employment. I felt that this was wrong, unfair, and not in the best interests of our District, community, teachers, and students.
>
> This action should have been voted on in public rather than misleading the public about her departure. Ending the employment of the one person the Board has the authority to hire and fire should take place with a public vote that lets the public know what is happening. When we hire a Superintendent, we do it in public, but these Board members wanted to get rid of the State Superintendent of the Year in secret.
>
> Transparency means conducting the public's business in public – all the time – not when it suits. It means not trying to cover up actions to create a narrative or advance a private agenda. As elected officials, we owe that obligation. I have worked for years on this Board for the public. Unfortunately, I do not believe I can solve this problem serving on this Board and don't want to preside over the damage to School District 5 that this Board is creating."

51. I am aware that after my departure Jan Hammond publicly stated that my statement to the public contained false information about the other Board Members. There is no false information in my issued statement. Jan Hammond's statement is a misrepresentation that is misleading. My statements are true and correct in all material respects and there were nine (9) people in the meeting room the night when Ken Loveless, Nikki Gardner and Catherine Huddle demanded that Dr. Melton resign. These people included the seven Board Members, Dr. Melton,

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003604

and Andrea White all of whom are witnesses to what occurred and what was said. I am aware that on June 28, 2021 Jan Hammond, Ken Loveless, Nikki Gardner and Catherine Huddle voted to approve a resolution censuring me for making the statement and part of the resolution states that I made false statements about the Board Members. This resolution by the Board and the statement that I made a false statement is an official statement of the Board that is misleading and misrepresents the facts as they occurred. Board Chair Jan Hammond made the motion to adopt this resolution. Trustees Matt Hogan and Rebecca Hines voted against the resolution. I am told that in the discussion portion of the motion in a recorded public meeting, Rebecca Hines asked Jan Hammond which part of my statements were not true and Jan Hammond would not answer that question. This resolution of the Board and the public statement that Jan Hammond made about me in her official capacity as the Board Chair are another step by Jan Hammond, Ken Loveless, Nikki Gardner and Catherine Huddle to use their positions as Board Members to mislead the public about what they had done to oust Dr. Melton.

52. Further public statements made by the Board Chair, Jan Hammond, following June 14, 2021 were dishonest and also misleading to the public. Those statements included the claim by Ms. Hammond that Dr. Melton had not been forced out but had resigned on her own volition. Another statement was that Dr. Melton talked about leaving for a month and that she had enough votes to remain the Superintendent had she wished to stay, or words to that effect. Jan Hammond's statement omits the fact the District would not have been required to pay Dr. Melton $226,368 if she simply wanted to leave on her own volition. Jan Hammond's statements also omit the fact that Dr. Melton only started negotiating the terms of her departure after the April 26, 2021 Board meeting where she was accosted by Catherine Huddle, Nikki Gardner and Ken Loveless with demands that Dr. Melton resign. Their demands for her resignation reflected a pattern of

mistreatment, blame and criticism that appears to have been coordinated between them with the support of Ms. Hammond. Those statements by Ms. Hammond further shows her support in assisting them in trying to keep these abusive actions hidden from the public.

53. Rather than dealing with the truth when it was disclosed to the public about the hostility directed at Dr. Melton, Chair Jan Hammond chose to attempt to hide this action from the public by misleading the public as to what actually happened to Dr. Melton.

54. I am not aware of any prior comments from Dr. Melton or any other Board Member, including Jan Hammond, that Dr. Melton wanted, or intended, to leave her position at the District for any reason other than the fact that Catherine Huddle, Nick Gardner and Ken Loveless demanded she resign. I spoke to Dr. Melton approximately a week before the meeting where the other Board Members signed the Settlement Agreement and asked Dr. Melton where she was with everything that was going on. Dr. Melton stated she wanted to get out of this situation on some reasonable basis with her reputation intact. She said that even if she tried to stay in her job with the hostile actions by Ken Loveless, Nikki Gardner and Catherine Huddle that these three were so insistent on intruding into the operations of the District that she was concerned that they were going to mess things up and blame it on her and, in doing so, damage her reputation. She also said that if the Board composition were to change that she would be willing to come back as Superintendent someday.

(signature is on the following page)

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003604

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Edward K. White

Edward K. White

In witness thereof on this 11th

day of February, 2022.

Jane M. Heinzelman

Notary Public for South Carolina

My Commission Expires: 6/9/2025

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4003604

EXHIBIT C

(Facebook subpoena)

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M Watson III
Haley Hubbard

226 State Street West Columbia, SC 29169
ph 803.796.9299 | **fx** 803.796.1066 | **desaballard.com**

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

September 7, 2022

Via Electronic Mail Only
Andrew Radeker, Esquire (drew@harrisonfirm.com)
Harrison, Radeker & Smith, P.A.
Post Office Box 50143
Colubmia, South Carolina 29250

Re: *Kenneth B. Loveless v. Kevin Scully*
Case No.: 2022-CP-40-01307

Dear Drew:

Pursuant to Rule 45, SCRCP, I am providing you with a copy of the subpoena our office will be sending tomorrow to San Mateo County Clerk of Court for domestication in the above-referenced matter. Please feel free to contact our office with any questions or concerns.

With warm personal regards, I am,

Sincerely yours,

Haley A. Hubbard

Haley Hubbard
haley@desaballard.com

Enclosures

cc: *Via Electronic Mail*
Sarah Larabee, Esquire
Taylor Smith IV, Esquire
Jay Bender, Esquire
Christopher Kenney, Esquire
Tucker Player, Esquire
Ken Loveless

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA

ISSUED BY THE Common Pleas COURT IN THE COUNTY OF Richland

Kenneth B. Loveless , Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Kevin Scully, Defendant

Case Number: 2022-CP-40-01307

Pending in Richland County

TO: Meta Platforms, Inc, 1601 Willow Road, Menlo Park, CA 94025

☐ YOU ARE COMMANDED to appear in the above named court at the place, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME _____, _____

☐ YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION	DATE AND TIME _____, _____

☒ YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date and time specified below (list documents of objects:
All account activity, including posts, for the period of August 1, 2021 - April 30, 2022 for the following Facebook accounts/profiles: (list of accounts/profiles attached as separate page)

PLACE Ballard & Watson 226 State Street, West Columbia, SC 29169	DATE AND TIME September 30, 2022 , 5:00 p.m.

☐ YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME _____, _____

ANY SUBPOENAED ORGANIZATION NOT A PARTY TO THIS IS HEREBY DIRECTED TO RULE 30(b)(6), SOUTH CAROLINA RULES OF CIVIL PROCEDURE, TO FILE A DESIGNATION WITH THE COURT SPECIFYING ONE OR MORE OFFICERS, DIRECTORS, OR MANAGING AGENTS, OR OTHER PERSONS WHO CONSENT TO TESTIFY ON ITS BEHALF, SHALL SET FORTH, FOR EACH PERSON DESIGNATED, THE MATTERS ON WHICH HE WILL TESTIFY OR PRODUCE DOCUMENTS OR THINGS. THE PERSON SO DESIGNATED TESTIFY AS TO MATTERS KNOWN OR REASONABLY AVAILABLE TO THE ORGANIZATION

I CERTIFY THAT THE SUBPOENA IS ISSUED IN COMPLIANCE WITH RULE 45(c)(1), AND THAT NOTICE AS REQUIRED BY RULE 45(b)(1) HAS BEEN GIVEN TO ALL PARTIES.

Haley Hubbard

Attorney/Issuing Officer's Signature | Date | Print Name
Indicate if Attorney for Plaintiff or Defendant
Attorney's Address and Telephone Number :

Clerk of Court/Issuing Officer's Signature | Date | Print Name
Pro Se Litigant's Name, Address and Telephone Number :

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

PROOF OF SERVICE

SERVED	DATE	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL
	PLACE	☐YES ☐NO AMOUNT $
SERVED ON		MANNER OF SERVICE
SERVED BY		TITLE

DECLARATION OF SERVER

I certify that the foregoing information contained in the Proof of Service is true and correct.

Executed on_____

_____
SIGNATURE OF SERVER

_____
ADDRESS OF SERVER

Rule 45, South Carolina Rules of Civil Procedures, Parts (c) and (d):

(c) Protection of Persons Subject to Subpoenas.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2)(A) A person commanded to produce and permit inspection and copying of designated electronically stored information, books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial. A party or an attorney responsible for the issuance and service of a subpoena for production of books, papers and documents without a deposition shall provide to another party copies of documents so produced upon written request. The party requesting copies shall pay the reasonable costs of reproduction.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises—or to producing electronically stored information in the form or forms requested. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time in the court that issued the subpoena for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

(i) fails to allow reasonable time for compliance; or

(ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or

(iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or

(iv) subjects a person to undue burden.

(B) If a subpoena:

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(See Rule 45, South Carolina Rules of Civil Procedure, Parts (c) & (d) on pages 2 and 3)

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(d) Duties in Responding to Subpoena.

(1)(A)A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(B) If a subpoena does not specify the form or forms for producing electronically stored information, a person responding to a subpoena must produce the information in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) A person responding to a subpoena need not produce the same electronically stored information in more than one form.

(D) A person responding to a subpoena need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or to quash, the person from whom discovery is sought must show that the information sought is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery.

(2)(A) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(B) If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The person who produced the information must preserve the information until the claim is resolved.

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Name	Account URL
Kevin Scully	https://www.facebook.com/kevin.scully.184
Leslie Anne	https://www.facebook.com/leslie.stiles.16
Deep Dive Into D5	https://www.facebook.com/groups/338642437220779
Learn About Lex/Rich D5	https://www.facebook.com/groups/LearnAboutYourD5SchoolBoard
Tucker Player	https://www.facebook.com/tucker.player
Kristin Bayles Batchelor	https://www.facebook.com/KBatch27
Kim Imbracsio Benson	https://www.facebook.com/kim.i.benson
Beth Hutchinson	https://www.facebook.com/bethw1957
Bea Dennis-White	https://www.facebook.com/profile.php?id=100009985530428
Arlene Kohler	https://www.facebook.com/arlene.kohler2
Jennifer A. York	https://www.facebook.com/jennifer.york2
Chrystal Buckley Barley	https://www.facebook.com/chrystal.barley
Pippa Curl	https://www.facebook.com/pippacurl
Laurene Cox Mensch	https://www.facebook.com/laurene.mensch
Lueen Cook Homewood	https://www.facebook.com/lueen.homewood
Michelle Carpenter	https://www.facebook.com/michelle.carpenter1999/friends
Beth Ricard Gossett	https://www.facebook.com/beth.gossett
William Salter	https://www.facebook.com/william.salter.31
Paige Turner	https://www.facebook.com/profile.php?id=100081016797866
Sheena Wilson	https://www.facebook.com/sheena.stillwilson
April Alsup	https://www.facebook.com/aprilalsup
Josh Gray	https://www.facebook.com/profile.php?id=100007091346013
Adam Benson	https://www.facebook.com/DreamOperator12/friends
Bristow Marchant	https://www.facebook.com/bristow.marchant
Danielle Gray	https://www.facebook.com/danielle.w.stmarie
Joann Witakowski Claspill	https://www.facebook.com/joann.w.wood
Krisdee Clark	https://www.facebook.com/krisdee.foster
Phillipe le Floppe	https://www.facebook.com/profile.php?id=100081146354660
Erin Strange	https://www.facebook.com/groups/338642437220779/user/525343184
Brent Chitwood	https://www.facebook.com/brent.chitwood.58
Ida Rider	https://www.facebook.com/profile.php?id=100083856513850
Ellen Baumgardner	https://www.facebook.com/profile.php?id=100004948576045
Mary Rose Satterfield	https://www.facebook.com/maryrosesatterfield
D5 Citizens for Open Government	https://www.facebook.com/D5Citizens
One D5	https://www.facebook.com/OneD5-106019997878185

Restoring Excellence in D5 (formerly The D5 Dumpster Dive)	https://www.facebook.com/groups/2523234697807730
Primary Stakeholders of LexRich5	https://www.facebook.com/groups/1085456085282369
Explore Lexington Richland District 5 BOT	https://www.facebook.com/groups/2523234697807730

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

EXHIBIT D

(SC Ethics Commission File)

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STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

RECEIVED
2021 FEB 17 AM 11:43
SC ETHICS COMMISSION

COMPLAINT FORM

FOR COMMISSION USE ONLY:
CASE NUMBER
C-2021-016

COMPLAINANT: Kim Benson
ADDRESS:
TELEPHONE NUMBER: [redacted]
TITLE: Parent & Tax Payer

RESPONDENT: Kemeth Loveless
ADDRESS:
TELEPHONE NUMBER: [redacted]
TITLE: School Board Trustee

Set forth in detail specific facts upon which you based your complaint against above-named respondent (only detailed, clear factual allegations will be considered. If additional space is needed, attach supplemental sheets).

Address: [redacted]

Address: [redacted]

* Please see attached document which contains various links to additional documents & media.

All investigations, inquiries, hearings, and accompanying documents must remain confidential unless respondent waives the right to confidentiality. If there is a finding of probable cause, the following documents become public record: the complaint, the response (if any) by respondent, and the notice of hearing. If a hearing is to be held, the final order and all exhibits become public record. If no hearing is held following a finding of probable cause, the final disposition of the matter becomes public record. The willful release of confidential information is a misdemeanor, and any person releasing such confidential information, upon conviction, must be fined not more than one thousand dollars ($1,000) or imprisoned not more than one year. Section 8-13-320(10)(g).

STATE OF SOUTH CAROLINA
COUNTY OF Richland

Personally appeared before me Kim Benson who, first being duly sworn, says that he/she has read and knows the contents of the above complaint and that the allegations contained therein, are true and correct to the best of his/her own knowledge, except for those matters therein based upon information and belief, and as to those he/she believes them to be true.

Kim M Benson
Complainant Signature

Sworn to and subscribed before me this
17th day of February 2021

Notary Public for South Carolina
My Commission expires 8-11-2025

SEC-7 (Revised 8/2019)

REPLY TO: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210 (803)253-4192
FAXED COPIES WILL NOT BE ACCEPTED

SCANNED
MLW RC 2-17-21 BP
LOGGED

C102form

SCEC_Subpoena_000001

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Respondent: Kenneth Loveless
Date Submitted: February 17, 2021

I am submitting this complaint against Kenneth Loveless, Lexington Richland School District 5 Board Trustee. Mr. Loveless received an informal opinion from the South Carolina Ethics Commission, dated September 25, 2020. This opinion was based on a hypothetical scenario that Mr. Loveless presented regarding the ethics of his business, Loveless Commercial Contracting, taking a contract with a District 5 vendor in a different school district – such as Richland District 2. It is important to note that Mr. Loveless requested this opinion while fully engaged in a $1,000,000+ contract with Contract Construction as a subcontractor. Contract Construction was hired by the Lexington Richland School District 5 Board of Trustees in December 2018, while Ken Loveless was a School Board Trustee, to be the general contractor for the construction of District 5's new elementary school, now known as Piney Woods Elementary School. It is interesting that he did not ask the SCEC directly about that contract at that time. The timeline that follows is also remarkably interesting, because Mr. Loveless' creates a steady stream of criticism of Contract Construction's work on the Piney Woods project. He goes to great lengths to discredit their work, he demands unnecessary inspections, and causes delays. The District has spent valuable time and resources in hiring consultants and running tests that have all confirmed that Mr. Loveless' claims are without merit.

The question is, why would he manufacture lies and work so hard to discredit Contract Construction whilst working with them as a subcontractor on another project? To gain an upper hand on the PWES site, to manipulate Contract Construction into giving future contracts for Loveless Commercial Construction? To distract his fellow trustees from discovering his economic relationship with Contract Construction. In one of the videos included in this report you will hear that even the owner of Contract Construction seems quite confused by Mr. Loveless' allegations. Regardless of the reason for his chaotic behavior, Mr. Loveless' financial relationship with Contract Construction is a conflict of interest, as defined by the South Carolina Ethics Commission. And his obstructionist, hostile behavior, and dubious power-grabs are of great concern to those who care about the future of Lexington Richland School District 5.

Timeline and Attachments:

- November 2018 – Ken Loveless wins a seat on the District 5 Board of Trustees.
- December 2018 – Contract Construction is awarded the contract for Elementary School #13 (soon to be named Piney Woods Elementary School).
- February 11, 2020 – Loveless Commercial Construction signs on as a subcontractor with Contract Construction for State Project #D50-9976CB (SLED Forensic Services Laboratory). Mr. Loveless signed the document (Doc A). At this time, Mr. Loveless does NOT notify the District 5 Board of Trustees of this contract, nor does he recuse himself of any of the District's dealings with Contract Construction. If anything, this evidence will prave that he ramps up his critique of Contract Construction. As of this date, Ken Loveless is in violation of Section 8-13-700 (A) and (B)

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

- February 13, 2020 – Mr. Loveless sends an email (Doc B) to then Board Chairperson, Robert Gantt, copying all other board members. In this email he begins what becomes a year-long drama of claims against the contractor, the district's staff and consultants, and fellow board trustees, all while his company, Loveless Commercial Construction, quietly accepts a contract with Contract Construction. His omission of this fact, while raising cane about Contract Construction, is dubious and dishonest.

- March 24, 2020 – Ken Loveless sends an email to Dr. Melton, District 5 Superintendent, with 30 plus attachments, directing her to get answers to his questions about the quality of work being done at Piney Woods Elementary School. (Doc C))

- April 20, 2020 – Mr. Loveless is defensive and often out of order during a report on the PWES project by Contract Construction. The contractors', consultants', and testing reports in response to issues raised in Mr. Loveless' email to Dr. Melton are also presented in this meeting. (Doc D)
  Video June 15

- June 18, 2020 – Trustees Ken Loveless, Jan Hammond, and Chairperson Michael Cates visit the PWES site, as requested during the June 15 meeting. It is rumored that Mr. Loveless spent some time talking with Greg Hughes, the owner of Contract Construction, during the visit, saying things like "we need to work together" and indicated that he "could make more trouble for Contract Construction". This may have been said in humor, but it was not necessarily received as such.

- July 10-13, 2020 – Emails move between board trustees regarding Mr. Loveless' claims against Contract Construction. It is in this email thread that then Chairperson Michael Cates tells Mr. Loveless that he is not to visit the PWES site. (Doc E)

- July 16, 2020 – Ken Loveless reports in an email to fellow board trustees that he received a package of concrete delivery tickets that arrived anonymously in the mail. (see September 14, 2020) (Doc F) Note that this document is entered into the board records on September 14, when the board receives a letter from subcontractor, Knight Construction.

- August 2, 2020 – Greg Hughes, the owner of Contract Construction, and Dan Neal , the District's construction project consultant, respond to Mr. Loveless' claims. This letter is directed to superintendent, Dr. Melton. You can clearly hear their tone of frustration in their very thorough responses. (Doc G)

- September 14, 2020 – This video of the September 14 board meeting shows a great example of the devious questioning that Mr. Loveless uses to undermine Greg Hughes, the general contractor, during his report on the Piney Woods Elementary School project. He creates an air of distrust and hostility in board meetings and is known to be quite aggressive in other meetings that are not shared with the public.
  Video September 14

- September 14, 2020 - Knight Construction reports in a letter to Greg Hughes, the owner of Contract Construction, that Ken Loveless requested, on or around April 17,

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2020, copies of concrete delivery tickets be mailed to his attention. This contradicts Mr. Loveless' claim that the concrete delivery tickets were sent to him anonymously. (Doc H)

- September 18, 2020 – The State Newspaper published a story titled, "Feud over new Midlands school leads to ethics accusatians against school board member". (Doc I)

- September 21, 2020 – Mr. Laveless emails the SCEC to seek opinion.

- September 25, 2020 – The SCEC responded to Mr. Laveless' inquiry and refers to law Section 8-13-700 B4) directing that in such a situation, the public official must recuse himself from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and reason for it to be noted in the minutes. This opinion also states that the public officer must submit a written statement describing the matter requiring this action and the nature of his potential conflict. In conclusion, the SCEC directs that "whenever you are faced with a scenario in which the general contractor has an economic interest, you must recuse yourself from that matter." Ken Loveless does NOT share this response from the SC Ethics Commission with his fellow board trustees.

- September 28, 2020 – Ken Loveless' meddling and condemnations lead to the resignation of Dan Neal, District 5's experienced and well-respected construction manager for the Piney Woods Elementary School project. (Doc J) Video September 28

- September 28, 2020 – After Mr. Neal's resignation, during the Discussion Agenda, Ken Loveless submits to the board a copy of the contract (dated February 11, 2020 (Doc A)) between Loveless Commercial Construction and Contract Construction for the SLED project. He also submits the opinion he received from the SC Ethics Commission.

- October 12, 2020 – After having some time to look back at events from the previous months, then Board Secretary Beth Hutchinson submits a copy of the SCEC's opinion with her own notes. (Doc K)

- November 16, 2020 – Ken Loveless accepts the office of Vice Chair of the Lexington Richland School District 5 Board of Trustees. Newly elected board trustees are sworn in. The new members are Cathy Huddle, Matt Hogan, and Rebecca Blackburn-Hines. FYI: Ken Loveless made a $1000 campaign donation to each of these candidates. His wife, Jondy Loveless (also a former D5 Board Trustee) made $500 campaign contributions to Hogan and Hines.

- January 25, 2021 – Though he has sought and reported the SC Ethic's Commission's opinion that he should recuse himself of matters involving Contract Construction,

during this board meeting, Mr. Loveless asks Clay Cannon, Director of Facilities Operations, to submit copies of all construction contacts to the board for *his* review. Video January 25 (23:00 mark)

- January 28, 2021 – Ken Loveless fails to comply with SCEC's opinion and prior board instructions from then chair Mr. Cates, as he participates in a site visit at Piney Woods Elementary School. (Doc L)

- February 8, 2021 – At the12:00 mark in the video segment of the superintendent's report is an example of how Ken Loveless tends to insert nan sequitur construction related questions and statements into other discussions. Board members and public observers have wondered if he does this to disrupt the meeting. Video February 8a

- February 8, 2021 - Ken. Loveless finally submits the written statement (Doc M) prescribed in the law quoted in the September 28 opinion by SCEC. After his statement is ready by board chairpersan, Jan Hammond, Mr. Loveless makes a long statement of rebuttal that sets out all the reasons why he still feels that he should NOT have to recuse himself. His rebuttal then evolves into accusatians of conflict of interest by another board trustee, Ed White. Mr. White has been critical of Mr. Loveless' disruptions and refusal to recuse himself of issues regarding Piney Wood's construction. Board secretary, Nikki Gardner, then makes a motion to investigate questions of Mr. White's campaign contributions. Video February 8b

- February 9, 2021 – The State Newspaper published a story titled, "SC school board member steps away from construction project after ethics dispute". The last paragraphs show how Mr. Loveless really feels about recusing himself from construction-related board business. (Doc N)

- Social Media: Mr. Loveless participates on a Facebook page, "Learn About Your D5 School District," that is widely known to be critical of teachers, students, and parents who express differing opinions. The group has "taken up" for Mr. Loveless and, in turn, its administrotors and members often condemn other board members along with the district superintendent, staff, and teachers. Mr. Loveless should not be sowing seeds of political strife via social media. Lately members of this group have been shaming District 5 teachers for questioning reentry plans and COVID-related teacher/staff safety. Mr. Loveless' participation in and support of this forum is equal to him being complicit in the derogatory statements and false claims made by members of the group. (Doc O)

In closing, I submit this complaint against Mr. Kenneth Loveless with great concern about a policy issue that he is currently trying to push through without the usual process. He is incredibly determined to put three board committees in place, despite the South Carolina School Board's advisement against committees and resistance, based on past experience, from some trustees. The chief complaint about board committees is that they can become political and undermine the superintendent. Alas, he has proposed the creation of a Construction Committee, that he intends to chair. Given his history of

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lying to his fellow trustees, stepping out of line regarding board protocol, making unreasonable demands of the superintendent, and benefiting personally from a District 5 financial contract, I do not think he should be given any control over a construction committee or any construction-related dealings of the District 5 Board of Trustees. I believe that he should NOT be allowed any vehicle with which he can continue to create political strife and administrative obstruction. With this, I ask the South Carolina Ethics Commission to please act on this complaint promptly.

ATTACHMENTS:

- Documents (Docs A – O) are attached.
- Videos are on the enclosed jump drive. The password is the same as the folder name: LovelessD5

P.S. While researching facts for this complaint, I discovered (on the SCEC website)that Loveless Commercial Construction was awarded a contract for over $3 million by Irmo Chapin Recreation Commission that spanned 2018-2019. Ken Loveless' brother, Bruce Loveless, was a Commissioner on ICRC's Board of Commissioners at that time and still is. This is not on ethics violation related to District 5, but it may point to a disturbing trend.

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#3,894 Doc A

Attachment included with the minutes of the 9/24/2020 meeting at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board may not approve, disapprove, or otherwise act upon the contents of this attachment.

AIA Document A401™ – 2017

Standard Form of Agreement Between Contractor and Subcontractor

AGREEMENT made as of the Eleventh day of February in the year Two Thousand Twenty
(In words, indicate day, month and year.)

Date Subcontract which is after last Vote

BETWEEN the Contractor:
(Name, legal status, address and other information)

Contract Construction, Inc.
1125 Bickley Road
Irmo, South Carolina 29063

and the Subcontractor:
(Name, legal status, address and other information)

Loveless Commercial Contracting, Inc.
1821 State Street
Cayce, South Carolina 29033

The Contractor has made a contract for construction (hereinafter, the Prime Contract) dated: February 6, 2020

with the Owner:
(Name, legal status, address and other information)

South Carolina Law Enforcement Division
Department of Administration
921 Main Street
Columbia, South Carolina 29201

for the following Project:
(Name, location and detailed description)

SLED Forensic Services Laboratory – State Project No. D50-9976-CB)
4700 Broad River Road
Columbia, South Carolina 29210

The Prime Contract provides for the furnishing of labor, materials, equipment and services in connection with the construction of the Project. A copy of the Prime Contract, consisting of the Agreement Between Owner and Contractor (from which compensation amounts may be deleted) and the other Contract Documents enumerated therein, has been made available to the Subcontractor.

The Architect for the Project:
(Name, legal status, address and other information)

LS3P Associates Ltd.
701-A Lady Street
Columbia, South Carolina 29201

The Contractor and the Subcontractor agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference.

Date Subcontract received back signed from Contractor Cont.

RECEIVED
MAR 12 2020
LOVELESS
Commercial Contracting, Inc

Init.

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User Notes:

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§ 14.7 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form. The parties will use AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, to establish the protocols for the development, use, transmission, and exchange of digital data.

§ 14.7.1 Any use of, or reliance on, all or a portion of a building information model without agreement to protocols governing the use of, and reliance on, the information contained in the model and without having those protocols set forth in AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, and the requisite AIA Document G202™–2013, Project Building Information Modeling Protocol Form, shall be at the using or relying party's sole risk and without liability to the other party and its contractors or consultants, the authors of, or contributors to, the building information model, and each of their agents and employees.

ARTICLE 15 ENUMERATION OF SUBCONTRACT DOCUMENTS

§ 15.1 This Agreement is comprised of the following documents:

.1 AIA Document A401™–2017, Standard Form Agreement Between Contractor and Subcontractor;

.2 Prime Agreement between the Owner and Contractor, including all exhibits thereto

.3 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if not included in the Prime Agreement, dated as indicated below:

.4 Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement.)

Exhibit A – List of Specifications
Exhibit B – List of Drawings
Exhibit C – List of Addenda
Exhibit D – Sample Certificate of Insurance
Exhibit E – Consent of Surety Company to Partial Payment
Exhibit F – Sample Bond Forms
Exhibit G – W9 Form
Exhibit H – Payment Application
Exhibit I - Parking Permit Form

.5 Other documents:
(List other documents, if any, forming part of the Agreement.)

This Agreement entered into as of the day and year first written above.

CONTRACTOR *(Signature)*	SUBCONTRACTOR *(Signature)*
Greg Hughes (President) Kyle Farley (Vice President) *(Printed name and title)*	KENNETH B. LOVELESS, PRESIDENT *(Printed name and title)*

Attachment #3, pg 5 to be included with the minutes of the 9/28/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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Doc B

Ed White

From: Edward White <ewhite@lexrich5.org>
Sent: Monday, June 15, 2020 12:46 PM
To: Ed White
Subject: Fwd: Concrete Inspection ans Testing Related matter December 6, 2019

This Issue Dec '19 → Feb 20 → June 20 → Sept 20 this claim Feb 2

[redacted] - From: ewhite@lexrich5.org

Attachment #1 2/13/2020 is included with the minutes of the [redacted] meeting, at the request of Board-member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

---------- Forwarded message ---------
From: **Kenneth Loveless** <[redacted]>
Date: Thu, Feb 13, 2020 at 5:08 PM
Subject: Concrete Inspection ans Testing Related matter December 6, 2019
To: Robert Gantt <RGantt@lexrich5.org>, Beth Hutchison <bhutchison@lexrich5.org>, Michael Cates <[redacted]>, Jan Hammond <[redacted]>, Nikki Gardner <[redacted]>, Board Member Ed White <EWhite@lexrich5.org>, Dr. Christina Melton <[redacted]>

Feb 13, 2020

Mr, Gantt,

When Dr.Melton, Dan Neal and I met on December 9,2019, she asked that I call Mr.Neal directly about observations and questions. Dr. Melton requested Mr.Neal to give me his business card with contact information, which he did. Last year we were instructed to contact administrative staff members directly to ask questions and make observations in their respective areas of expertise.I have been doing that. In the email dated February 12, 2020 from you, I am now being required to submit questions directly to you and Dr. Melton.

I spoke to Mr.Neal yesterday. He stated to me that he could not give me answers to my requests.I called Mr.Neal to find the times and dates he could possibly to meet on site to review documents and review the work related to the matter. Mr.Neal said to me that he was under orders from you, the board chair and the superintendent not to meet with me or to provide documents without a directive from the two of you.I believe that neither of you has the power to do as Mr.Neal says.

First, I was elected by the public, am peer to you. Further, I am not an employee and as such, do not take orders from Dr. Melton.

Second, the requests for documents are targeted to specific items and timeframes and are not overly burdensome. They are not attorney work product and are not the product of any executive session since the causative event was brought to the entire board's attention during the public participation session of the December 9,2019 board meeting. The documents requested are all items which are required in the Project Manual or contract documents.If the documents have been submitted and maintained as the Project Manual and contract documents require, all can be sent to me with as little as two hours clerical effort.

Additionally, since we are paying one half million dollars for testing, I do not believe we would would be putting any imposition upon the consultants to answer the legitimate concerns of the public.

In as far as Mr. Neal is concerned,for December 9,2019, I was attempting to arrange a meeting with Mr.Neal to ask questions prior to the board meeting that night.I wanted to meet with Dan Neal without the architect and construction manager present because I had concerns which an owner might want to keep confidential. In a December 5,2019 email to me from you, Robert Gantt it was stated:" As you know, Mr. Neal is a Mechanical Engineer and a Professional Engineer.He is the District 5 representative looking out for our interest He is not however an architect nor the Prime Contractor for D5 on the new elementary school. He may not have the have all the detail for design and construction you may be seeking."

In your February 12,2020 email you state " Our consultant Mr. Dan Neal is a professional engineer with advanced degrees and a career with vast experiences that benefit the district in the pursuit of excellence in this construction". It appears to me that you want it both ways. I don't fathom the reversal in your opinion of him.

I, too,have experience and degrees.The longer it takes to gain the answers to my questions and obtain the documents requested, the more costs and the long term safety could be jeopardised.

And, here's the kicker, Mr. Gantt, I was elected to bring oversight so that we will not have projects such as the Chapin High School Renovations where the experts were aware that work was not per specification and it ended up costing the taxpayers millions to correct defects.

And, I am a bargain. It is not costing you anything for an extra set of eyes. My intent ,regardless of Ed White's ascertains, is to have an exceptionally well built project. I believe that all of us have the same goal. I come with my own insurance so there is no liability. I will not give directives.

Please provide me the documents that I have requested.

Respectfully submitted,

Kenneth B. Loveless

All Board Members have the same rights and responsibilities,

Mr. Loveless is not credentialed to sign off on this project.

This is incorrect. Mr. Loveless was not on the Board during the Settlement. Total deficiencies at Chapin High School less than #25,000, Settlement discussion to be on subsequent meeting.

See and listen to September 14, 2020 Board recording.

Attachment #1 of 2 is included with the minutes of the [illegible] meeting, at the request of Board Member [illegible] pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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Doc C

Questions Raised about Construction on Amicks Ferry Road

Kenneth B. Loveless

[redacted]

March 24, 2020

Attachment #1, pg. 1 is included with the minutes of the 1/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Dr. Christina Melton

Superintendent Lexington-Richland School District 5

1020 Dutch Fork Road

Irmo, SC 29063

Re: Elementary School # 13 Amicks Ferry Road

Dear Dr. Melton:

First, I am aware that district administration has had its hands full with the COVID-19 Pandemic. Yet, construction at the site continues and items within the body of this report have bearing upon contractor safety and quality of construction. As such, each should have relative equal gravity as compared to the present geopolitical occurrences. I believe that I had no choice but to report the situation.

As general notes, any item marked as CONFIDENTIAL is no longer so (and should never have been because this is public project) because the construction documents after approval of the GMP are for public knowledge. Likewise, passages to which I refer marked DRAFT were unchanged during contract negotiations and are also in the public domain.

All correspondence via district email concerning this matter is included. (See attachment #1) I initially requested that the Project Representative Dan Neal investigate by providing Daily Progress reports, photos, concrete delivery tickets for each batch (truckload), Field Density test reports, cut sheets and submittals for select fill and by class of concrete used on site. We also need to review all dates of mobilizations of each contractor or subcontractor, concrete tests reports, soils test reports and electrical conduit submittals from the period interval from the inception of the project until and including progress on December 9, 2019. The initial soils information given indicated an Erosion and Sedimentation Observation Report from Terracon dated 9/25/2019. So, the inception of the project had to have occurred before that date.

At the December 9, 2019 school board meeting, Mrs. Susan Baker made know her observations (see attachment # 2) and requested explanations for actions taken by the Contractor on the night of December 6, 2019. Mrs. Baker has never received an answer to her inquiry. Under school board policy BEDH (see attachment #3) a school board trustee may request an official oral answer to the information

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at the next board meeting. Since I was unaware that Mrs. Baker had not received an answer until today, I am hereby requesting such for the next board meeting.

At the January 27 board meeting, we received letters (see attachments #4, 5 and 6) from engineers and a letter from the project architect (see attachment #7) orchestrated by and presented through the district's Project Representative, Mr. Dan Neal. After reviewing the letters, I have the following to offer:

1) In general, the letters attempt to limit Mrs. Baker's request by filtering out potential causative effects other than concrete materials and testing. Mrs. Baker's inquiry did not exclude any other areas of concern which might have been and are: design, construction, materials utilized, inspections and safety. Mr. Neal choose to make concrete and material testing his focus since his witness, Mr. Greg Hughes, President of Contract Construction, Inc., later stated in the board meeting that electrical duct bank concrete materials did not need to be tested. I asked Mr. Neal in your office December 9, 2019, the afternoon before the meeting, about the matter. He told me that he was confident that the work had been done correctly since Contract Construction's project superintendent had personally supervised the work.

2) As in any construction related endeavor, it's Safety First. Many of our students in mock and real life interviews tout the fact that they have earned through study the OSHA 10 Hour Certification. Yet, we as adults, are allowing unsafe conditions on our district's work site. Think how disillusioned students will be when they become aware of this situation. Our highly regarded general contractor was supervising work performed under tractor lights. I reference you to 29 CFR OSHA 1926 Construction Industry Regulations Section 1926.56 Illumination. (See attachment #8) The Final Geotechnical Engineering Report Item 6.5 General Construction Considerations on page 20 warn bidders about Excavation Safety. OSHA Section 1926.32 deals with the Competent Person who was to have supervised excavations on site. Subpart P deals with excavations. On March 12, 2020 at 9:16 a.m. and again at March 13, 2020 at 3:25 p.m. contractor's employees were observed in open excavations over 5 feet depth without trench boxes, trench shoring, ladders or other equipment. The occurrence on March 12 was observed at the water main tie-in location in the right-of-way at the extreme northeastern corner of the property. After a period of almost continual rain for weeks, exceedingly wet soil conditions existed. Yet, a vertically walled excavation (one without sloped banks) was observed. To make matters worse, a track hoe with its surcharge loading was on the leading edge of the excavation directly above and adjacent to the employee. (See attachment #9). There is no evidence that the contractor has complied with either the OSHA illumination section or the trenching section. These minimum standards were brought into question with workers observed in open trenches at night. Please see also the thumb drive with video of a similar occurrence made from Amick's Ferry Road December 10, 2020. (see attachment #10) Contrary to statements made, the safety violations continued after the December 9, 2020 school board meeting.

3) Letters from RB Todd dated December 18, 2019 and Terracon dated January 8, 2020 (see attachments #4 and 5) were sent. The letters are in error by stating that concrete testing

#1, pg. 2

Attachment is included with the minutes of the 2/25/2020 meeting, at the request of Board member [redacted]

pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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is not a requirement of Project Specification Section 321313 Concrete Walks, Curb and Pavement. In response, the specifications reference SCDOT 2007 Standard Specifications for Highway Construction (see attachment #11) page 6 101.3.14 defines The SCDOT Construction Manual as the "criteria and procedures used by engineering personnel in the administration of construction contracts". The SCDOT Construction Manual as revised 01/11/2019 (see attachment # 12) includes the Quality Assurance and Testing Guide which is an amendment to Figures 106B and 106C of the SCDOT Construction Manual. The guide is also known as SC-50-T.
As a consequence, the SCDOT further defines material classifications not by their use such as conduit encasement but by rather strengths of materials. The Project Manual for Elementary School # 13 states under Specification Section 321313 Concrete Walks and Curbs page 321313-2 paragraph 2.5 A. 1. (see attachment #13) "Concrete Walks and Curbs and Gutters: Class 3000 per SCDOT Table 701.2.12.2."
Referring to SC-50-T (attachment # 14) the concrete is defined as structural Class 3000 and requires 1 each set of concrete cylinder tests per and up to 50 CY on small pours as well as Slump, Air Content, Temperature and Thickness Verification for each batch (truckload).

4) The letter from Sims Engineering dated December 19, 2019 addressed to Barb Haller and Clay Cannon states that testing of concrete at concrete encased conduits is not required. (see attachment #6) The Project Manual for Elementary School #13 Electrical Basic Materials and Methods states under Specification Section on page 260500-15 article 3-03 Raceways Underground Feeder Conduit, Communications Conduit, and Duct Banks: "3.) Where required concrete encasement shall be either 2000psi or 3000psi." (see attachment #15) But, on December 6, 2019 Specification Section 260500 was not part of the Project Manual because the Early Site Work contract which was the only contract at the time. Specification Section 260500 was not part of the Early Site Work Bid Set. The building GMP had not yet been approved nor with it other specification sections. Further, there is no evidence that a highly non-standard 2000 psi design mix had been submitted and approved by the Engineer of Record. In all likelihood, the more standard Class 3000 mix design was used. In any case, testing was required under SC-50-T. I have asked that the district obtain from the construction manager at risk all the delivery tickets from the concrete suppliers so that we can determine the mixes actually incorporated into the work. It was stated that no concrete tests were performed and no test data has been received to date.

5) Under Specification Section 260500 page 15 3.03 Raceways Underground Feeder Conduit, Communications Conduit and Duct Banks: It states "1) Use GRC and PVC schedule 40 for underground and duct bank installations." NFPA 70 National Electric Code 2017 page 70-88 states Section 230.50 (A) (1) Service Entry Cables (3) Schedule 80 PVC conduit.' (see attachment # 16) If installed in accordance with Specification Section 260500 of the Project Manual for Elementary School # 13, the installation may not meet code.(see attachment #17)

Attachment #1, pg. 3 is included with the minutes of the 16th August 2020 meeting, at the request of Board member Ed Cuttz
pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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6) Underground duct banks under NFPA 70 of that National Electric Code must be carefully installed by skilled workmen. Under section 230.6 (4) pages 70-84 and 85 it requires cables be "in conduit and installed with no less than 18"of earth beneath buildings and other structures". Section 230.32 on page 70-86 requires protection against damage. Section 230.53 on page 70-88 requires raceways to drain. Section 300.5 on pages 70-136 and 137 has requirements for wet locations, backfill and compaction and minimum concrete coverage over conduits and other requirements. Section 300.7 on page 70-139 has expansion and expansion deflection and deflection fittings requirements. Section 310.2 on page 70-145 has round cross sectional requirements. Section 310.15, on pages 70-146,147 and 148, shows spacing using PVC spacers and mounts between raceways as requirements. Article 352 Rigid Polyvinyl Chloride Conduit: Type PVC on pages 70-202 and 203 shows 352.3 Securing and Supporting requirements.

Clearly the intent of these requirements as shown in paragraph 110.12 page 70-44 which notes that acceptable industry practices are described in reference specification ANSI/NECA 1-2015. These references have at their cores describe the intent that all installations be carefully inspected prior to concrete placement. (see attachment #16)

7) Of 15 each Field Density Soils Reports from Terracon provided, none are noted as occurring at electrical duct bank locations. (see attachment #18) All nine performed at trench locations were at storm drain pipe locations. None of those reports indicates the existence of a required mud slab or support anchoring slabs for conduit or duct bank construction. None indicates testing of Class 1 or 2 "Select Fill" for pipe bedding as required in Specification Section 312333 Trenching, Backfilling, Compacting for Utility Systems Embedment Materials paragraph 2.6.1 and.2 on page 312333-5 for storm drain piping (see attachment #19) and NFPA 70 300.5 (F) on page 70-136 Backfill for Underground Conduit Installations. (see attachment #16) In fact, Specification Section 312333 2.6 A.4.(see attachment #20) indicates that all the trench backfill as noted in the Terracon reports is the least desirable material listed, Class IV. So, instead of select fill soils which are listed in the specifications, unsatisfactory were utilized.

8) Because the work was supervised as indicated by the general contractor in the January 27, 2020 board meeting and Mr. Neal on December 9, 2019 there are indications that the work was performed by forces not licensed to do this work. The electrical subcontractor probably had not been mobilized since to do so he would have been working without a subcontract. The work on the building contract had not yet been approved because the Guaranteed Maximum Price had not yet been submitted. Electrical specifications were not included under the Early Site Work Bid Set. To know for certain we need to know the date that the electrical subcontractor mobilized. I have requested that the district ask the construction manager at risk for this information. (see attachment #21)

9) 3 each Laboratory Services Reports, i.e., # 73191119.0023, # 73191119.0030 and # 73191119.0032 are soils classifications reports which are identified as unsatisfactory soils

#1, pg. 4

Attachment ____ is included with the minutes of the 1/27/2020 meeting, at the request of Board member [illegible]

pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

for use as listed in Section 312000 1.7 C. page 312000-5 of Project Manual for Elementary School #13. These soils were used on this project anyway. (see attachment #22)

One of the soils used shown on Laboratory Services Report # 73191119.0011 dated 10/14/2020 has a maximum dry density weight less than the 95 PCF as specified in Section 312000 1.7 B Soils Materials which should have also rendered it unsatisfactory for use. (see attachment #23)

It should be noted that I brought it to the attention of Mr. Neal and attorney Michael Montgomery during contract negotiations with the construction manager at risk that unclassified excavation should have been included in the Contract for Construction. At the time, we were told that it would have been cost prohibitive to include unclassified excavation in the requirements. But, we have already agreed to pay up to an additional $175,000.00 for the Soils Plasticity Remediation Allowance which is allowance # 2 Exhibit C Allowances in the BUILDING GMP approved December 9, 2019 even though each bidder possessed the soils reports at time of bid. Incredibly, this work is related to site paving not buildings but was approved as an allowance under the Building GMP. (see attachment # 24) It certainly appears that the Owner is taking on and paying for the contractor's risk here because all of this was known at the time of the bid.

Attachment #1, pg 5 is included with the minutes of the 12/15/2020 meeting, at the request of board member [illegible]
pursuant to South Carolina Code Ann. Section 30-4-90(a)(4)
and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Of the 15 each Field Density Reports nine each relate to tests in confined trenches and six each relate to general fill soils installed in large unconfined areas. The site is approximately 24 acres which is 1,045,440 square feet. If one third of it was compacted fill that would require 104 tests per 8" lift of fill soils installed. There are embankments noted where at least 48"of fill soils have been installed. That makes the approximate order of magnitude number of soils compaction tests required (35 times 6 each 8" lifts) equal to 210 tests. Yet, in the general fill areas which are not the trench areas through and including November 11, 2019, there were only 11 individual Field Density Tests made. I cannot say for certain but for a project this large where 1 test is to be done in 8" lifts of fill soils placed per 10,000 sf of surface area in pavement areas and 1 test per 2,500 sf under building footprint area is required per 8' lift (see page 18 Fill Compaction requirements of the Final Geotechnical Engineering report Lex 5/Amicks Ferry Site by ECS Southeast, LLP dated June18, 2019,) (see attachment #25) the number of 11 each tests seems inordinately low. It appears that only approximately 5% of the required number of tests may have been performed.

The 9 each trench tests reported above were on storm drain lines. None were done on Electrical Duct Bank Construction and none were done on the day which Susan Baker observed the work being placed on the night of 12/6/2019.

10) There is correspondence from the previous board chair which states that access to the site and documents under the control of the construction manager at risk are somehow not obtainable by the Owner.(See attachment # 1) Please refer to the General Conditions to the Contract for Construction A 201 -2007 article 3.16 on page 18. "The Contractor shall

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provide the Owner and Architect access to the Work in preparation and progress wherever located." (see attachment #26)

Under article 13.5.2 page 37 should the "Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing inspection or approval under 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing , inspection or approval by an entity acceptable to the Owner...."(see attachment #27)

Article 13.5.4 states "Required certificates of testing, inspection and approval shall, unless otherwise required by the Contract Documents, be secured and promptly delivered to the Architect." (see attachment #27)

Further, the Project Manual under 14000 1.8 A. Contractor's Quality Control Plan states that within 10 days of the Notice to Proceed and not less than five days prior to the preconstruction conference that the Contractor is to submit a comprehensive plan of quality control to include a schedule of testing and inspection. It also requires continuous inspection of workmanship. (see attachment # 28)

Under 013300 pages 5, 6 and 7 of the Project Manual H 3. And 5. Material Test Reports and Product Test Reports are to be submitted to the Architect for review. This includes design mixes for concrete, select backfill embedment and pipe bed material and PVC electrical conduit. (see attachment # 29). By contract these are to be made available to the Owner upon request.

Under AIA Document A 201-2007 article 3.11 page 16 Documents and Samples at the Site The Contractor is to maintain for the Owner one of submittals. This includes the requested items in the paragraphs above. (see attachment #30)

Under article 3.12.7 the Contractor is to perform no portion of the work on site which require submittals until the submittals have been approved by the Architect. (see attachment # 31) This includes the requested items in the paragraphs above.

Finally, under A 133 -2009 page 8 article 2.3.8.8, it states" The construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect the progress of the work, accidents, injuries, and other information required by the Owner." (see attachment #32)

In addition to the documents requested in paragraph one of this letter, I ask that you as district superintendent also provide the answers to the following questions for the period from the inception of the project until December 9, 2019:

Attachment #1, 12-9-19 is included with the minutes of the meeting, at the request of Board member [illegible] pursuant to South Carolina Code Ann. Section 30-4-90(b)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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A) Were safety protocols noted in # 2) above followed in regard to illumination and trench safety? If not, what is being done about it?

B) Were concrete mix designs submitted by the general contractor and each subcontractor for each type mix used or to be used on the project? Provide a copy of each approved mix design.

C) Were the specified mixes placed at each location as required? Provide a copy of the material delivery tickets and location of each batched placed.

D) Was a schedule of required tests submitted and approved as in 14000 1.8 A. for concrete and earthwork provided? Provide a copy of the schedule. Which contractor or subcontractor was responsible for coordination and scheduling of the testing agency? Were the tests performed per the schedule?

E) Were the tests performed in proper number and locations as specified? If not, what will be done about it?

F) When was each contractor or subcontractor mobilized? Who was on the site each day? What problems were reported? Provide copies of contractor and subcontractor daily reports. Provide a listing the other information required by the owner as above under A 133-2009 page 8 article 2.3.2.7.

G) Was schedule 80 PVC conduit with proper spacers and supports used at duct bank construction? Was select fill pipe bedding and embedment material installed at storm drain and duct bank locations. Was a concrete mud slab or anchoring slab used at duct bank locations? Was the installation inspected? If so, provide the inspection report. If not, what will be done to insure the installation was done properly?

H) Has the district taken on and paid for the contractor's risk as in #9 above? If so, how will that be rectified?

In summary, applicable building codes and/or the Project Manual may not have been followed. As you can see, the district through its paid consultants must require the contractors follow the contract documents. We, as the board, must act accordingly by overseeing and insisting that our administrative group investigate and rework as necessary for quality assurance.

Please keep in mind that only the Architect may change project specification requirements issued after the contract has been signed. He or she may only do so a change order executed by the Owner (the board).

I hope that we are good stewards for future citizens. We teach our children the scientific method. Carl Sagan said: "Something my father dearly loved is the scientific method, and it's founded in this element of humility. The idea is that you pursue truth wherever it goes; you need to evidence, and if you can –you see if it's repeatable." Why would we teach our children this and then not want to know? Ronald Reagan said it best when he said, "Trust but verify."

I request action and a reply on these matters within the next two weeks.

Attachment #1, 2, 3, 4, 5, 6, 7 is included with the minutes of the 9th Dec 2010 meeting, at the request of Board member Ed Welch pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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Please act accordingly.

Respectfully submitted,

Kenneth B. Loveless, Trustee

Attachment #1, pg. 8 is included with the minutes of the 4/19/2020 meeting, at the request of Board member Edwards pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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DOC D

Response By District Consultant

Dan Neal, PE (ret)
[redacted]

April 20, 2020

Dr. Christina Melton, Ed. D.
Superintendent
School District Five of Lexington and Richland Counties
1020 Dutch Fork Road
Irmo, SC 29063

Dear Dr. Melton,

Please find attached a letter, with enclosures, from Mr. Greg Hughes, President of Contract Construction, Inc. Mr. Hughes answers in detail the concerns raised by Trustee Ken Loveless in his letter dated March 24, 2020. I agree with Mr. Hughes letter in its entirety. In my opinion, Contract Construction, Inc. is one of the premiere K-12 construction firms in the state and we are fortunate to have them working on this project for District 5. Please let me know if you have any additional questions.

Sincerely,

Dan Neal

Dan Neal, PE (ret)

Attachment #2, pg. 1 is included with the minutes of the 6/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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CONTRACT
CONSTRUCTION

4/20/20

Responses to Questions Raised by Ken Loveless

Dan Neal, PE (ret)
[redacted]

Attachment #3, M-1 included with the minutes of the 6/16/2020 meeting, at the request of Board member Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

RE: Letter Dated 3/24/20 from Ken Loveless

Dear Dan:

I am writing in response to the above-referenced correspondence (which I enclose for reference purposes) and will respond to items that I feel require a response from us in the order in which issues were identified. Before I begin, I want to make it clear that I take immediate exception to Mr. Loveless' inference that we should not be currently working on the school during the "present geopolitical occurrences". Construction has been deemed essential and we are taking each day with a newly elevated level of caution to protect the workers on our project. The safety of our workers is our top priority and I am disappointed that Mr. Loveless would attempt to portray otherwise.

Regarding Mrs. Susan Baker's observation:

As you may be aware, we had record-breaking quantities of rainfall in the latter part of 2019 so we did then and still do now take advantage of every single opportunity to get work completed so our project can remain on schedule, and that includes nights and weekends. Proper illumination has been questioned based on a video taken from across the street, the illumination provided was deemed safe by our project superintendent for the task at hand and the work was completed under our direct supervision in accordance with the contract documents.

Item 2:

I would like to start by stating that Contract Construction has a 35-year impeccable safety record and enjoys a very good relationship with OSHA, who has commented on a number of occasions that we are in fact "highly regarded" in the OSHA organization. We are also an active participant in OSHA's Office of Voluntary Programs and invite them regularly to all of our jobsites. We have constructed over a billion dollars worth of educational facilities across the state of South Carolina with very few OSHA violations. Furthermore, our Experience Modification Rate (MOD) has been 0.75 for the past three years, we are a member of the National Safety Council, and have been awarded the highest safety award offered by our 180-member General Contractor's Captive Insurance Group 8 years in a row. So, with all that said, the students in LR5 have the rare opportunity to experience the process in real life, from one of the top school-builders in the state, and we would welcome the chance to go into the classrooms to enhance their learning experience.

o: 803.781.7058 f: 803.732.3064 P.O. Box 269, Ballentine SC 29002 www.contractconstruction.net

#3.M.2
meeting, at the request of Board member
pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CONTRACT CONSTRUCTION

1. As noted above, illumination for the curb and gutter pour was adequate and appropriate and no one was put at any risk during this placement. However, since illumination levels have been questioned from hundreds of yards away, we have rented light towers, which hopefully will not disturb surrounding neighbors. If documentation of illumination levels is going to be deemed necessary by LR5, please let us know and we will begin to record this information.
2. We take exception to Mr. Loveless' guestimate on the depth of the trench. The trench was 40" deep and at no point has any worker been endangered by entering excavations over 60" without proper benching or use of trench boxes. Regarding the proximity of the excavation equipment, there was and has not been any displacement of trench walls caused by the weight of excavation equipment and any statement to the contrary is simply a supposition.

Item 3:

Please see attached letter from Bruce Todd of ADC Engineers, the civil engineer of record, explaining the strength of the concrete curb and gutter. In addition, it should be noted that the curb installed will be in place for approximately 18 months prior to turning over to the Owner and any damaged or compromised curb will be replaced accordingly.

Item 4:

Chris Patrick of the Simms Group, Electrical Engineer of record offers the following:

> "The electrical specifications state that concrete encasement shall be either 2000 psi or 3000 psi. The electrical specifications do not specifically require testing of the concrete encasement. The company that provided the concrete should provide written confirmation of the compressive strength of the concrete delivered and used for concrete encasement of conduit."

Attached are the delivery tickets for the concrete placed in the electrical duct bank, substantiating that a 3000psi mix design was used. One should note that this concrete was in-fact sold to West Electric, a properly licensed electrician. This also provides substantiation to our response to item 8.

Item 5:

Chris Patrick of the Simms Group, Electrical Engineer of record, explaining the erroneous interpretation of the electrical code as it relates to the activity in question:

> "NEC 230-50(A) addresses "*Protection Against Physical Damage*" of "*Underground Service-Entrance Conductors*", which is the application addressed in 260500, 3-03 where PVC Schedule 40 is permitted for this project. NEC 230-50(A) references NEC 300.5, where the use of PVC Schedule 40 is permitted for underground installations of service-entrance conductors. NEC 230-50(B)(3), the section referenced in the March 24 letter, addresses "*Protection Against Physical Damage*" of "*All Other Service-Entrance Conductors*" (i.e. not underground). 260500, 3-03 does not permit PVC Schedule 40 in these cases, and in fact, specifically states, "*PVC is not permitted above grade.*" The electrical specifications require Galvanized Rigid Metal Conduit (RMC) or Intermediate Metal Conduit (IMC) for the condition described in

o 803 781.7058 f: 803.732.3064 P.O. Box 269, Ballentine SC 29002 www.contractconstruction.net

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#3 19-3

th

the minutes of the 10/15/2020 meeting, at the request of Board member [illegible]

pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CONTRACT CONSTRUCTION

NEC 230-50(B), which is permitted in 230-50(B)(1) and 230-50(B)(2). The installation as specified in 260500 complies with the requirements of NEC 230-50."

Item 6:

Terracon report number 73191119.0037 states clearly, "the installation of the schedule 40 conduits are installed in accordance with the plans."

Item 7:

I am not sure I follow this question. The electrical duct bank was excavated into virgin soils and is not a structural component of the building, so compaction testing was not required nor necessary. The duct bank being questioned is also concrete encased so I cannot fathom why there would be a concern with settlement of this utility.

Item 8:

In order to maintain the early sitework schedule, Contract Construction proceeded at risk to get the conduits installed so sitework would not be interrupted. We did so with the clear understanding that we would not be paid for this work if the GMP was not approved. West Electric, a properly licensed electrical contractor, performed this work. By Contract Construction doing this, the Owner gained the benefit of accelerating the project with no risk. To be clear, the GMP documents were complete at the time of installation and used for this construction.

Item 9:

The reason that it is fiscally irresponsible to put the risk of unclassified excavations on the CMR / Site Contractor is that the numbers will be unnecessarily padded to cover unknown quantities of unsuitable materials, and then the subcontractor will reap all the rewards of savings. It is true that we included an allowance in the GMP for soils plasticity remediation in the amount of $170,000. However, through many discussions with our site contractor, geotechnical engineer, civil engineer, and special inspector we were able to improve the in-place soils using soil cement, were able to do so within the early sitework GMP, and have not had to use one cent of the $170,000 allowance to date. In this scenario, all allowance savings will be returned to the Owner and not kept by a subcontractor that was asked to bid an unclassified site.

Regarding the suitability of the soils, Terracon notified the project team on or about Oct. 4th that the onsite soils did not meet the project specifications for structural fill. Terracon was directed to do additional onsite soil classification in multiple areas across the project area. The project team, consisting of the Owner, Terracon, BCS Southeast (geotechnical engineer of record), Contract Construction, Coogler Construction (site contractor), Quackenbush, ADC (Civil) and Johnson and King (Structural) had multiple discussions about how to mitigate and move forward with the onsite soils, which are natural and typical for this area. These methods included a stone base for the building area and modified soil cement subgrade for the pavement subgrades. To be very clear, there are no subsurface conditions beneath in-place construction that have been deemed unsatisfactory.

803.781.7058 f: 803.732.3064 P.O. Box 269, Ballentine SC 29002 www.contractconstruction.net

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CONTRACT CONSTRUCTION

Attachment #3, pg. 4 is included with the minutes of the 6/1/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Item 10:

a. Documents and site access have been made available to our Owner Representative on site. We are not obligated to provide information or access to anyone other than those named in our contract.
b. No additional testing has been deemed necessary by the designers of record. In addition, Contract Construction will provide warranties and guarantees as specified in the contract documents at the conclusion of the project.
c. The testing company works for Lexington-Richland School District Five, so these reports are provided directly from Terracon to LR5.
d. We did conduct a pre-construction conference on 9/12/19 with Terracon and Lexington County. It was at that meeting that our Quality Control Plan was reviewed, as well as, the Schedule of Special Inspections which dictates exactly what is required to be tested.
e. All of these items have been submitted and approved by the design team and have been made available to our Owner Representative.
f. All items are being maintained at the project site and are readily available for our Owner Representative to review.
g. Daily reports have and continue to be maintained since the inception of this project and are readily available to our Owner Representative.

Answers to questions posed:

a. Yes, and we continue to monitor worker safety every single day.
b. Yes. Approved mix designs are maintained in our submittals folder on site.
c. Yes. Terracon can confirm this as fact. If material delivery tickets are to be matched to locations placed, that would be an additional service for Terracon and should be negotiated with them.
d. The Schedule of Special Inspections is clearly listed in section 14000 and is being strictly adhered to. Contract Construction arranges for all inspections. Terracon will confirm that inspections have been conducted in accordance with the schedule of special inspections.
e. Terracon can confirm that tests have been performed in proper number and locations.
f. Subcontractor mobilizations and any issues encountered are documented in our daily reports by our site superintendent.
g. 1. Schedule 40 was specified, installed and signed off on by Terracon as being in accordance with the contract documents. 2. Where utilities were installed in fill locations, such fill was deemed appropriate for use by Terracon. Waterlines and Sanitary Sewer were bedded with 57 stone per the Town of Chapin requirements. 3. No mud slab or anchoring slab was used or deemed necessary by Terracon during the installation of the electrical duct bank. See attached report as requested.
h. The District gained all the benefit regarding the scenario mentioned in item 9.

o: 803.781.7658 f: 803.732.3064 P.O. Box 269, Ballentine SC 29002 www.contractconstruction.net

CONTRACT
CONSTRUCTION

I conclude by stating that we are not perfect and never will be, but every single day we strive to do things better than the day before and to be more like a thermostat affecting our surroundings, instead of a thermometer that merely reacts to them. When we encounter issues, we work with the project team to resolve them. In addition to Contract Construction's very high level of daily quality control, LR5 has hired trust-worthy individuals and firms that include a dedicated Owner Representative, Architect, Professional Engineers, and Special Inspectors to verify our work. I believe that everyone on this project team will confirm that this project is being managed very professionally and with very few deficiencies for this size project.

Please do not hesitate to let me know if I have not adequately responded to any of the issues presented by Ken Loveless.

Sincerely,

Greg Hughes
President

Attachment #3, Pg. 5 is included with the minutes of the 10/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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ADC ENGINEERING
7436 Broad River Rd– Suite 212
Irmo S.C. 29063

March 31, 2020

Quackenbush Architects + Planners
1217 Hampton Street
Columbia, SC 29201

Attn: Barb Haller, AIA, LEED AP

Re: Amicks Ferry Road Elementary School – Curb and Gutter Testing

Dear Barb:

This letter is in response to Item #3 of a correspondence between Ken Loveless (Trustee – LRSD5) and Dr. Christina Melton (Superintendent- LRSD5) dated March 24, 2020. The item is in reference to testing for structural strength of concrete poured for curb and gutters.

The SCDOT testing standards referenced in the letter are correct. However, it was never the intent on this project, or any project, to test the structural strength of concrete being used in a non-structural application like curb and gutter.

It is my professional opinion as the Engineer of Record, that even though the concrete strength specified for curb and gutters is 3000 psi, that they are not considered a structural element. Therefore, testing of concrete in the construction of curb and gutter sections is an unnecessary expense.

However, if it is desired to confirm the structural strength of concrete previously poured, it is suggested that the testing firm propose a plan for non-destructive testing of poured in place curb and gutter.

Sincerely,

Bruce Todd, P.E., LEED AP BD+C
803-781-3141 x.306
brucet@adcengineering.com

Attachment #4, pg. 1 is included with the minutes of the 10/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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OFFICE:
PO BOX 3408
SUMMERVILLE, SC 29484
PHONE: 843-821-7600
FAX: 843-821-7627
MIDLANDS DISPATCH
803-754-8633

No. 713598

PLANT LOCATIONS
PLANT 6 BLYTHEWOOD
PLANT 7 IRMO, SC
PLANT 8 LUGOFF, SC
PLANT 9 WINNSBORO, SC

Attachment #4 PM 2 is included with the minutes of the ... meeting, at the request of Board member ...

pursuant to South Carolina Code Ann. Section 30-4-900 (B) the Board majority and Board Policy #DC ... the Board ... or otherwise ... attachment ...

UNLOADING

Drivers are not permitted to add water to the mix to exceed the maximum slump. Drivers are prohibited from delivering concrete except under the truck's own power, and where site conditions permit the safe and proper operation of this equipment. Drivers are not permitted to go beyond the curb line, except upon the authorization of the customer and his acceptance of risk for any loss or damage to the property or our equipment. This includes any wrecker or towing charges for getting out of the location.
Water added.

RECEIPT A[illegible]

Gallons

Customer's representative

CAUTION

May cause eye or skin injury. Contains Portland cement. Fresh cement, mortar, concrete, or grout may cause skin injury.

TAKE THESE PRECAUTIONS:
1. Avoid all contact with eyes.
2. Wear rubber boots and gloves, and avoid prolonged contact directly with skin or through porous materials.
3. In case of contact with skin or eyes, FLUSH THOROUGHLY WITH WATER.
4. If irritation persists, get medical attention promptly.
5. Keep children away.

TERMS: Net 30 Days

RECEIVED SUBJECT TO CONDITIONS ON REVERSE SIDE

CUSTOMER	P.O. NUMBER	DUE	ORDERED BY	TIME	DATE	DAY
1269				11:19 AM	11/14/19	14667

SOLD TO

DELIVER TO

Leave 1140 Arrive 1230
Leave Plant 1245 Arrive Plant 105

QUANTITY THIS LOAD	QUANTITY ORDERED	QUANTITY DELIVERED	PRODUCT CODE	PRODUCT DESCRIPTION	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
1.00	1.00	1.00	ENV	ENVIRONMENTAL FEE MIDL FUE			

TRUCK # DRIVER DA SLUMP DUE AT JOB

CALCIUM WATER REDUCER AIR ENTRAIN PHONE

GALS/CY MAY BE ADDED NOT TO EXCEED W/C RATIO

SUB TOTAL
TAX
TOTAL

DELIVERY INSTRUCTIONS

10 MINUTES PER YARD ALLOWANCE

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Knight's REDI-MIX

OFFICE:
PO BOX 3408
SUMMERVILLE, SC 29484
PHONE: 843-821-7600
FAX: 843-821-7627
MIDLANDS DISPATCH
803-754-9633

No. 713599

PLANT LOCATIONS:
PLANT 6 BLYTHEWOOD, SC
PLANT 7 IRMO, SC
PLANT 8 LUGOFF, SC
PLANT 9 WINNSBORO, SC

Attachment #4 to the minutes of the ____ meeting, at the request of Board member ____ is included with pursuant to South Carolina Code Ann. Section ____ and does not necessarily reflect the opinions of this attachment.

UNLOADING

Drivers are not permitted to add water to the mix to exceed the maximum slump. Drivers are prohibited from delivering concrete except under the truck's own power, and where site conditions permit the safe and proper operation of this equipment. Drivers are not permitted to go beyond the curb line, except upon the authorization of the customer and his acceptance of risk for any loss or damage to the property or our equipment. This includes any wrecker or towing charges for getting out of the location.
Water added.

RECEIPT AND RELEASE:

_____ Gallons

Customer's representative

CAUTION

May cause eye or skin injury. Contains Portland cement. Fresh cement, mortar, concrete, or grout may cause skin injury.
TAKE THESE PRECAUTIONS:
1. Avoid all contact with eyes.
2. Wear rubber boots and gloves, and avoid prolonged contact directly with skin or through porous materials.
3. In case of contact with skin or eyes, FLUSH THOROUGHLY WITH WATER.
4. If irritation persists, get medical attention promptly.
5. Keep children away.

TERMS: Net 30 Days

RECEIVED SUBJECT TO CONDITIONS ON REVERSE SIDE

CUSTOMER ID 1269 | D NUMBER | D BT 12:45 PM | 1/14/19 | 4668

SOLD TO | DELIVER TO | Leave Plant 100 | Arrive Job Site 45 | Leave Job Site 54 | Arrive Plant

QUANTITY THIS LOAD	QUANTITY	QUANTITY DELIVERED	PRODUCT CODE	PRODUCT DESCRIPTION	UNIT MEASURE	UNIT PRICE	EXTENDED PRICE
		00					

TRUCK | DRIVER | SLUMP | DUE AT JOB | USE OF CONCRETE

CALCIUM | WATER REDUCER | AIR ENTRAIN | PHONE

GALS/CY MAY BE ADDED NOT TO EXCEED W/C RATIO

SUB TOTAL
TAX
TOTAL

DELIVERY INSTRUCTIONS

10 MINUTES PER YARD ALLOWANCE

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Proper Board Role in Construction

the South Carolina Freedom of Information Act. Please see the following link for exemptions provided for in SC FOIA: **https://www.scstatehouse.gov/code/t30c004.php**

3) **How can some board members deny other board members access to LR5 building sites? How or why does one have that power? Shouldn't all building have oversight by all board members?** Construction contracts give control of construction sites to the general contractor. Managing the construction contractor is an administrative function. The District, with Board approval, contracted for Contract Construction to serve as the District's Construction Manager at Risk for Elementary School 13. The terms of the contract give Contract Construction the responsibility to maintain a safe and secure job site. The District's administration is responsible for the day to day management of the District's operations. Board Policy BBA describes the Board's Powers and Duties, including Visits to Schools. Oversight is the responsibility of the Board collectively. Board Policy BB notes that "All powers of the board lie in its action as a body." Board members acting as individuals have no authority over personnel or school affairs. Board Policy BCA notes that board members' basic function is policymaking, not administration.

The Superintendent and the administration operate and supervise the day to day functions of the District including construction projects.

The District retains a consultant to represent the District's interest and ensure the terms of the contract are being met. This professional acts as the owner's representative on the project. In addition to Contract Construction and the District's consultant, the District also engages the services of a third-party inspection company that is paid by and answers to School District Five.

Michael Cates
School Board Chairman
School District Five of Lexington & Richland Counties

4) **When can we expect the redistricting information? Withholding this information (which should have been completed before deciding where to build #13) is very inconsiderate to LR5 families with school age children.** No official timeline has been provided for the Milone & MacBroom report, but one will be provided publicly to the school board at the appropriate time.

5) **And 5) When will the Amicks Ferry /#13 traffic patterns be resolved?** There are no traffic pattern issues to resolve. The District is complying with all elements of a traffic study, which has been accepted and approved by SCDOT

Your questions and comments were shared with all members of the Board of Trustees and posted publicly on the District's website.

Attachment #6, Pg. 1 **is included with the minutes of the** 10/19/2020 **meeting, at the request of Board member** Ed Winslow **pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.**

Doc E

July 10-13

Ed White

From: Edward White <ewhite@lexrich5.org>
Sent: Monday, July 13, 2020 12:49 PM
To: Ed White
Subject: Fwd: Attachments to my letter Dr. Melton dated 3/24/20

Attachment #2, M-1 is included with the minutes of the 8/10/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

External Email - From: ewhite@lexrich5.org

---------- Forwarded message ----------
From: **Edward White** <ewhite@lexrich5.org>
Date: Mon, Jul 13, 2020 at 12:47 PM
Subject: Fwd: Attachments to my letter Dr. Melton dated 3/24/20
To: Beth Hutchison <bhutchison@lexrich5.org>, Christina Melton <csmelton@lexrich5.org>, Janis Hammond <jhammond@lexrich5.org>, Kenneth Loveless <kloveless@lexrich5.org>, Michael Cates <michaelcates@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Robert Gantt <rgantt@lexrich5.org>

Michael,

As you are aware, state law allows me to put any information on the record to be included in the minutes of our meeting.

Ken Childs assisted us in the creation of the current policy years ago, including the requirement that the information be stamped with a disclaimer by the district, and the policy was designed to comply with state law.

My submission at the last meeting is the complete submission not to be amended or supplemented by another board member.

When an item is on the agenda, I have the right, as a board member, to ask any relevant questions I chose germane to the topic. When the Superintendent requested that I wait and pursue my questioning at a later date, when the presenters could be better prepared, I acquiesced.

I have many questions yet to ask on the subject of the work product of Contract Construction and the accusations of Ken Loveless in his letter and I look forward to this topic being put on our agenda again in the near future.

To be clear, if I am interested in an exhibit or attachment to Ken's letter I will ask for it.

Finally, I take issue with Ken Loveless accusing you and Dr. Melton of conspiring or doing anything with me asking these questions. I did not consult with anyone before raising my questions or putting the documents on the record. I think it is interesting that Ken is accusing the two of you of censorship when it appears that what he really wants is to limit my ability to speak , ask questions or put information of my choosing in the minutes of our meeting.

Thank you,

Ed

---------- Forwarded message ----------
From: **Kenneth Loveless** <kloveless@lexrich5.org>
Date: Mon, Jul 13, 2020 at 8:27 AM
Subject: Re: Attachments to my letter Dr. Melton dated 3/24/20
To: Michael Cates <michaelcates@lexrich5.org>
CC: Christina Melton <csmelton@lexrich5.org>, Beth Hutchison <bhutchison@lexrich5.org>, Robert Gantt

SCEC_Subpoena_000029

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<RGantt@lexrich5.org>, Jan Hammond <jhammond@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Ed White <EWhite@lexrich5.org>

Mr. Cates : Mr. White and Mr. Hughes have used as part of their replies as evidence such documents as Terracon report # 37 which is not on the district's website. It has been given to neither me through request to the Superintendent nor the public through FOIA. Neither has the full complement of Terracon reports. My letter cannot be characterized as mere accusations. How could it be? It simply asks questions. I have unwittingly stumbled upon an institutional censorship scheme. You, Mr. Chairman, have just admitted to being part of it. You say below that you don't need my full letter to make your promulgation that my questions are unfounded. I expected more from you but that is OK. What is not OK is that some of the people involved received the entire letter and some did not. What is not OK is that some of the people involved were allowed to see other documents including all those I have requested and some were not. You see, Mr. Chairman, someone other than the people involved got to determine what other important people should be able to see. They were asked to formulate their opinions without all the information. Those people may be more naturally inquisitive and therefore less dogmatic than you. They might have inquiring minds. But, you participated in a scheme to keep them from having the right to make their own decisions. That, Mr. Chairman, is wrong. I reiterate my request that my full letter with attachments,all the documents that I have requested in the body of the letter and all of the Terracon reports be released to the public. Let the public make the determination. Respectfully submitted., Kenneth B. Loveless, Trustee

On Sun, Jul 12, 2020, 1:45 PM Michael Cates <michaelcates@lexrich5.org> wrote:

Mr. Loveless,

First, let me be clear, so you do not have to surmise, speculate, or assume. For the record, I did not involve an attorney in my response.

Second, I received your letter without the corresponding attachments on April 20, 2020, along with the rest of the board. I was not involved in answering your letter and did not need the attachments to understand your accusations and the written response by Dan Neal, Contract Construction, and ADC Engineering. Anyone who was involved in answering your unfounded accusations received the full document. I am sure the response to your letter was at considerable expense to the district.

Third, you attempted to obtain the floor without being recognized and interrupted another board member. It is your responsibility to understand how to obtain the floor and how to raise an objection. I interrupted Mr. White not because he was out of order, but because the presenters did not have the documents he was referencing in front of them. To be very clear, you are wrong. Mr. White's questions were germane to the agenda item. Item 9 was listed as Superintendent's Report, Update on Elementary School 13. As I stated during the meeting, I did not know that Mr. White intended to ask questions regarding the response to your letter.

Please accept this as my final response to this matter.

Michael Cates
School Board Trustee, Board Chair
District Five of Lexington & Richland Counties
803 518-4567
michaelcates@lexrich5.org

Attachment #2 pg. 2 is included with the minutes of the 8/10/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

On Jul 12, 2020, at 10:28 AM, Kenneth Loveless <kloveless@lexrich5.org> wrote:

Mr. Cates, I surmise by your response that an attorney has advised you. If so, which attorney? I have the right to know if an attorney paid by the school district for which I am a trustee was involved. Second, we know that Trustees Gardner and Hammond never received my full letter with attachments. Did you receive the full letter from Dr.Melton prior to the meeting? Did anyone including Mr. Hughes and Mr. Neal receive my full letter prior to the meeting? Third, you as board chair let Mr. White, over my attempted objections, continue his cross examination of his "expert" witness. Mr. White continued. You effectively lost control of the meeting. If we were to have had a discussion of the matter and if the Superintendent had requested such as policy states, then policy requires it to have been on the agenda. Since you and the Superintendent set the agenda, did you know that Mr. White would attempt to discuss and

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characterize my work without citing and very possibly without having received my full letter prior to the meeting? Please respond. Respectfully submitted, Kenneth B. Loveless, Trustee

On Sat, Jul 11, 2020, 4:34 PM Michael Cates <michaelcates@lexrich5.org> wrote:
I have not spoken to Dr. Melton, she can respond if she wishes, at a more appropriate time. Since many of your questions are related to board members and board policy I will respond. My response to your questions is found in italics below.

Dr.Melton, in conversation with Trustees Gardner and Hammond and a follow-up review of documents which Trustee White plans to attach to the minutes of the latest board meeting of June,2020. I noticed the 32 attachments which were part and parcel to my letter were not included.

Mr. White has no obligation to include the attachments.

Further, I noted that contrary to policy BEDH, the 32 attachments to my letter were not forwarded to the other board members. Was a decision made to present my inquires to the full board? If so, I did not receive any notice under policy BEDH of such. Was such a decision sent to others? I have it on good authority that your actions by not publishing my letter in its entirety with the 32 attachments included constitute censorship. Board members Gardner, Hammond and possibly the others were not given the full benefit of the body of the work.

Policy BEDH, Public Participation at meetings, has no bearing on your request. Your letter to Dr. Melton and the response was sent to the full board. Your request was not for information but for an investigation. I am not sure it is covered by policy. Policy BEDGA, Board Records, addresses requests for information from board members. The policy states,

Requests by members of the board
Since the board is ultimately responsible for all district operations, individual board members are extended special consideration in obtaining information. Under normal circumstances, requests to inspect and/or receive copies of records should be made by individual board members to the superintendent who may refer such requests to the Office of Community Services.
These particular requests will be processed whenever possible in a more expeditious manner than otherwise required by law
and at no cost to the individual board members. All board members will be appropriately advised of all requests as well as the responses.
If, on the other hand, the requests are determined by the superintendent to be unusual in nature, by reason of their content, subject matter or volume/size, then they should be referred by the superintendent to the fully seated board. The superintendent
will require that such requests be made in writing. Upon affirmative action by the board, all requested information and available written documents once again will be provided board members as expeditiously as possible and at no cost to the individuals
involved.
Individual board members may request information as a member of the general public in accordance with the provisions of the Freedom of Information Act.

Dr. Melton chose to answer your questions, and you along with the full board received the response on April 20, 2020. She could have referred your request to the full board for a vote because it was undoubtedly "unusual in nature, by reason of their content, subject matter of volume/size..." To be clear, you have no individual authority to direct the work of the Superintendent. You do not have the individual authority to set deadlines for the Superintendent. Your insistence to act with individual authority is in direct violation of board policy, BB, School Board Legal Status, BBA, Board Powers and Duties BCA, Board Member Code of Ethics, and the Superintendent's contract of employment.

Your allegations appear to be refuted by the district consultant for construction matters, the construction management company, professional engineers, and the third-party inspector hired by the district. I am sure the response was at great expense to the district.

Mr. White had no right to launch into an obviously orchestrated cross examination of his expert witness because I was never given notice of any decision on your part under policy BEDH.Therefore, the opinions and conclusions offered and made could have been formed without important information.

Attachment [illegible] is included with the minutes of the [illegible] 2020 meeting, at the request of Board member [illegible]
Pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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Policy BEDH has nothing to do with this. I am not sure what notice you require. Mr. White's questions were germane to the agenda item. Your claim that this was orchestrated is false and baseless.

The topic was presented during a board meeting and was therefore up to you to state that important parts if my inquiry had been deleted and that notice under policy BEDH that a decision to present to the entire board had been made. Any acts that spring from your original action could be additional acts of censorship.

Dr. Melton is a participant in the board meeting by contract and policy. The Superintendent is not responsible for managing the board meeting, which would be the board chair's responsibility. BEDH has no bearing on this matter.

As a way forward, I request that you immediately explain in public your actions to:1) not forward important portions of my letter to other decision makers and to: 2) not publish any decision to present my inquiry to the full board.

Let me say once again you have no authority to direct the work of the Superintendent. You are welcome to share the attachments with the board. I believe you have shared documents with the board in the past. It is my understanding your letter stands on its own and the attachments were shared with those tasked with answering your inquiry.

Further, I ask that if my letter is to be included in the minutes of the meeting, that the entire letter with all attachments be included. By copy of this communication to Board Chairman Michael Cates, that he by way of his role, direct that my letter in its entirety be included in the minutes. Sincerely, Kenneth B.Loveless,Trustee

It is not up to you to determine what other board members will add to the record. Please review policy BEDG since my explanation of this policy in previous emails appears to be insufficient. Your request to add the attachments to the minutes should have been made the night of the meeting you wish to attach for the record items, they must be germane to the agenda and should be limited to five pages front and back. I have interpreted the five pages to be per item. As an example, I viewed Mr. White's request for the record as three distinct items. Your letter, the response form Contract Construction, and my response to a public participation question. The policy manuel can be found at https://boardpolicyonline.com/?b=lex5

Michael Cates
School Board Trustee, Board Chair
District Five of Lexington & Richland Counties
803 518-4567
michaelcates@lexrich5.org

Attachment #2, pg.4 is included with the minutes of the 8/10/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

On Jul 10, 2020, at 10:53 PM, Kenneth Loveless <kloveless@lexrich5.org> wrote:

Dr.Melton, in conversation with Trustees Gardner and Hammond and a follow-up review of documents which Trustee White plans to attach to the minutes of the latest board meeting of June,2020. I noticed the 32 attachments which were part and parcel to my letter were not included. Further, I noted that contrary to policy BEDH, the 32 attachments to my letter were not forwarded to the other board members. Was a decision made to present my inquires to the full board? If so, I did not receive any notice under policy BEDH of such. Was such a decision sent to others? I have it on good authority that your actions by not publishing my letter in its entirety with the 32 attachments included constitute censorship. Board members Gardner, Hammond and possibly the others were not given the full benefit of the body of the work. Mr. White had no right to launch into an obviously orchestrated cross examination of his expert witness because I was never given notice of any decision on your part under policy

BEDH.Therefore, the opinions and conclusions offered and made could have been formed without important information. The topic was presented during a board meeting and was therefore up to you to state that important parts if my inquiry had been deleted and that notice under policy BEDH that a decision to present to the entire board had been made. Any acts that spring from your original action could be additional acts of censorship. As a way forward, I request that you immediately explain in public your actions to:1) not forward important portions of my letter to other decision makers and to: 2) not publish any decision to present my inquiry to the full board. Further, I ask that if my letter is to be included in the minutes of the meeting, that the entire letter with all attachments be included. By copy of this communication to Board Chairman Michael Cates, that he by way of his role, direct that my letter in its entirety be included in the minutes. Sincerely, Kenneth B.Loveless,Trustee

Attachment #2, pg.5 is included with the minutes of the 8/10/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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For the Record - 9/14/2020
Beth Hutchison

Attachment #2, pg 1 is included with the minutes of the 9/14/2020 meeting at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

DOC 1

ELECTRONICALLY FILED - 2022-Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Fwd: familyneals@aol.com has sent you a file from the Terracon CDW

1 message

July 16, 2020

Kenneth Loveless <kloveless@lexrich5.org> Thu, Jul 16, 2020 at 5:17 PM
To: Michael Cates <michaelcates@lexrich5.org>, Beth Hutchison <bhutchison@lexrich5.org>, Robert Gantt <RGantt@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Christina Melton <csmelton@lexrich5.org>, Janis Hammond <jhammond@lexrich5.org>, Edward White <EWhite@lexrich5.org>

All,

After receiving Terracon Report # 37, I offer the following:

Please review the attached photos above from the letter from Dan Neal to Dr.Melton dated 4:45 PM 7/13/2020. The letter contains Terracon report # 37 of which the photos are a part. The electrical code, NFPA 70 article 352.30 (B) requires 2' PVC conduit to be supported at no greater than 5'0" O.C. Look at the second photo. Do you see anything supporting the conduit off the earth? There is nothing there.

Both photos show the conduit is penned down to the floor of the ditch with piles of dirt,not on PVC conduit spacer racks with restraints as required. Those dirt piles are still there right now separating the conduit from the concrete. The concrete is not homogeneous because the concrete has dirt mixed in with it.The conduit is on the ditch bottom held down by the dirt following the contour of the excavation, not suspended in the concrete as required. The conduit can be punctured by the mass of the concrete and backfilled earth above the concrete bearing on it. This mass can force the conduit into sharp rocks or other objects in the ditch bottom.That is why the NFPA 70 calls for such conduit to be Schedule 80 rather than schedule 40 as constructed.Had the duct bank been constructed properly, the schedule 40 PVC conduit would have been acceptable. Did Mr. Sims,the electrical engineer, know the full story when he wrote his letter in defense of Mr. Hughes? Why was Mr.Sims prompted to write the letter without full knowledge? Whether or not Mr. Sims agrees or not, best practices were not installed with the conduit on the ditch bottom. It's a simple concept.

Article 352.44 requires expansion fittings where there will be temperature changes. I don't see any.

Mr. Hughes says in his letter of 4/20/20 that all has been signed off by Terracon. Mr. Hughes knows that Terracon is not the deciding entity. Terracon works for the district to insure the district testing protocols are followed. As such, Terracon does not take on the role of interpreting the specifications for the contractor. Only the Architect can do that and the Architect must be informed before the work can continue or the contract is responsible for his actions.

I invite everyone to read this: The Project Manual Section 14000 1.8 B.states :"Project quality-control manager may also serve as Project superintendent."There is a built-in conflict of interest. The fox is guarding the hen house. Does anyone seriously believe that the same person who is paid to push production and schedule is going to also demand quality when that would mean slowing the schedule and production? Can you imagine any homeowner building a house who would cede to his builder the owner's right to control quality? Would any of you? Yet, the district did just that.

I have studied the Terracon reports that were provided to date.There are a minimum of 238 reports which are supposed to have been posted through 7/5/2020. 76 are actually posted. Of those 76, ten reports show deviations from the specifications. You can read them. They show that there are more than just a few instances where Terracon indicated discrepancies but the quality-control manager/ Project superintendent proceeded on without stopping.

See other side →

July 16, 2020 email

Mr.Gantt sent me Terracon reports 1-35 when he was chairman. Of those 35 reports only 1-18,23 and 31A are shown on the website. I have the remainder and can prove that they came from the district. Contrary to the Director of Communications,the district has reports that it is not sharing with the public. Will they be shared today? What's in the remaining more than 162 reports? Why are they not being shared? You should ask that.

I have asked for all the missing reports through 7/8/2020. My wife has sent a FOIA request for the same. Other parties have sent FOIA requests for the same.To date, the website does not list the full complement of reports.

A package of concrete delivery tickets came anonymously in the mail. I have reviewed those and found serious problems which I forward in a letter to Mr. Cates and Dr. Melton on 7/14/2020. My letter of March 24,2020 to Dr. Melton asked for other impoitant information which has apparently been ignored. You should ask why I cannot see the things for which I have asked.

Please review and act accordingly by understanding that quality construction takes a group effort. I am trying to help the group.

Ken Loveless

---------- Forwarded message ----------
From: Christina Melton <csmelton@lexrich5.org>
Date: Tue, Jul 14, 2020 at 9:06 AM
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW
To: Katrina Goggins <kgoggins@lexrich5.org>

This message is being blindcopied to all Board of Trustees. An attachment is included for your information.

Christina S. Melton, Ed.D.
Superintendent
School District Five of Lexington & Richland Counties
office: 803.476.8169 or 803.476-8116
www.lexrich5.org

Pursuing Excellence for Tomorrow's Challenges

Attachment #2 pg 2
Pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

---------- Forwarded message ----------
From: Dan Neal <familyneals@aol.com>
Date: Mon, Jul 13, 2020 at 4:45 PM
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW
To: csmelton@lexrich5.org <csmelton@lexrich5.org>

Here is the requested report 37.

SCEC_Subpoena_000035

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ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

DocG

Philoma Skipper

From:	Greg Hughes
Sent:	Monday, September 14, 2020 7:52 AM
To:	Philoma Skipper
Cc:	Kyle Farley
Subject:	Fwd: Response to Ken Loveless concerns regarding electrical duct bank, Ryan Drafts, and Curb and Gutter Concrete
Attachments:	Dennis Core Results (1).pdf; CC&I ES 13 Electrical Service Letter.pdf; Letter from Knights.pdf; Rebound Hammer Test Amicks Ferry.pdf; Curb Concrete Submittal.pdf

Philoma,

Please print me 4 copies of this (including attachments), paperclip, and put in a folder for Kyle to bring to the board meeting tonight. Thanks.

Greg Hughes, President
Contract Construction, Inc.
803.781.7058 o
803.513.8080 c
P.O. Box 269, Ballentine, SC 29002
www.contractconstruction.net

Attachment #2, 13, 10 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Debbie Hutto pursuant to South Carolina Code Ann. Section 30-4-80(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CONTRACT CONSTRUCTION

Begin forwarded message:

From: Dan Neal <familyneals@aol.com>
Subject: Fwd: Response to Ken Loveless concerns regarding electrical duct bank, Ryan Drafts, and Curb and Gutter Concrete
Date: August 2, 2020 at 8:35:42 AM EDT
To: "csmelton@lexrich5.org" <csmelton@lexrich5.org>, "lrichard@lexrich5.org" <lrichard@lexrich5.org>, "michaelcates@lexrich5.org" <michaelcates@lexrich5.org>
Cc: "ghughes@contractconstruction.net" <ghughes@contractconstruction.net>, "dquackenbush@quackenbusharchitects.com" <dquackenbush@quackenbusharchitects.com>, "mhm@montgomerywillard.com" <mhm@montgomerywillard.com>
Reply-To: Dan Neal <familyneals@aol.com>

Dr. Melton,

Please see attached Mr. Hughes' comments on Mr. Loveless' concerns in recent emails. I absolutely agree with everything in Mr. Hughes' email and especially his comments about Ryan Drafts and as the email states, the concrete strengths speak for themselves. I do not yet have the comments from Mr. Quackenbush on the electrical duct band, but I expect them before we have our meeting on Tuesday.

Dan Neal

Attachment #2 pg 11 is included with the minutes of the 8/19/2020 meeting at the request of Board member Beth Rikard pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

-----Original Message-----
From: Greg Hughes <ghughes@contractconstruction.net>
To: Dan Neal <familyneals@aol.com>
Sent: Thu, Jul 30, 2020 9:32 am
Subject: Response to Ken Loveless concerns regarding electrical duct bank, Ryan Drafts, and Curb and Gutter Concrete

Dan,

In response to emails from Ken Loveless that have been forwarded to me I offer the following responses:

1. Regarding the electrical duct bank installation, see attached letter from CC&I, special inspection subcontractor to Terracon, explaining why Mr. Loveless' assertions are incorrectly applied to this installation. You will note that this is not just the opinion of the inspection agency, but also the opinion of Mid Carolina Electric Cooperative (the ultimate authority for this installation) and the Electrical Engineer of record. You may also want to get Quackenbush Architects and Planners to weigh in on this issue with their "interpretation" of their specifications, as Mr. Loveless points out as protocol.
2. Now I will address Mr. Loveless' attack on our Project Superintendent, Ryan Drafts. Ryan takes his job very seriously and is arguably one of the best school builders in this state. His attention to quality assurance is apparent by the speed at which he corrects discrepancies identified and his level of quality control is illustrated by the small number of discrepancies noted by Terracon. This is a testament to how he personally identifies issues and has them corrected prior to scheduled inspections. Mr. Loveless seems to think it is impossible to be exemplary in both quality and schedule but I can assure you that Ryan is nearly perfect at both. What is most disturbing is that on June 18, Mr. Loveless visited the jobsite with other board members and Dr. Melton and was very complimentary of Ryan's management of the jobsite and the flow at which he has constructed the facility. If Mr. Loveless still doubts Ryan's capabilities, I will be happy to provide a number of reference letters on Ryan's behalf that will be testimonials to Ryan's unique abilities to push a schedule without sacrificing quality.
3. Lastly, Mr. Loveless refers to an anonymous package of concrete tickets that came in the mail. These were not at all anonymous. Mr. Loveless used his recent re-established relationship with Pete Knight, Owner of Knight's Redi-Mix, as well as his position on the Board of Trustees to have Pete provide him with Coogler Construction's concrete delivery tickets for the curb and gutter. He went on to specifically request that they not be emailed, but mailed to him. Pete Knight is our preferred concrete supplier and has done business with us for many years and Mr Loveless manipulated him under the guise that "as a board member he was trying to help put an issue to bed related to the concrete used for curb and gutter on Elementary School 13". Now that the manner in which these tickets were received has been cleared up, let's talk about the concrete itself. Mr. Loveless points out a number of tickets that have water added or have time limit issues. We decided to simply let the concrete speak for itself and did so using two different testing methods (you will note that we also tested the "identifying concrete" poured over the electrical duct bank since this was also a concern of Mr. Loveless in previous correspondences). Attached are the results of 20 concrete cores taken by Dennis Corporation, 17 of which were from curb and gutter and 3 of which were from the electrical duct bank. The average of the 17 cores in the curb and gutter was 4478 psi compared to the specified requirement of 3000 psi. The three cores taken at the electrical duct bank averaged 3780 psi, for concrete that had no specified strength requirements. As a second level of verification, Coogler Construction requested that Knights Redi-Mix perform non-destructive testing at 8 other locations and those results averaged 4686, which is very consistent with the destructive testing performed by Dennis Corporation. We utilized two different companies to perform testing so there would be no "fox watching the hen house" accusations. Knights goes further to explain the reason they were not concerned with the placement of concrete from trucks that had exceeded the normal time limitations for concrete.

SCEC_Subpoena_000037

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In closing, we feel that we have gone above and beyond to address the issues that Mr. Loveless felt were detrimental to the project, and hope that we have provided information that proves, beyond a shadow of a doubt, that the work in place meets and exceeds the project requirements.

Feel free to contact me if there are any further questions regarding these matters.

Greg Hughes, President
Contract Construction, Inc.
803.781.7058 o
803.513.8090 c
P.O. Box 269, Ballentine, SC 29002
www.contractconstruction.net

Attachment #2, 10 12 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CONTRACT CONSTRUCTION

On Jul 21, 2020, at 9:15 PM, Dan Neal <familyneals@aol.com> wrote:

Greg, please research these issues and let me know when you can provide a full report to me so that I can brief Dr. Melton. Thanks.

Dan

----Original Message----
From: Christina Melton <csmelton@lexrich5.org>
To: familyneals@aol.com
Sent: Tue, Jul 21, 2020 8:35 pm
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW

Dan ,
Upon your review , reach out to Erin for us to schedule a time to discuss this information.

Christina S. Melton , Ed.D.
Superintendent of School District 5 of Lexington & Richland Counties

Sent from my iPhone

Begin forwarded message:

From: Michael Cates <michaelcates@lexrich5.org>
Date: July 16, 2020 at 6:21:54 PM EDT
To: Ken Loveless <kloveless@lexrich5.org>
Cc: Beth Hutchison <bhutchison@lexrich5.org>, Robert Gantt <RGantt@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Christina Melton <csmelton@lexrich5.org>, Jan Hammond <jhammond@lexrich5.org>, Ed White <EWhite@lexrich5.org>
Subject: Re: familyneals@aol.com has sent you a file from the Terracon CDW

Mr. Loveless,

All Terracon reports are on the district website. The reports are listed by month some months have multiple pages and the district has been maintaining the site for some time. I am not sure how many

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because I have not taken the time to count them. I see reports I-200 with some numbers having multiple reports (a,b,c) are listed. If you need help accessing them please let me know. They can be found at https://www.lexrich5.org/Page/24735

If, and I say if, what you are describing is so, what remedy are you sugesting?

Michael Cates
School Board Trustee, Board Chair
District Five of Lexington & Richland Counties
803 518-4567
michaelcates@lexrich5.org

Attachment #2, 8/3/20 is included with the minutes of the 8/17/2020 meeting, at the request of Board member Beth Whitaker pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

On Jul 16, 2020, at 5:17 PM, Kenneth Loveless <kloveless@lexrich5.org> wrote:

All,

After receiving Terracon Report # 37, I offer the following:

Please review the attached photos above from the letter from Dan Neal to Dr.Melton dated 4:45 PM 7/13/2020. The letter contains Terracon report # 37 of which the photos are a part. The electrical code, NFPA 70 article 352.30 (B) requires 2' PVC conduit to be supported at no greater than 5'0" O.C. Look at the second photo. Do you see anything supporting the conduit off the earth? There is nothing there.

Both photos show the conduit is penned down to the floor of the ditch with piles of dirt,not on PVC conduit spacer racks with restraints as required. Those dirt piles are still there right now separating the conduit from the concrete. The concrete is not homogeneous because the concrete has dirt mixed in with it.The conduit is on the ditch bottom held down by the dirt following the contour of the excavation, not suspended in the concrete as required. The conduit can be punctured by the mass of the concrete and backfilled earth above the concrete bearing on it. This mass can force the conduit into sharp rocks or other objects in the ditch bottom.That is why the NFPA 70 calls for such conduit to be Schedule 80 rather than schedule 40 as constructed.Had the duct bank been constructed properly, the schedule 40 PVC conduit would have been acceptable. Did Mr. Sims,the electrical engineer, know the full story when he wrote his letter in defense of Mr. Hughes? Why was Mr.Sims prompted to write the letter without full knowledge? Whether or not Mr. Sims agrees or not, best practices were not installed with the conduit on the ditch bottom. It's a simple concept.

Article 352.44 requires expansion fittings where there will be temperature changes. I don't see any.

Mr. Hughes says in his letter of 4/20/20 that all has been signed off by Terracon. Mr. Hughes knows that Terracon is not the deciding entity. Terracon works for the district to insure the district testing protocols are followed. As such, Terracon does not take on the role of interpreting the specifications for the contractor. Only the Architect can do that and the Architect must be informed before the work can continue or the contract is responsible for his actions.

I invite everyone to read this: The Project Manual Section 14000 1.8 B.states :"Project quality-control manager may also serve as Project superintendent."There is a built-in conflict of interest. The fox is guarding the hen house. Does anyone seriously believe that the same person who is paid to push production and schedule is going to also demand quality when that would mean slowing the schedule and production? Can you imagine any homeowner building a house who would cede to his builder the owner's right to control quality? Would any of you? Yet, the district did just that.

SCEC_Subpoena_000039

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I have studied the Terracon reports that were provided to date.There are a minimum of 238 reports which are supposed to have been posted through 7/6/2020. 76 are actually posted. Of those 76, ten reports show deviations from the specifications. You can read them. They show that there are more than just a few instances where Terracon indicated discrepancies but the quality-control manager/ Project superintendent proceeded on without stopping.

Mr.Gantt sent me Terracon reports 1-35 when he was chairman. Of those 35 reports only 1-18,23 and 31A are shown on the website. I have the remainder and can prove that they came from the district. Contrary to the Director of Communications,the district has reports that it is not sharing with the public. Will they be shared today? What's in the remaining more than 162 reports? Why are they not being shared? You should ask that.

I have asked for all the missing reports through 7/6/2020. My wife has sent a FOIA request for the same. Other parties have sent FOIA requests for the same.To date, the website does not list the full complement of reports.

A package of concrete delivery tickets came anonymously in the mail. I have reviewed those and found serious problems which I forward in a letter to Mr. Cates and Dr. Melton on 7/14/2020. My letter of March 24,2020 to Dr. Melton asked for other important information which has apparently been ignored. You should ask why I cannot see the things for which I have asked.

Please review and act accordingly by understanding that quality construction takes a group effort. I am trying to help the group.

Ken Loveless

Attachment #2, pg 14 is included with the minutes of the 7/14/2020 meeting at the request of Board member Beth Hulsizer pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

-------- Forwarded message --------
From: **Christina Melton** <csmelton@lexrich5.org>
Date: Tue, Jul 14, 2020 at 9:06 AM
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW
To: Katrina Goggins <kgoggins@lexrich5.org>

This message is being blindcopied to all Board of Trustees. An attachment is included for your information.

Christina S. Melton, Ed.D.
Superintendent
School District Five of Lexington & Richland Counties
office: 803.476.8169 or 803.476-8116
www.lexrich5.org

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SCEC_Subpoena_000040

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Doc H

P.O Box 3408
Summerville, SC 29484-3408

Office (843) 821-7600
Fax (843) 821-7627

September 14, 2020

Mr. Greg Hughes
Contract Construction
P.O. Box 269
Ballentine, SC 29002

Re: Amick's Ferry Elementary School Project

Dear Greg:

On or around April 17, 2020 Ken Loveless requested copies of concrete delivery tickets as it pertains to curb & gutter concrete supplied to Coogler Concrete for the above referenced project. At Mr. Loveless's request the delivery tickets were mailed to his attention.

Please contact me should you have any questions or if you need any additional information.

Respectfully,

Pete Knight
President

Attachment #2, pg 3 is included with the minutes of the 9/15/2020 meeting, at the request of Board member Beth Bulwinkel pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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Doc I

The State Newspaper
September 18, 2020

Feud over new Midlands school leads to ethics accusations against school board member

BY BRISTOW MARCHANT
SEPTEMBER 18, 2020 09:53 AM

Questions of ethics violation rise out of Lexington Richland District 5 board meeting

Some board members at Lexington Richland District 5 are concerned about contract awarded to a fellow board member Ken Loveless. BY LEXINGTON RICHLAND DISTRICT 5
CHAPIN, SC

A long-simmering feud over a new elementary school in Lexington-Richland 5 has boiled over into accusations of unethical conduct against one of the project's biggest critics.

The spat escalated at Monday's Lexington-Richland 5 school board meeting, when members accused their colleague Ken Loveless of using his position on the board to secure lucrative jobs for his company.

Loveless Commercial Contracting was awarded a more than $1 million contract this spring to perform subcontracting work on a construction project overseen by Contract Construction for the State Law Enforcement Division. Loveless's fellow board members blasted that decision.

Contract Construction is the firm overseeing the construction of Piney Woods Elementary School.

"He has turned his board seat into a money-making enterprise by submitting a bid to work for a contractor already doing business with the school district for which he serves as a board trustee," said board member Ed White.

Loveless disputes that his board position had anything to do with the contract.

"My company bid a project, put it out to five or six general contractors, and we were the low bidder with the contractor that was selected," Loveless said. "Period. It had nothing to do with anything with school board."

Loveless said he had spoken about the project with the S.C. Ethics Commission, who had assured him the contract did not raise legal issues.

Under questioning from White at Monday's meeting, Contract Construction president Greg Hughes acknowledged the two men had discussed potential business between the two firms during a June 18 tour that some school board members took of the Piney Woods site. White said that the incident showed Loveless mixing his personal business with the business of the board.

Loveless described the conversation as innocuous.

"After the tour was over, he was talking to me about how they had just bid this big west campus job at USC, and that our company had put out a preliminary bid to all the contractors," Loveless said. "He was talking to me that there was a possibility we would be working together... since then the project was shelved because of money problems, but he was asking me if I wanted to do other work with him. Of

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ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

course, we're a construction company, and we've been around here for years... I said, 'Why don't we go over some time and look at the SLED job?' I hadn't seen it. He said 'sure.'

"That was the extent of the conversation. What did I do wrong there? ... It doesn't create a conflict of interest for businessmen to talk about a project that's not related to School District 5."

Greg Hughes had a similar recollection of the conversation. "I mentioned he'd done good work on the SLED job, and he said he was interested in doing more," Hughes recalled.

But while answering questions at Monday's school board meeting, Hughes walked a fine line between defending his company's work on Piney Woods while acknowledging his relationship with Loveless.

"He does good work for us," Hughes said. "I'd like him to continue doing it."

The latest allegations are the latest in a long dispute between board members over construction of the new elementary school on Amicks Ferry Road about three miles southwest of Chapin, which is slated to open in the fall of 2021. Loveless has been critical of the project since he joined the board in 2018, questioning its cost and what he identifies as deficiencies in its construction.

Loveless criticized the strength of concrete used to insulate electrical wiring buried at the site, which caused the firm to do additional testing, and absorb the cost, before confirming its suitability. He's also questioned practices like doing work on the site at night. Other school board members say the independent inspectors contracted to oversee the project haven't flagged any serious issues.

The dispute continued Monday over a July 16 letter, in which Loveless claimed he had received an anonymous shipment of concrete delivery tickets detailing conditions of the material. In trying to determine where the tickets had come from, the board were told by the concrete supplier that they had provided the tickets at Loveless's request. Board member Beth Hutchison criticized Loveless for trying to mislead his colleagues about how he had acquired the tickets and why they might have been sent.

"He lied to us and he lied to the public," Hutchison said.

Loveless later told The State he didn't want to "rat out my source" for the delivery tickets, although Hughes openly acknowledged Monday their concrete supplier had produced the tickets at the board member's request. Loveless also complained he'd been unable to receive such documents when he requests them from the district.

Loveless also argues he's been denied the ability to visit the Piney Woods site, other than the June 18 site tour. White argues there are liability issues if a board member is issuing directions to contractors on the job.

"He says he ran on this theme of 'I'm going to oversee construction,'" White said. "But we all have equal rights to vote on policy. It's not proper for one board member to decide, 'I'm going to do this part of the district's business.'"

But Loveless says his critical stance on the project means it can't be unethical for him to work on another project with Contract Construction. He voted against their Piney Woods contract when he first joined the board and has continued to question its handling of the site, even after he received the SLED contract.

"Where's the conflict of interest?," he said. "You'd think they would welcome me being involved, since I think you can see I know what I'm talking about."

Doc J

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- I am a retired Navy Captain who commanded and who retired as the Assistant Chief of Civil Engineers for the entire Navy.
- I have three master's degrees and have been a PE in SC since 1982
- I ran operations in RSD 2 which included construction, facility maintenance and repair, food services, security, and transportation.
- I was the South Carolina Area Manager for a large international engineering firm whose projects included the design of the Ravenel Bridge in Charleston
- The Governor has appointed me to the SC Procurement Review Panel
- I was also on the RSD 2 school board and the last year I served I was the vice-chair of an effective board.
- I believe that I understand what a board and each member need to do.
- Dr. Hefner called me over 5 years ago and asked me if I could give him a day or two a week for a couple of months to help solve three issues at the Chapin HS addition project:
  - The inconsistent brick color
  - The slope in the football and soccer practice fields
  - The poor quality metal siding
- My tasking then went on to completing the renovations to Irmo HS, the completion of Chapin Middle School, the replacement of the siding at Chapin High, and the eventual addition of the third wing at Chapin Middle School.
- Dr. Melton asked me to stay on and work the design and construction of what was then ES 13

Attachment #1, pg 1 is included with the minutes of the 4/26/2020 meeting, at the request of Board member Richard Carnes pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment

– Dan Neal
pg. 1

- We worked through the Architect and CM@R contractor selections and are well on our way to delivering a state of the art school that will outlive us all
- When Dr. Hefner asked me to come and help 5 years ago, I told him I would do it if I had Board support and the work was rewarding
- Until recently that was the case
- I find that today I spend more time answering trivial questions by those who want to find fault and it detracts from the project
- When I was a Board member I understood that:
    - I had no authority as an individual
    - I chose not to visit construction projects unless I was invited by the administration and that was rare
    - I understood that it was not my job to supervise construction, but rather to support those who do
- Last Thursday I gave Dr. Melton my resignation in accordance with my ageement
- I am proud that I was able to work with the superb men and women in the District Administration, and the best K-12 architects and contractors in South Carolina
- Mr. Chairman, thank you for this personal privilege

Attachment #1 pg 2 is included with the minutes of the 9/28/2020 meeting, at the request of Board member Michael Cates pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

– Dan Neal
pg. 2

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Doc K

Resubmitted by Beth Hutchison 11/12/20 mty

see page 2 & 3 to see Recusal requirement for Mr. Loveless regarding Ethics Commission Warning that he must recuse himself in School Board business whenever discussion or vote about contracts - he must recuse himself.

State of South Carolina
State Ethics Commission

CHARLES C. THIGPEN, III, CHAIR
DENNIS P. STOLLER, VICE CHAIR
BRIAN M. BARNWELL
ANDOLYN THOMAS HOUSTON
2411 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210
MEGAN WALKER
EXECUTIVE DIRECTOR

September 25, 2020

Attachment #3, pg 6 is included with the minutes of the 9/25/2020 meeting at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

VIA ELECTRONIC MAIL ONLY

Kenneth B. Loveless
[redacted]
ken@lovelesscontracting.com

Re: Informal Opinion Request

Dear Mr. Loveless:

Thank you for your request for an informal opinion from the State Ethics Commission (Commission). An informal opinion is the opinion of Commission staff, taking into consideration any applicable formal opinions, law, and/or judicial decisions. Please be advised that an informal opinion is not binding on the Commission. Additionally, the Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act). This opinion is based solely on the facts relayed by you and does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. A failure to disclose relevant information may void the opinion.

ISSUE

On September 21, 2020, you presented the following in an e-mail:

> I am an elected member of the Lexington-Richland District Five Board of Trustees. The company for whom I am employed as President, Loveless Commercial Contracting, Inc., from time to time subcontracts work from general contractors. I understand that our company can neither bid upon nor construct projects either as subcontractor or a general contractor for District Five. Loveless Commercial Contracting, Inc. has never done so.
>
> If my employer, Loveless Commercial Contracting, Inc. is awarded a project outside of District Five such as an upcoming project at E.L. Wright Middle School in Richland District No. 2 as a subcontractor for a general contractor who does

Attachment #1, pg 1 is included with the minutes of the 10/12/2020 meeting at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

See pages 2 & 3

SCEC_Subpoena_000046

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Attachment #1, #2 is included with the minutes of the 10/12/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

business with District Five, what ethics path in reference to voting upon matters that effect the general contractor with whom Loveless contracts should I follow?

LAW

Section 8-13-700 states, in part:

(A) No [public official] may knowingly use his official [office] to obtain an economic interest for himself, a family member, an individual with whom he is associated, or a business with which he is associated . . .

(B) No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

. . .

(4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

#3, #4, #7 Attachment 10/12/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment. is included with the minutes of the

Section 8-13-100(4) defines "business with which he is associated" as:

[a] business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth more than one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

Ry 10/12/2020 Beth Hutchison

DISCUSSION

Based on the facts presented, the general contractor for which Loveless Construction subcontracts is a "business with which [you are] associated" for purposes of the Ethics Act. This means that whenever you are faced with a scenario in which the general contractor has an economic

- General Contractor Contract Construction as 3rd party

* If other conflicts occur the remedy

SCEC_Subpoena_000047

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Note: Mr. Loveless must recuse himself

interest, you must recuse yourself from that matter following the instructions in Section 8-13-700(B). There is no outright prohibition against Loveless Construction performing subcontracting work for this general contractor; rather, Section 8-13-700(B) must be followed in instances where the general contractor has an economic interest. Thank you for contacting the Commission. If you have any questions or need anything further, please do not hesitate to contact me.

Sincerely,

Courtney M. Laster

Courtney M. Laster
General Counsel

Attachment #1, pg 3 is included with the minutes of the 10/2/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Attachment #3, pg 8 is included with the minutes of the 9/25/2020 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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Doc L

Names confirmed and added by Complainant

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Doc M

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Kenneth B. Loveless

[redacted]

Mrs. Janis Hammond

Chairperson of the Board of Trustees

School District Five of Lexington-Richland Counties SC Ethics Commission Statements of Economic Interests

1020 Dutch Fork Road

Irmo, SC 29063

Re: Recusal of Kenneth B. Loveless on certain matters

Dear Mrs. Hammond:

In accordance with the requirements of SC Code Section 8-13-700(B)(1), I am advising you, as Chairperson of the Board of Trustees for School District Five of Lexington and Richland Counties, of my affiliation with Contract Construction, Inc. My affiliation with Contract Construction, Inc. is that the company which I am employed and a stockholder, Loveless Commercial Contracting, Inc. operates as a subcontractor on the S.C. Law Enforcement Division Forensics Lab project, Columbia, SC. The association began on March 12,2020 and will end at the completion of the construction project.

Please be advised that effective immediately, I will recuse myself from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction, Inc.

Please publish my statement to the Board and the public at the Board's next meeting on February 8,2021 and include a copy of this statement with the minutes of that meeting.

Yours Truly,

Kenneth B. Loveless

Vice Chairman of the Board of Trustees

School District Five of Lexington-Richland Counties

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EXHIBIT E

State of South Carolina
State Ethics Commission

CHILDS C. THRASHER, CHAIR
DONALD GIST, VICE CHAIR
BRIAN M. BARNWELL

AJ HOLLOWAY
DON JACKSON
BRANDOLYN THOMAS PINKSTON

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

September 25, 2020

VIA ELECTRONIC MAIL ONLY
Kenneth B. Loveless
[redacted]
ken@lovelesscontracting.com

Re: Informal Opinion Request

Dear Mr. Loveless:

Thank you for your request for an informal opinion from the State Ethics Commission (Commission). An informal opinion is the opinion of Commission staff, taking into consideration any applicable formal opinions, law, and/or judicial decisions. Please be advised that an informal opinion is not binding on the Commission. Additionally, the Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act). This opinion is based solely on the facts relayed by you and does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. A failure to disclose relevant information may void the opinion.

ISSUE

On September 21, 2020, you presented the following in an e-mail:

> I am an elected member of the Lexington-Richland District Five Board of Trustees. The company for whom I am employed as President, Loveless Commercial Contracting, Inc., from time to time subcontracts work from general contractors. I understand that our company can neither bid upon nor construct projects either as subcontractor or a general contractor for District Five. Loveless Commercial Contracting, Inc. has never done so.
>
> If my employer, Loveless Commercial Contracting, Inc. is awarded a project outside of District Five such as an upcoming project at E.L. Wright Middle School in Richland District No. 2 as a subcontractor for a general contractor who does

business with District Five, what ethics path in reference to voting upon matters that effect the general contractor with whom Loveless contracts should I follow?

LAW

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>
> (B) No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a governmental decision in which he, a family member, an individual with whom he is associated, or a business with which he is associated has an economic interest. A [public official] who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a family member, an individual with whom he is associated, or a business with which he is associated shall:
>
> > (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
> >
> > . . .
> >
> > (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of an agency, commission, board, or of a county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

Section 8-13-100(4) defines "business with which he is associated" as:

> [a] business of which the person or a member of his immediate family is a director, an officer, owner, employee, a compensated agent, or holder of stock worth more than one hundred thousand dollars or more at fair market value and which constitutes five percent or more of the total outstanding stock of any class.

DISCUSSION

Based on the facts presented, the general contractor for which Loveless Construction subcontracts is a "business with which [you are] associated" for purposes of the Ethics Act. This means that whenever you are faced with a scenario in which the general contractor has an economic

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Sincerely,

Courtney M. Laster

Courtney M. Laster
General Counsel

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District Five OF LEXINGTON & RICHLAND COUNTIES

Agenda

Board of Trustees

Regular Meeting

Location: Spring Hill High School, Multipurpose Room

Video Livestream: https://lexrich5.rev.vbrick.com/#/webcasts/boardmeeting

These documents are not date-stamped because the minutes from this meeting are not available yet. See pg. 2 of agenda.

February 8, 2021

1. Call to order at 5:00 p.m.

2. Approval of the agenda

3. Enter Executive Session to consider the following:
   a. Selected employment items (*Exhibit A*) (Action)
   b. Selected employment items (*Exhibit B*) (Information Only)
   c. Discussion and review of the Superintendent's Goals/Expectations and the Board/Superintendent Relationship
   d. Legal advice regarding one construction contract
   e. Legal advice related to Amicks Ferry Elementary School sewer line

4. Call to order at 7:00 p.m.

5. Welcoming remarks – Jan Hammond, Board Chair

6. Invocation – Ken Loveless, Board of Trustees

7. Pledge of Allegiance – Ken Loveless, Board of Trustees

8. Superintendent's Report (Action as necessary)
   - 2020-2021 School Reentry Overview: Part XI
   - Flexible Innovative Virtual Education (FIVE)

9. Approval of the minutes of the January 25, 2021 board meeting

10. Public Participation*

ACTION AGENDA

11. Action as Necessary or Appropriate on Matters Discussed in Executive Session

12. Approval of Proposed 2021-2022 School Year Calendar *(Exhibit C)*

13. Second Reading Approval of revisions to Policy BDE "Board Committees" *(Exhibit D)*

DISCUSSION AGENDA

14. Financial relationship of board member with a vendor and recusal requirements *(Exhibit E)*

15. Adjourn

INFORMATION AGENDA

16. Board Policy BEDB "Agenda"

17. The next regular scheduled board meeting will be February 22, 2021. Location to be determined.

**The Board welcomes and encourages public participation. We respectfully ask that you adhere to the procedures and the decorum provided in board policy BEDH "Public Participation at Meetings". Your comments should be limited to three minutes. Questions asked during public participation will be handled in accordance with board policy BEDH.*

COVID-19 NOTICE: Due to federal and state social distancing guidelines, seating capacity at our school board meeting will be limited. The district will live stream board meetings to provide virtual viewing options. Masks will be required.

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SC school board member steps away from construction project after ethics dispute

BY BRISTOW MARCHANT
FEBRUARY 09, 2021 02:20 PM,
UPDATED FEBRUARY 09, 2021 10:26 PM

Questions of ethics violation rise out of Lexington Richland District 5 board meeting

Some board members at Lexington Richland District 5 are concerned about contract awarded to a fellow board member Ken Loveless. BY LEXINGTON RICHLAND DISTRICT 5

A Lexington-Richland 5 school board member has recused himself from involvement with work on a new elementary school because of his ties to the construction company.

Facing criticism over his business relationship with Contract Construction, Loveless on Monday provided the board with a letter detailing the ties between his company, Loveless Commercial Contracting, and the firm overseeing construction of Piney Woods Elementary School.

"Please be advised that effective immediately, I will recuse myself from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction, Inc.," Loveless wrote.

Contract Construction is the firm overseeing construction of Piney Woods Elementary School on Amicks Ferry Road near Chapin. The school is slated to open its classrooms to students this fall. The firm also contracts with Loveless Commercial Contracting, the board member's firm, on a separate project outside Lexington-Richland 5.

On Monday, Loveless said that work is part of the "normal course of business" for his contracting firm, and it came about last March, long after the district agreed to use Contract Construction for the Piney Woods project. Loveless pointed out that he has been critical of the project for a long time and had voted against it on numerous occasions.

Loveless Commercial Contracting's work with Contract Construction involves a project separate from Piney Woods Elementary. Loveless said he won the job based on a competitive public bidding process. Had Contract Construction not been selected for the other project, Loveless said, his firm could have ended up working with another company.

Speaking about the work he and his wife have done for Lexington-Richland 5, Loveless said, "We are not motivated by money or interest, as my opponents would have you believe."

Loveless' relationship with Contract Construction previously came under fire last fall when it was highlighted by board member Ed White and then-board member Beth Hutchison.

Loveless has said his construction work is unrelated to his role on the school board, and that his relationship with the company doesn't pose an ethical conflict, citing an advisory from the S.C. Ethics Commission.

But in that letter to Loveless, an Ethics Commission attorney cited state ethics law requiring "No [public official] may make, participate in making, or in any way attempt to use his [office] to influence a

government decision in which he ... or a business with which he is associated has an economic interest," according to the document filed with the Sept. 28 board meeting minutes.

Critics argue that language would prohibit Loveless from having any involvement with the district's construction projects involving Contract Construction.

"It's clear he should not be involved in any way," Hutchison, who didn't seek reelection to the Lexington-Richland 5 school board last November, told The State.

On Monday, board member Catherine Huddle moved that the school board also ask the Ethics Commission whether White should recuse himself from matters involving Contract because of past campaign donations he received from the company and its executives as far as back as 2010. White declined to comment on the motion to The State.

Board member Rebecca Blackburn Hines also asked that ethics officials rule on whether Loveless' recusal precludes him from inspecting the construction site on Amicks Ferry. The board approved both motions.

Loveless was also criticized for discussing business with the company's president during a tour of the Piney Woods site last June. Hutchison argued the ethics rule should prohibit Loveless from even taking such district-arranged trips to the construction site.

She compared the situation to the board's role in bearing concerns about individual students. "If you know the family, you have to recuse yourself," Hutchison said. "You have to leave the room. You couldn't call or lobby your colleagues about the case. You couldn't have any influence at all. That's what recusal means."

But Loveless made clear at the board's Jan. 25 meeting he doesn't believe the recusal precludes him from making future visits to the site. "Just because I recuse myself does not mean I cannot go on a construction site," Loveless said at the meeting. "You're abridging my rights as a school board member to do that."

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From Facebook:

Learn About Your D5 School District

Private group
·3.8K members

About This Group

This Facebook group is in NO WAY associated with School District 5 of Lexington and Richland Counties. This group was created by concerned citizens to allow for pertinent and timely discussion about the school district and its Board of Trustees, and the seats coming open in November. This group does not solicit funds nor fundraise for candidates. The administrators are not paid.

If you review our pre-Covid posts you can see the information we uncovered and shared about questionable actions by the current board. An incredible amount of research, FOIA requests, and study. The current board is controlled by 4 people who have a history of suppressing public input and not being transparent with this information. The only way to fix this is new blood.

Sample posts/comments by Ken Loveless in this Facebook group:

Ken Loveless
Mar 7, 2020 ·

In the January 27,2020 board meeting and in previous ones, I have been attacked by Ed White and the rest of the board majority. I have been pointing out that the quality of construction through inspection needs to be carefully monitored at Amick's Ferry, lest we have another debacle like the 2008 Bond Referendum Renovation at Chapin High School. That work was never properly completed. New materials were torn out because specifications either weren't followed or were improperly drawn. We, the taxpayers,not the contractors paid for the rework. Not only that, the board paid the general contractor as settlement an extra $700,000,in addition to his contracted amount.More rework continues at Chapin High recognized as" just discovered" and we, the taxpayers,again, are paying for it. Mr. White has repeatedly ascribed my motives at Amicks Ferry as trying to stop construction and/or trying to usurp his precious 4 vote majority's decision to throw extra millions more than necessary at the project. Again, he is trying to use your money to deflect from the fact that his group sat on its laurels for ten years after not building the school the voters voted for in 2008 at Dorrick's Pond. Now, after Susan Baker recently documented their placing concrete at night under tractor lights, the superintendent will not ask that contractor provide me with pertinent documents in his possession which his contract states he must. (blocking the request is Mr. White's precious 4 vote majority). I am being denied access and even threatened with removal from the board if I go on site. Mr. White has repeatedly stated in board meetings that his new school is beautiful and will be "built to last 100 years" If he wants that, then we need to adhere to the specs. It will have to be someone else. I will not be allowed to participate.

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Juli Jordan Booth ▸ Learn About Your D5 School District
Jul 14, 2020 ·

There appeared to be a little dust-up between Chairman Cates and Trustee Loveless last night. Actually, Chairman Cates appeared to be "disciplining" Mr Loveless for something, but it was difficult to understand what was going on.

I'm hoping Trustee Ken Loveless will explain. This occurred when the board was voting on approval of the minutes from the last meeting.

The vote on approving the minutes was 4-3 (Nikki Gardner, Jan Hammond, Ken Loveless dissenting). So what was it about the minutes that they didn't want to approve?

Ken Loveless

Susan Baker questioned early on in public participation construction activities at night without lights. Susan, a longtime volunteer and SIC member at Chapin High was trying to prevent s repeat of the construction debacle at CHS which left us with 1100 deficiencies. Since that time Ed White,Michael Cates and the board majority have made it their mission to keep me, a general contractor since 1986 off the project. Having monitored the construction at Elementary School #13 from afar, I have been relegated to monitoring the inspection and testing reports supposedly provided by the district. I did that as well as noted serious safety viol... See More

reported by others in a letter to the Superintendent asking questions March 24, 2020. That detailed letter (nine pages with 32 attachments) noted serious matters. It asked for documents in the district's possession which I still have not been allowed to see. I received cover letter with a response from the district's paid contractor of choice defending himself but nothing of substance from the district's Project Representative, Dan Neal. Ed White at the June 15,2020 deemed that his contractor as the expert(fox guarding the henhouse)and proceeded to lob softball questions to him. I objected. I was gaveled out of order. Cates, the chairman, who lost control of the meeting, later wrote me that he stopped the meeting so that his witnesses (Dan Neal and others) could've the documents,i.e.get their stories straight. Ed White placed into the record at the last night's meeting my letter WITHOUT any of the 32 attachments which they did not want anyone to see and without anyone being able to see documents which purported to defend Ed's star witness, the paid contractor.Last night, I was attempting to include my full letter with attachments for the record. Cates, in an effort to at censorship supported by the board majority, scolded me by
told me that my request was out of order. The vote to approve the minutes of the June 15,2020 meeting was approved 4-3 with the majority voting to keep everyone uninformed. I hope you will remember so all the work will not have been done in vain.

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Jondy Loveless
Sep 28, 2020 ·

This from Ken Loveless:

For as long as anyone can remember, this school board and administration have resorted to hurling accusations as a way to suppress criticism.

On Monday, the knives came out once again. Instead of making the agenda to discuss what is foremost in all parents' minds, re-entry, the majority members came after me. This time I was the target of well orchestrated, but completely baseless accusations. Make no mistake: The sole reason behind the false attacks was the fact that I'd brought to light very serious problems involving nonconforming materials being used on the ongoing new Piney Woods Elementary School Project.

Yes, I'm in the construction business. In fact, my construction background is one of the reasons I ran for the school board. I never made any bones about the fact that, given the persistent construction-related missteps in our district, someone with construction experience was need on the board.

No, that's not a conflict of interest. Nor have I done anything improper, unethical or illegal. It's no more a conflict of interest for a contractor to serve on the board than a government employee or a lawyer to serve on the board.

Unfortunately, character assassination has become the standard response to some pretty serious problems in this district, including even critical issues that deserve civil, rational discussion ... such as the mismanaged construction with multiple issues such as siding and its subsequent replacement at Chapin High, selection of contractors and designers, actions that lead to the the never-built Derrick Pond school and latent soils and foundation matters on Oak Pointe Elementary School construction. It should be no surprise that these problems happen again and again and again: It's simply easier to kill the messenger than to acknowledge our shortcomings and address them.

For my part, I'm going to continue to do the job I came here to do, which is to clean up substandard practices in District 5's capital projects program. If that puts me in the crosshairs, so be it.

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Ken Loveless ▸ Learn About Your D5 School District

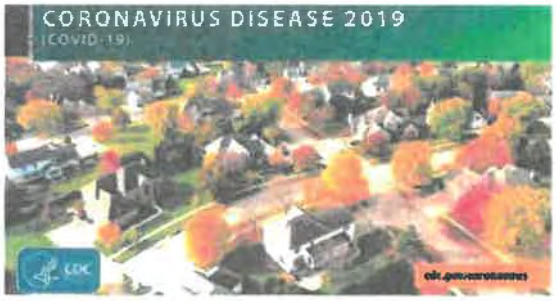
Ken Loveless
Oct 13 2020 ·

Robert Gantt and Ed White have worked diligently with their whisper campaign trying to blame the debacle with Chapin High construction on the "Lady in the Pink Hard Hat". In his dialribe at the September 28, 2020 school board meeting White was forced to bring his statements out in the open. Well, something happened yesterday that would have otherwise gone unnoticed if not mentioned here. Dr. Melton yesterday put out a statement that Facilities Director Clay Cannon would provide preliminary costs at the next juncture where Capital Budgets would be discussed to correct electrical problems at Chapin High. It took Scott Carlin, Dan Neal and Mike Montogomery leaving association with the District to finally get movement on the issue. Retiring board member Beth Hutchison got the spot light at last night's board meeting but the true unsung super hero is my precious wife, Jondy Loveless, for staying true to her convictions for the safety of our teachers,staff and students. She knew that the contract work had never been completed at CHS. She knew that the contractor's performance bond was not called. She also knows that as it exists now, there are code violations and serious safety concerns with the electrical work. Kudos to Jondy Loveless," The Lady in the Pink Hard Hat". Now, it is up to the District to act sooner than later to make long overdue safety repairs!

Learn About Your D5 School District

Judy Raphael Kletter ▸ Learn About Your D5 School District ...

Is our new elementary school (and all of our schools) following the new CDC Covid guidelines for the safety of all student?



CDC.GOV
Community, Work, and School
Actions that communities can take to slow the spread of CO...

Ken Loveless
I wouldn't know about Piney Woods. Board member Ed White and another have kept me away from Piney Woods by threatening me with Ethics Violations if I go on site. Their latest tact is to claim that because my company has a construction contract on a another project, an office building project for SC Law Enforcement Division with the same general contractor, that I cannot see construction documents on Piney Woods. I hate to disappoint them but I will continue to work to see that the public's money is properly spent and that some of the federal money is spent on older schools. Should you have questions about Piney Woods, contact board member Ed White.

State of South Carolina
State Ethics Commission

CHILDS C. THRASHER, CHAIR
DONALD GIST, VICE CHAIR
AJ HOLLOWAY

DON JACKSON
BRIAN BARNWELL
BRANDOLYN THOMAS PINKSTON

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

February 23, 2021

Ms. Kim Benson
[redacted]

Certified Mail: 9214896900999790141904883

PERSONAL AND CONFIDENTIAL

RE: COMPLAINT C2021-016

In the Matter of Kenneth Loveless

Dear Ms. Benson:

The State Ethics Commission has received the complaint filed by you against Kenneth Loveless. The complaint contained facts sufficient to warrant an investigation.

In accordance with Section 8-13-320(9) and (10), all complaints, investigations, inquires, hearings, and accompanying documents are confidential unless the respondent waives the right to confidentiality in writing to the Commission, or upon a finding of probable cause by the Commission.

We shall keep you informed of the status of this complaint.

Sincerely,

Meghan L. Walker
Executive Director

MLW:rp

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State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210

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Ms. Kim Benson
[redacted]

PERSONAL
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UNITED STATES POSTAL SERVICE

March 2, 2021

Dear Richard Provencher:

The following is in response to your request for proof of delivery on your item with the tracking number: **9214 8969 0099 9790 1419 0488 33.**

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Extra Services:	Certified Mail™
	Return Receipt Electronic
Recipient Name:	Ms Kim Benson

Shipment Details	
Weight:	0.0oz

Recipient Signature

Signature of Recipient:	Re Rt Col C-19 Kim Benson
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State of South Carolina
State Ethics Commission

CHILDS C. THRASHER, CHAIR
DONALD GIST, VICE CHAIR
AJ H OLL O WA Y

DON JACKSON
BRI AN M. B ARNWELL
BRANDOL YN TH OMAS PINKSTON

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

February 23, 2021

Mr. Kenneth Loveless
[redacted]

Certified Mail: 9214896900999790141904882 6

PERSONAL AND CONFIDENTIAL

In the Matter of Kenneth Loveless

RE: Complaint C2021-016

Dear Mr. Loveless:

In accordance with Section 8-13-320(10)(a) of the Ethics Reform Act, we are providing you with a copy of a complaint filed against you.

On February 17, 2021, in accordance with Section 8-13-320(10) Code of Laws for SC 1976 as amended, the State Ethics Commission reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation. You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make. If you wish, you may provide a written response to the complaint, including any documentation you wish the Commission to consider. Should you retain legal counsel, please advise the Commission.

In accordance with Section 8-13-320(9) and (10), all complaints, investigations, inquires, hearings, and accompanying documents are confidential unless the respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition. The willful release of confidential information is a misdemeanor, and any person releasing such confidential information, upon conviction, must be fined not more than one thousand dollars or imprisoned for not more than one year.

Complaint procedures are outlined on our website under the link to complaints. We shall keep you informed of the status of this complaint.

Sincerely,

Meghan L. Walker
Executive Director

MLW:rp
Enclosure: Complaint

(803) 253-4192 http://ethics.sc.gov/ FAX (803) 253-7539

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Commission
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Mr. Kenneth Loveless
[redacted]

ROA 000377

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BOWERS LAW OFFICE LLC
Post Office Box 50549
Columbia, South Carolina 29250

Phone: 803-753-1099 **butch@butchbowers.com**

February 28, 2022

Via Electronic Mail (rcaldwell@ethics.sc.gov)
Ryanne Caldwell
Chief Investigator
SC State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, South Carolina 29210

Re: *In the Matter of Kenneth Loveless*
Complaint No.: C2021-016

Dear Ms. Caldwell:

I hope this finds you well. As we discussed on January 25, 2022, Mr. Loveless wishes to provide a written response to the referenced complaint. However, we respectfully decline your invitation to shift the burden to Mr. Loveless of "address[ing] how his participation in discussions regarding Contract Construction from February 2020 through September 2020 did not violate Section 8-13-700(B)". As you know, the burden of proof is not on Mr. Loveless, it is on the Commission. However, we will submit the following which should be considered as Mr. Loveless's response to the complaint by Kim Benson on February 17, 2021.

Preliminarily, this letter shall serve as Mr. Loveless' direction to the Commission that he waives confidentiality of these proceedings, as he is permitted to do under S.C. Code Ann. Section 8-13-320(10)(b). He reserves the right, therefore, to share any communications between himself and the Commission with whomever he desires to share the materials with.

As you know, Mr. Loveless became a "public official" when he was elected as a member of the Lexington-Richland School Board in November 2018. S.C. Code Ann. Section 8-13-100(27).

Prior to his election, on August 20, 2018, District Five issued a Notice of Intent to Award a contract for Construction Manager-at-Risk for construction of Elementary School #13, which was later named Piney Woods Elementary School.

Once Mr. Loveless was elected, Mr. Loveless did not have any individual authority to decide anything regarding Piney Woods Elementary school, or its construction. As you know, the Board collectively "manage[s] and control[s]" the school district. Section 59-19-10. Statutory duties of School Boards are spelled out by the general assembly, and they include the obligation

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to "[p]rovide schoolhouses" and to [t]ake care of, manage and control . . . school property of the district. Section 59-19-90. District Five Board has a code of ethics that obligates its Trustees to "accept the responsibility along with . . . fellow board members of ensuring that optimal facilities and resources are provided for the proper functioning of schools" and "recognizing that authority rests only with the board in official meetings and that the individual member has no legal status to bind the board outside of such meetings." District Five Policy BCA.

This is significant because SEC AO2003-002 relied on the fact that a public official who "has no independent decision-making authority" on his own was not required to recuse himself from providing services of drafting, coordination within the agency, presenting the consensus of the senior staff to the Board and representing the agency in the approval process in the General Assembly, even though his spouse "represents clients seeking permits." The Commission found it significant that the public official's decision-making authority was minimized by a "lengthy [process] that provides for public comment and legislative review" and only the Board as an entity had for initial approval of regulations. There, as here, Mr. Loveless has no individual ability to make decisions for the Board.

As a Board member, however, Mr. Loveless was obligated to the citizenry to bring matters to which he was alerted by citizens and that he personally observed regarding construction at Piney Woods Elementary School to the attention of the school administration. He has carried out his obligations throughout his tenure on the Board, but he has not taken any action with respect to the District's contract with Contract Construction to benefit his economic interest or that of his family.

The company that employs Mr. Loveless was selected as a subcontractor by Contract Construction in connection with a construction project for SLED in late February, 2020. Bids are submitted by lower-level staff at Mr. Loveless's office. In late February or early March 2020, Mr. Loveless became aware that a contract was going to be awarded by Contract Construction for the SLED project. It was Contract Construction that created the alleged "economic interest" by selecting Loveless Commercial Contracting as a subcontractor on the SLED Forensic Lab Project. However, at no time did Mr. Loveless or his employer have an economic interest in Contract Construction's dealings with the school district. Mr. Loveless has no reason to believe that his status as a member of the school board influenced a decision by a private contractor who was performing a construction project for a public entity to choose Loveless Commercial Contracting as a sub-contractor. That is true, unless the private contractor awarded the contract to the company by which Mr. Loveless is employed for the intentional purpose of attempting to prevent Mr. Loveless from commenting on the quality of work by the contractor being performed for the School District, which is apparently what has occurred here.

Mr. Loveless did not believe that his company's status as a subcontractor on the SLED project being constructed by a private entity constituted an "economic interest" within the definition set forth in Section 8-13-100 (11)(a). He believed then, and believes now, that his

company's contractual relationship as a sub-contractor on the SLED project is governed by Section 8-13-100(11)(b), because Loveless Commercial Contracting is a member of "a profession, occupation or large class . . ." which has the same economic interest in doing business with Contract Construction "to no greater extent than the economic interest or potential benefit [that] could reasonably be foreseen to accrue to all other members of the profession, occupation or class." Loveless Commercial Contracting's economic interest in the SLED project was no greater than the economic interest of any other bidder, subcontractor or potential subcontractor that may provide services to a general contractor who has been awarded a public or private construction project. Loveless Commercial Contracting is not prohibited from bidding on public or private jobs simply by virtue of Mr. Loveless's membership on the School Board.

The Commission has found on numerous occasions that economic interests involving a "large class" exempt public employees, officers or officials from the "economic interest" prohibition set forth in Section 8-13-700(B). The Commission has stated that questions such as these "must be answered on a case-by-case basis." SEC AO2004-001.[1] In concluding that a town councilman was not required to recuse himself from a vote on development of green space in the municipality "would appear to have an economic interest in taking actions that would directly impact" property he owned in the municipality; "however, the definition of economic interest provides for the large class exception." SEC AO2008-004. In that decision, the Commission referenced an earlier decision, AO92-201 that held "since the four Council Members are either school district employees or married to a school district employee, their interest is potentially no greater or less than that of all other members of the group of school employees." This was so even though the town council voted on the school district budget issue from which their spouses were paid.

The Commission noted "[t]he large class exception. . . has never made a numerical determination of what a large class is. The Commission prefers to review these questions on a case-by-case basis." In applying the large class exception, the Commission found that there were 171 property owners "with an interest in the property" and the public employee was only one and he "may participate in the selection process and award of a contract to a consultant for the management plan for the town-owned green space."

Similarly, based on the large class exception, the Commission allowed a City of Georgetown council member to vote on matters involving the repair and maintenance of a city

[1] A public official could participate in a rezoning decision of the municipality which he serves even though he personally owns property that is in the vicinity of the land being considered for rezoning. The Commission ruled that it would be clear if the public official owned land in the area of the proposed rezoning, he would be required to recuse himself. Since the public official's land was merely in the vicinity of the land under consideration for rezoning but not in the property, "the public official's economic interest. . . is less clear." *Id.* The Commission held that the public official was not required to recuse himself on a rezoning application for property in which he owned property in the same vicinity.

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boardwalk when she was one of 56 property owners whose property adjoined the boardwalk. "The Commission prefers to review these questions on a case-by-case basis since each set of facts is unique." SEC AO2010-004.

While carrying out his duties as a Board member, Mr. Loveless is required to address issues to the full Board and the administration regarding provision of existing schoolhouses and construction of additional school facilities, particularly when raised by a member of the community. He has voiced his concerns repeatedly about deficiencies in work performed by Contract Construction to the administration of the District and generally. To require him to recuse himself from his statutory duties because he owns an interest in one of thousands of contractors and subcontractors in the state who work in commercial construction and might bid or be awarded contracts for construction of public buildings would create an opportunity for political abuse fraud by members of the construction industry and their allies. The only way Mr. Loveless has an economic interest by virtue of this company's contract with Contract Construction in an unrelated matter is for this Commission to assist companies such as Contract Construction to force the recusal by a public official and prevent him from doing his statutory duties. It was Contract Construction that created this scenario, not Mr. Loveless. If Contract Construction did so to force Mr. Loveless' recusal (and his criticism of their work for the District) they cannot be allowed to succeed.

When political opponents of Mr. Loveless' attempted to raise the issue of conflict of interest with him in September, 2020, Mr. Loveless requested an opinion from this office to resolve the matter. This office declined, and instead in an informal opinion dated September 25, 2020 your agency opined that Mr. Loveless should recuse himself from "that matter" (which was not defined). In his follow-up with the Commission, Mr. Loveless was advised that "you are correct that the ultimate decision to recuse belongs to the public official." (Letter from Courtney Laster dated 2.22.2021, p. 4).

While Mr. Loveless disagreed with the informal opinion of staff, and out of respect for the Commission's position, he nevertheless wrote the statutorily-required notice to Janis Hammond, Chairperson of the Board of Trustees for the School District in early 2021, in accordance with Section 8-13-700(b)(1), based on the view expressed by Commission staff.

Since that time, Mr. Loveless has not made any votes, nor has he taken any action "that could be perceived as an attempt to influence the government decision." (Laster to Loveless February 22, 2021). He has, however, continued to carry out his official duties, which included a site visit to the construction site at Piney Woods Elementary School, and he has privately observed the defective construction at Piney Woods Elementary Sschool, while not voting or taking any action to interfere with the District's contract with Contract Construction.

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"Recusal" is not defined in any of the published advisory opinions that are available for consultation and guidance, but Mr. Loveless has purposefully not voted or taken any action regarding Contract Construction since he complied with Section 7-13-700(b) in early 2021. He is, however, permitted by the First Amendment to make public comment on matters in which he has expertise, and failure to do so would constitute an abandonment of his obligations as a member of the school board. In fact, he cannot be forced to abandon his duties to the District by Contract Construction's attempts, in conjunction with others, to silence him.

If there is existing precedent which prohibits him from voicing his opinion regarding the quality of work being performed for the school district, and therefore expressly allows such an infringe on his first amendment right of free speech, please point those out for our consideration. Similarly, if he is prohibited from listening to discussions about the projects for which he is statutorily required to carry out his duties as a member of the school board (other than voting), please provide that. He has not voted or attempted to influence any vote or any action regarding Contract Construction's involvement with the Piney Woods Elementary School nor taken any other action which would compromise his integrity as a Board member.

If it was Contract Construction's intent to prevent Mr. Loveless from carrying out his duties as a member of the District Five school board by awarding a contract to his employer in an attempt to silence him, then Contract Construction has violated Section 8-13-705(A) and (C), and I request that the Commission investigate appropriately. The statute provides that if Contract Construction attempted to initiate his recusal by awarding Loveless Commercial Contracting a subcontract for an unrelated project after he was elected to the School Board, they are guilty of a misdemeanor. Section 8-13-705(F). Contract Construction's actions should also be examined under Section 8-13-720.

If you have any specific questions, or wish to modify any of the statements made by yourself or Commission staff, we would be happy to hear from you. Mr. Loveless intends to continue to faithfully discharge the duties of his elected position.

Thank you for the opportunity to respond to the complaint in this matter. We look forward to closure of this matter with all deliberate speed.

Sincerely yours,

BOWERS LAW OFFICE LLC

Karl S. Bowers, Jr.

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SEC AO2003-002 September 18, 2002

SUBJECT: PUBLIC EMPLOYEE AND THE REGULATORY PROCESS

SUMMARY: Based on the information provided regarding the DHEC regulatory process, the DHEC Board is ultimately responsible for setting agency policy with substantial input from many factions and thus the public employee's ability to use her employment to obtain an economic interest for herself or her spouse appears remote. However, notwithstanding the apparent remoteness, a public employee must not knowingly use her employment to obtain an economic interest for herself or her spouse. A public employee is required to follow the procedures of Section 8-13-700(B) if a matter comes before her which would affect her or her spouse's economic interests.

QUESTION: Would it violate the state Ethics Act for a DHEC employee, whose spouse represents clients seeking permits, to assist the agency in the process of drafting and coordination within the agency, presenting the consensus of the senior staff to the Board and representing the agency in the approval process in the General Assembly? Several other agency staff serve in this capacity. The employee will not take an independent position on regulations before the Board. The employee has no independent decision-making authority, but rather facilitates developing consensus if stakeholders raise concerns with members of the General Assembly by serving as a liaison among senior staff, agency executive management, the DHEC Board and the General Assembly.

DISCUSSION: The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act no. 248 of 1991; Section 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of

Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

A public employee works for the S.C. Department of Health and Environmental Control ("DHEC"). The public employee's spouse is a consultant who represents clients who seek permits from DHEC for various projects. The public employee's spouse is paid for his representation. The public employee plays no role in the decision to grant, reject, or modify any individual permit application.

The question is whether it would violate the Ethics Reform Act for the public employee to assist DHEC in the process of drafting and coordination within the agency, presenting the consensus of the senior staff to the DHEC Board and representing the agency in the approval process in the General Assembly, notwithstanding the public employee's spouse's employment? The public employee's spouse is a member of the employee's immediate family and thus governed by both Sections 8-13-700(A) and 700(B).

Section 8-13-700(A) provides as follows:

> (A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public member's, or public employee's use which does not result in additional public expense.

Section 8-13-700(B) provides in part as follows:

> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:
>
> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
>
> * * *
>
> (3) if he is a public employee, he shall furnish a copy of the statement to

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his superior, if any, who shall assign the matter to another employee who does not have a potential conflict of interest. If he has no immediate superior, he shall take the action prescribed by the State Ethics Commission;

Immediate family member is defined in Section 8-13-100(18) as:

(a) a child residing in a candidate's, public official's, public member's, or public employee's household;
(b) a spouse of a candidate, public official, public member, or public employee; or
(c) an individual claimed by the candidate, public official, public member, or public employee or the candidate's, public official's, public member's, or public employee's spouse as a dependent for income tax purposes.

Economic interest is defined in Section 8-13-100(11) as:

(a) ...an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's , or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

In promulgating regulations, DHEC and other similar agencies must follow the dictates of the Administrative Procedures Act (APA). The process is a lengthy one and provides for public comment and legislative review. After initial drafting by staff, DHEC's proposed regulations are subjected to internal agency review and comment by appropriate staff throughout the agency. Following that review, the proposed regulations are forwarded to the deputy commissioner for the division where they originated. Following the deputy commissioner's review and approval, the regulations are submitted to DHEC's Board (the "Board") for initial approval to publish the regulation in the State Register and solicit public comment. Changes may be made as a result of public comments received. As required by the APA, the Board then conducts a public hearing following notice and approves the regulation in the form in which it is submitted to the General Assembly.

The DHEC Board has sole authority over the content of any DHEC regulation submitted to the General Assembly for approval. The General Assembly can then approve

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the regulation, disapprove it, request the agency to modify the regulation in a specific way in order to gain approval, or take no action. After an agency submits a regulation to the General Assembly, the agency cannot withdraw or amend the regulation unless an appropriate legislative committee so directs in writing. If the legislative committee states that it cannot approve a regulation unless certain specified changes are made, the agency, after consultation with the Board, can make the specified changes. The agency cannot make changes other than as directed by the legislative committee.

A public employee is prohibited by Section 8-13-700(B) from participating in any action in which he or a member of his immediate family has an economic interest. The public employee is required to follow the procedures of Section 8-13-700(B)(1) and (3) if an issue arises in her employment which would affect the economic interests of her spouse. It does not appear that the regulatory procedure previously outlined would permit the public employee an opportunity to affect the economic interest of her spouse to any greater extent than anyone else affected by the regulation. In providing the staffing function within DHEC and the liaison function with the General Assembly, the public employee would not make agency decisions regarding the content, modification, or adoption of any regulation. The public employee is not a permit manager and does not work in a regulatory section. The public employee does not vote on proposed regulations. As a staff member, the public employee would, along with others, serve as liaison with the General Assembly and support agency policy as formulated by senior staff, the deputy commissioner and commissioner, and the Board, which is ultimately responsible for setting agency policy.

CONCLUSION: Based on the information provided regarding the DHEC regulatory process, the DHEC Board is ultimately responsible for setting agency policy with substantial input from many factions and thus the public employee's ability to use her employment to obtain an economic interest for herself or her spouse appears remote. However, notwithstanding the apparent remoteness, a public employee must not knowingly use her employment to obtain an economic interest for herself or her spouse. A public employee is required to follow the procedures of Section 8-13-700(B) if a matter comes before her which would affect her or her spouse's economic interests.

KEY WORDS:	economic interest, immediate family member

ANNOTATIONS:	8-13-100(11), 8-13-700(A) and 8-13-700(B)

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SEC AO2004-001 January 21, 2004

SUBJECT: CONFLICT OF INTEREST

SUMMARY: The question of whether a public official has an economic interest in a zoning issue before his government entity must be answered on a case-by-case basis. In the situation outlined, the public official does not have an economic interest and is not required to recuse himself pursuant to Section 8-13-700(B).

QUESTION: A petition to rezone property from current single-family to planned community development is to be considered by a municipality. A public official of the municipality owns property in the general vicinity, but not adjacent to the property at issue. The question presented is whether the public official may participate in the zoning decision?

DISCUSSION: The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act no. 248 of 1991; Section 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

The developer of real property petitions a municipality to rezone property in a subdivision from current $-1 (single family) to a planned community development with zoning of R-1, R-2 and R-3. A public official of the municipality owns and resides on a parcel of land in the subdivision, but not adjacent to the property to be rezoned. The question presented is whether the public official may participate in, vote on, or influence or attempt to influence an official decision on this zoning issue?

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Section 8-13-100(11) provides as follows:

(a)`Economic interest' means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b)This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Section 8-13-700(B) provides as follows:

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
>
> * * *
>
> (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

Section 8-13-700(B) requires that, in the event of a conflict of interest, a public official must recuse himself from participating in certain governmental actions or decisions. The public official is prohibited from voting, deliberating or taking any other action relating to the conflict. Clearly, if a rezoning matter dealt directly with a public official's property, then he would be required to recuse himself. In that case the public official's economic interest is clear. Less clear is whether owning property in the general vicinity to the property to be rezoned creates a conflict for the public official. Under the facts provided and a previous opinion the change in zoning from residential to planned community development does not appear to affect the public official's economic interest, in that the public official's property is not adjacent.

CONCLUSION: Under the facts presented a public official does not need to recuse himself from voting, deliberating or taking any action on the rezoning of property in the general vicinity of his own.

KEY WORDS:	conflict of interest, recusal, economic interest
ANNOTATIONS:	8-13-100(11) and 8-13-700(B)

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ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

SEC AO2008-004 January 16, 2008

SUBJECT: LARGE CLASS EXCEPTION

SUMMARY: The council member with property contiguous to the accreted land area may vote on the selection of a consultant and may vote to contract with the selected consultant regarding the management plan for the town owned green space. The council member may vote and participate in drafting or amending ordinances for the accreted land area. The same council member also owns commercial property and he may not participate in the selection of a consultant or the vote to retain a consultant to develop a master plan for the commercial district. The council member may not vote or participate in drafting or amending ordinances that affect the commercial district. The council member may provide direction and input for the consultants in public hearings as any other member of the public would be able to.

QUESTIONS: The Town of Sullivan's Island questions whether a council member can vote on matters related to the two projects that will develop a master plan for the commercial district/surrounding public property and a management plan for the Town owned green space?

DISCUSSION:

The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act no. 248 of 1991; Section 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

Section 8-13-700(B) provides in part as follows:

> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:
>
> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
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> * * *
>
> (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

Economic Interest is defined in Section 8-13-100(11) as:

> (a) "Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
>
> (b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

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Section 8-13-700(B) requires that, in the event of a conflict of interest, a public official must recuse himself from participating in certain governmental actions or decisions of which he has an economic interest. The public official is prohibited from voting, deliberating or taking any other action relating to the conflict.

The Town of Sullivan's Island is preparing to initiate two projects that will develop a master plan for the commercial district/surrounding public property and a management plan for the town owned green space. A council member owns one of one hundred seventy-one (171) lots contiguous to the accreted land area, i.e. the town owned green space. The same council member owns four of nineteen (19) commercially zoned lots in the commercial district.

Whether the council member may participate in the management plan for the town owned green space and in the master plan for the commercial district requires a determination of whether his economic interests are distinct from the public and other members of the class of property owners. A council member would appear to have an economic interest in taking actions that would directly impact his property; however, the definition of economic interest provides for the large class exception.

The large class exception is just that, an exception to the recusal requirements of Section 8-13-700(B) for public officials and businesses with which they are associated and this exception must be reviewed on a case by case to determine whether a large class exists. See SEC AO92-64, AO92-92 and AO92-201. The opinions primarily deal with council members who are also school district employees or spouses of school district employees and the question posed is whether those council members could vote on the school board appropriation. The Commission in AO92-201 stated "(s)ince the four Council Members are either school district employees or married to a school district employee, their interest is potentially no greater or less than that of all other members of the group of school employees. Therefore, the State Ethics Commission sees no prohibition against the four Council Members participating in the deliberations and votes on the school district budget issue. **The members are advised, however, that issues directly affecting their own economic interest to greater extent than other members of the school district employee group will necessitate following the procedures of Section 8-13-700(B).**" (Emphasis added.)

The large class exception found in Section 8-13-100(11)(b) of the definition of economic interest is not defined and the Commission has never made a numerical determination of what a large class is. The Commission prefers to review these questions on a case by case basis since each set of facts is unique. The council member is a member of two classes of Sullivan's Island property owners; however, the question is whether he is member of a large class of the two property groups? The council member may participate in the selection process and the award of a contract to a consultant for the management plan for the town owned green space. He is one of one hundred seventy-one (171) owners with an interest in the accreted property which is a large class. The council member may

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not participate in the selection process and the award of a contract to a consultant for a master plan for the commercial district. He owns four of nineteen (19) lots in the commercial district which is not a large class; therefore, the exception from the Section 8-13-700(B) recusal is not available to him. In addition, he may not draft or amend ordinances that deal with the commercial district. He may as a member of a large class participate in the drafting and amending of ordinances dealing with the management plan for the accreted land area. As to providing direction and input to the consultant the council member may do that as a citizen in public hearings.

CONCLUSION: The council member with property contiguous to the accreted land area may vote on the selection of a consultant and may vote to contract with the selected consultant regarding the management plan for the town owned green space. The council member may vote and participate in drafting or amending ordinances for the accreted land area. The same council member also owns commercial property and he may not participate in the selection of a consultant or the vote to retain a consultant to develop a master plan for the commercial district. The council member may not vote or participate in drafting or amending ordinances that affect the commercial district. The council member may provide direction and input for the consultants in public hearings as any other member of the public would be able to.

KEY WORDS:	economic interest, large class exception
ANNOTATIONS:	8-13-700(B), 8-13-100(11)

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ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

SEC AO92-201 June 9, 1992

SUBJECT: COUNTY COUNCIL MEMBERS VOTING ON SCHOOL BUDGET

SUMMARY: Council Members who are school district employees or who are married to a school district employee may participate in the deliberations and votes on the school district budget issue since their interest is no greater than that of all other school district employees.

QUESTION: Colleton County Council has raised a question as to whether members of County Council may vote on the school budget. The Council is composed of four members; three are employees of the Colleton County School District and the fourth is the spouse of a School District employee.

DISCUSSION:

This opinion is rendered in response to a letter dated April 14, 1992 requesting an opinion from tbe State Ethics Commission. The Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act No. 248 of 1991; Section 8-13-100 et. seq., as amended, 1976 Code of Laws). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation.

Section 8-13-700(B) provides in part as follows:

> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family an individual with whom he is associated, or a business with which he is associated shall:
>
> (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
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> * * *
>
> (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the

statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes.

Economic Interest is defined in Section 8-13-100(11) as:

(a) "Economic interest" means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.

(b) This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Since the four Councilmembers are either school district employees or married to a school district employee, their interest is potentially no greater or less than that of all other members of the group of school employees. Therefore, the State Ethics Commission sees no prohibition against the four Council Members participating in the deliberations and votes on the school district budget issue. The members are advised, however, that issues directly affecting their own economic interests to a greater extent than other members of the school district employee group will necessitate following the procedures of Section 8-13-700(B).

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State Ethics Commission
5000 Thurmond Mall, Suite 250
Columbia, South Carolina 29201

SEC AO2010-004 May 19, 2010

SUBJECT: Conflict of Interest

SUMMARY: The question of whether a public official has an economic interest in the maintenance and repair of a city asset, which is before her government entity, must be answered on a case-by-case basis. In the situation outlined, the public official has an economic interest, but she is a member of a large class of property owners and thus she may participate in the discussions and votes.

QUESTION: A City of Georgetown council member questions whether she can vote on matters involving the maintenance and repair of a city asset, i.e. the municipal boardwalk on the Sampit River, when she is one of fifty-six (56) property owners that adjoin the boardwalk?

DISCUSSION: The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act no. 248 of 1991; Section 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

A newly elected City of Georgetown Council Member owns property that adjoins a municipal boardwalk on the Sampit River that was constructed in the 1980's. Discussions were begun by Georgetown City Council about the repair and maintenance of the boardwalk prior to the council member's election. As a property owner and a citizen, the council member was involved in those discussions. The Georgetown Mayor and City Administrator have proposed a total replacement of the planks, as well as new railings and lighting of which the council member is opposed. while various proposals were being reviewed, the council member questioned whether the city had sought the proper

permitting required from DHEC's Ocean and Coastal Resource Management (OCRM) in addition to concerns regarding the financing of the project.

The question is whether the council member can vote on matters involving the maintenance and repair of the municipal boardwalk, when she is one of fifty-six (56) property owners that adjoin the boardwalk?

Section 8-13-100(11) provides as follows:

> (a)`Economic interest' means an interest distinct from that of the general public in a purchase, sale, lease, contract, option, or other transaction or arrangement involving property or services in which a public official, public member, or public employee may gain an economic benefit of fifty dollars or more.
>
> (b)This definition does not prohibit a public official, public member, or public employee from participating in, voting on, or influencing or attempting to influence an official decision if the only economic interest or reasonably foreseeable benefit that may accrue to the public official, public member, or public employee is incidental to the public official's, public member's, or public employee's position or which accrues to the public official, public member, or public employee as a member of a profession, occupation, or large class to no greater extent than the economic interest or potential benefit could reasonably be foreseen to accrue to all other members of the profession, occupation, or large class.

Section 8-13-700(B) provides as follows:

> (B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:
>
> > (1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;
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> > * * *

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> (4) if he is a public official, other than a member of the General Assembly, he shall furnish a copy of the statement to the presiding officer of the governing body of any agency, commission, board, or of any county, municipality, or a political subdivision thereof, on which he serves, who shall cause the statement to be printed in the minutes and require that the member be excused from any votes, deliberations, and other actions on the matter on which the potential conflict of interest exists and shall cause the disqualification and the reasons for it to be noted in the minutes;

Section 8-13-700(B) requires that, in the event of a conflict of interest, a public official must recuse himself from participating in certain governmental actions or decisions. The public official is prohibited from voting, deliberating or taking any other action relating to the conflict.

Whether the council member may participate in the boardwalk discussion and votas, to include permitting and financing, requires a determination of whether her economic interests are distinct from the public and other members of the class of property owners. A council member would appear to have an economic interest in taking actions that would directly impact her property; however, the definition of economic interest provides for the large class exception.

The large class exception is just that, an exception to the recusal requirements of Section 8-13-700(B) for public officials. Prior Commission opinions have primarily dealt with council members who were also school district employees or spouses of school district employees and the question posed was whether those council members could vote on the school board appropriation.

The Commission in AO92-201 stated "(s)Ince the four Council Members are either school district employees or married to a school district employee, their interest is potentially no greater or less than that of all other members of the group of school employees. Therefore, the State Ethics Commission sees no prohibition against the four Council Members participating in the deliberations and votes on the school district budget issue. **The members are advised, however, that issues directly affecting their own economic interest to greater extent than other members of the school district employee group will necessitate following the procedures of Section 8-13-700(B)."** (Emphasis added.)

"Large class" as found in Section 8-13-100(11)(b) of the definition of economic interest is not defined and the Commission has never made a numerical determination of what a large class is. The Commission prefers to review these questions on a case by case basis since each set of facts is unique.

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ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

The council member is one of fifty-six (56) property owners with an assumed economic interest in the repair and maintenance of the municipal boardwalk; however, whether that economic interest would result in increased income for her business is purely speculative. Therefore, it is the Commission's opinion that her economic interest is no more than that of all other property owners.

CONCLUSION: The question of whether a public official has an economic interest in the maintenance and repair of a city asset, which is before her government entity, must be answered on a case-by-case basis. In the situation outlined, the public official has an economic interest, but she is a member of a large class of property owners and thus she may participate in the discussions and votes.

KEY WORDS:	conflict of interest, recusal, economic interest
ANNOTATIONS:	8-13-100(11) and 8-13-700(B)

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State of South Carolina
State Ethics Commission

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201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

March 21, 2022

Ms. Kim Benson
[redacted]

Re: Waiver of Confidentiality, C2021-016 In the Matter of Kenneth Loveless

Dear Ms. Benson:

In accordance with Section 8-13-320(10), Code of Laws for South Carolina, 1976, as amended, and Rule 52-718 of the Rules and Regulations promulgated by the State Ethics Commission, the Respondent in the above-captioned complaint has waived the confidentiality of the existence of the complaint and authorized the release of information about the disposition of the complaint, if any.

Therefore, as of this date, all parties are henceforth free to discuss this complaint, its contents, and its disposition.

If you have any questions, please contact this office.

Sincerely,

Meghan L. Walker
Executive Director

MLW:ro

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District Five OF LEXINGTON & RICHLAND COUNTIES

Minutes
Board Meeting – June 15, 2020

The Board of Trustees of School District Five of Lexington and Richland Counties conducted an in-person meeting at The Center for Advanced Technical Studies with the following members present:

Mr. Michael Cates, Chairman
Ms. Beth Hutchison, Vice Chairman
Mr. Robert Gantt, Secretary (via video/phone conference call)
Mrs. Nikki Gardner (via phone/conference call)
Mrs. Jan Hammond
Mr. Ken Loveless
Mr. Ed White
Dr. Christina Melton, District Superintendent

The following staff members attended in person or virtually via video/phone conference call:

Mrs. Katrina Goggins, Director, Office of Communications
Mr. Michael Guliano, Chief Instructional Officer
Dr. Michael Harris, Chief Planning and Administrative Officer
Dr. Allison Jacques, Chief Human Resources Officer
Mr. Len Richardson, Chief Finance Officer

A livestream video link was provided to the public for the meeting.

Chairman Cates called the meeting to order at 7:03 p.m. and offered welcoming remarks.

The Invocation and Pledge of Allegiance were given by Jan Hammond, Board of Trustees.

During the Superintendent's Report, Dr. Christina Melton reported on the successful graduation ceremonies that took place during the week of June 1, 2020. Dr. Melton provided information regarding the start of summer feeding sites. Mr. Greg Hughes and Mr. Dan Neal provided an update on Elementary School 13. Following the Elementary School 13 update, Board of Trustees member, Mr. Ed White, submitted items for the record that include: a letter (dated March 24, 2020) from Board of Trustees member, Mr. Ken Loveless (Attachment #1); response letters (dated April 20, 2020) from Mr. Dan Neal (Attachment #2) and Contract Construction (Attachment #3); a letter (dated March 31, 2020) from ADC Engineering (Attachment #4); and FOIA documentation regarding board members' roles in construction (Attachment #5).

The minutes from both the May 18, 2020 board meeting, and the May 28, 2020 special-called board meeting were approved.

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This meeting marked the return to unmodified, in-person public participation. During public participation: Eleanor Howe spoke regarding CDC guidelines; Kim Murphy spoke regarding budget transparency; Deana Berley spoke regarding what the 2020-2021 school year may look like, as well as construction taking place at Nursery Road and Harbison West elementary schools; and, Albert Jones spoke regarding social injustice and Black Lives Matter.

Action Agenda – the following items were presented:

Action was taken as necessary or appropriate on matters discussed in Executive Session: a. Selected employment items (*Exhibit A*) (Action); b. Selected employment items (*Exhibit B*) (Information Only).

Rescind Emergency Resolution Re: 2019 Novel Coronavirus Response, Adopted April 6, 2020.

Proposed revisions to board policy IHBF "Homebound Instruction" (*Exhibit C*) were presented for approval.

Proposed revisions to board policy EF "Food Services" were presented for approval (*Exhibit D*).

A request to Suspend board policy JFABB "Admission of Foreign Exchange Students" due to COVID-19 Mandated Closure (*Exhibit E*) was presented for approval.

DISCUSSION AGENDA

The FY2020-21 General Fund Budget was presented for discussion by Len Richardson (*Exhibit F*).

The meeting was adjourned at 8:48 p.m.

INFORMATION AGENDA

Administrative Rule GDBC-R "Support Staff Supplementary Pay/Overtime" was provided with revisions.

Administrative Rule JFABB-R "Admission of Foreign Exchange Students" was provided with Exhibit E.

Title I, Title II, and Title IV Programs for 2020-2021 was provided.

The next regular scheduled board meeting will be July 13, 2020 at a location to be determined.

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Record of Voting

School District Five
of
Lexington and Richland Counties

Meeting of June 15, 2020

	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
1. M. Hutchison S. Hammond Approve the agenda	X	A	A	X	X	X	A
2. M. Hutchison S. Loveless Return to unmodified Board Policy BEDH "Public Participation"	X	A	A	X	X	X	A
3. M. Loveless S. Hammond Enter executive session to consider the following: a. Selected employment items (*Exhibit A*) (Action); b. Selected employment items (*Exhibit B*) (Information Only)	X	A	A	X	X	X	A
4. M. -- S. -- (*consent approval of minutes as presented*) Approve the minutes of the May 18, 2020 board meeting	X	X	X	X	X	X	X
5. M. -- S. -- (*consent approval of minutes as presented*) Approve the minutes of the May 28, 2020 special-called board meeting	X	X	X	X	X	X	X
6. M. Loveless S. Hammond Approve selected employment items shown in Exhibit A	X	X	X	X	X	X	X
7. M. Hammond S. Hutchison Rescind Emergency Resolution Re: 2019 Novel Coronavirus Response, adopted April 6, 2020	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
8. M. Hutchison S. Hammond Second reading approval of proposed revisions to board policy IHBF "Homebound Instruction" as shown in Exhibit C	X	X	X	X	X	X	X
9. M. Hutchison S. Hammond Second reading approval of proposed revisions to board policy EF "Food Services" as shown in Exhibit D	X	X	X	X	X	X	X
10. M. Hutchison S. Hammond Suspend board policy JFABB "Admission of Foreign Exchange Students" due to COVID-19 Mandated Closure as shown in Exhibit E	X	X	X	X	X	X	X
11. M. White S. Hammond Adjourn the meeting at 8:48 p.m.	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

Questions Raised about Construction on Amicks Ferry Road

Kenneth B. Loveless

[redacted]

March 24, 2020

Attachment #1, pg. 1 is included with the minutes of the 6/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Dr. Christina Melton

Superintendent Lexington-Richland School District 5

1020 Dutch Fork Road

Irmo, SC 29063

Re: Elementary School # 13 Amicks Ferry Road

Dear Dr. Melton:

First, I am aware that district administration has had its hands full with the COVID-19 Pandemic. Yet, construction at the site continues and items within the body of this report have bearing upon contractor safety and quality of construction. As such, each should have relative equal gravity as compared to the present geopolitical occurrences. I believe that I had no choice but to report the situation.

As general notes, any item marked as CONFIDENTIAL is no longer so (and should never have been because this is public project) because the construction documents after approval of the GMP are for public knowledge. Likewise, passages to which I refer marked DRAFT were unchanged during contract negotiations and are also in the public domain.

All correspondence via district email concerning this matter is included. (See attachment #1) I initially requested that the Project Representative Dan Neal investigate by providing Daily Progress reports, photos, concrete delivery tickets for each batch (truckload), Field Density test reports, cut sheets and submittals for select fill and by class of concrete used on site. We also need to review all dates of mobilizations of each contractor or subcontractor, concrete tests reports, soils test reports and electrical conduit submittals from the period interval from the inception of the project until and including progress on December 9, 2019. The initial soils information given indicated an Erosion and Sedimentation Observation Report from Terracon dated 9/25/2019. So, the inception of the project had to have occurred before that date.

At the December 9, 2019 school board meeting, Mrs. Susan Baker made know her observations (see attachment # 2) and requested explanations for actions taken by the Contractor on the night of December 6, 2019. Mrs. Baker has never received an answer to her inquiry. Under school board policy BEDH (see attachment #3) a school board trustee may request an official oral answer to the information

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at the next board meeting. Since I was unaware that Mrs. Baker had not received an answer until today, I am hereby requesting such for the next board meeting.

At the January 27 board meeting, we received letters (see attachments #4, 5 and 6) from engineers and a letter from the project architect (see attachment #7) orchestrated by and presented through the district's Project Representative, Mr. Dan Neal. After reviewing the letters, I have the following to offer:

1) In general, the letters attempt to limit Mrs. Baker's request by filtering out potential causative effects other than concrete materials and testing. Mrs. Baker's inquiry did not exclude any other areas of concern which might have been and are: design, construction, materials utilized, inspections and safety. Mr. Neal choose to make concrete and material testing his focus since his witness, Mr. Greg Hughes, President of Contract Construction, Inc., later stated in the board meeting that electrical duct bank concrete materials did not need to be tested. I asked Mr. Neal in your office December 9, 2019, the afternoon before the meeting, about the matter. He told me that he was confident that the work had been done correctly since Contract Construction's project superintendent had personally supervised the work.

2) As in any construction related endeavor, it's Safety First. Many of our students in mock and real life interviews tout the fact that they have earned through study the OSHA 10 Hour Certification. Yet, we as adults, are allowing unsafe conditions on our district's work site. Think how disillusioned students will be when they become aware of this situation. Our highly regarded general contractor was supervising work performed under tractor lights. I reference you to 29 CFR OSHA 1926 Construction Industry Regulations Section 1926.56 Illumination. (See attachment #8) The Final Geotechnical Engineering Report Item 6.5 General Construction Considerations on page 20 warn bidders about Excavation *Safety. OSHA Section 1926.32 deals with the Competent Person* who was to have supervised excavations on site. Subpart P deals with excavations. On March 12, 2020 at 9:16 a.m. and again at March 13, 2020 at 3:25 p.m. contractor's employees were observed in open excavations over 5 feet depth without trench boxes, trench shoring, ladders or other equipment. The occurrence on March 12 was observed at the water main tie-in location in the right-of-way at the extreme northeastern corner of the property. After a period of almost continual rain for weeks, exceedingly wet soil conditions existed. Yet, a vertically walled excavation (one without sloped banks) was observed. To make matters worse, a track hoe with its surcharge loading was on the leading edge of the excavation directly above and adjacent to the employee. (See attachment #9). There is no evidence that the contractor has complied with either the OSHA illumination section or the trenching section. These minimum standards were brought into question with workers observed in open trenches at night. Please see also the thumb drive with video of a similar occurrence made from Amick's Ferry Road December 10, 2020. (see attachment #10) Contrary to statements made, the safety violations continued after the December 9, 2020 school board meeting.

3) Letters from RB Todd dated December 18, 2019 and Terracon dated January 8, 2020 (see attachments #4 and 5) were sent. The letters are in error by stating that concrete testing

Attachment #1, pg. 2 is included with the minutes of the 2/18/2020 meeting, at the request of Board member Edwards pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

is not a requirement of Project Specification Section 321313 Concrete Walks, Curb and Pavement. In response, the specifications reference SCDOT 2007 Standard Specifications for Highway Construction (see attachment #11) page 6 101.3.14 defines The SCDOT Construction Manual as the "criteria and procedures used by engineering personnel in the administration of construction contracts". The SCDOT Construction Manual as revised 01/11/2019 (see attachment # 12) includes the Quality Assurance and Testing Guide which is an amendment to Figures 106B and 106C of the SCDOT Construction Manual. The guide is also known as SC-50-T.

As a consequence, the SCDOT further defines material classifications not by their use such as conduit encasement but by rather strengths of materials. The Project Manual for Elementary School # 13 states under Specification Section 321313 Concrete Walks and Curbs page 321313-2 paragraph 2.5 A. 1. (see attachment #13) "Concrete Walks and Curbs and Gutters: Class 3000 per SCDOT Table 701.2.12.2."

Referring to SC-50-T (attachment # 14) the concrete is defined as structural Class 3000 and requires 1 each set of concrete cylinder tests per and up to 50 CY on small pours as well as Slump, Air Content, Temperature and Thickness Verification for each batch (truckload).

4) The letter from Sims Engineering dated December 19, 2019 addressed to Barb Haller and Clay Cannon states that testing of concrete at concrete encased conduits is not required. (see attachment #6) The Project Manual for Elementary School #13 Electrical Basic Materials and Methods states under Specification Section on page 260500-15 article 3-03 Raceways Underground Feeder Conduit, Communications Conduit, and Duct Banks: "3.) Where required concrete encasement shall be either 2000psi or 3000psi." (see attachment #15) But, on December 6, 2019 Specification Section 260500 was not part of the Project Manual because the Early Site Work contract which was the only contract at the time. Specification Section 260500 was not part of the Early Site Work Bid Set. The building GMP had not yet been approved nor with it other specification sections. Further, there is no evidence that a highly non-standard 2000 psi design mix had been submitted and approved by the Engineer of Record. In all likelihood, the more standard Class 3000 mix design was used. In any case, testing was required under SC-50-T. I have asked that the district obtain from the construction manager at risk all the delivery tickets from the concrete suppliers so that we can determine the mixes actually incorporated into the work. It was stated that no concrete tests were performed and no test data has been received to date.

5) Under Specification Section 260500 page 15 3.03 Raceways Underground Feeder Conduit, Communications Conduit and Duct Banks: it states "1) Use GRC and PVC schedule 40 for underground and duct bank installations." NFPA 70 National Electric Code 2017 page 70-88 states Section 230.50 (A) (1) Service Entry Cables (3) Schedule 80 PVC conduit.' (see attachment # 16) If installed in accordance with Specification Section 260500 of the Project Manual for Elementary School # 13, the installation may not meet code.(see attachment #17)

Attachment #1, pg. 3 is included with the minutes of the 9/15/2020 meeting, at the request of Board member Ed White

pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

6) Underground duct banks under NFPA 70 of that National Electric Code must be carefully installed by skilled workmen. Under section 230.6 (4) pages 70-84 and 85 it requires cables be "in conduit and installed with no less than 18"of earth beneath buildings and other structures". Section 230.32 on page 70-86 requires protection against damage. Section 230.53 on page 70-88 requires raceways to drain. Section 300.5 on pages 70-136 and 137 has requirements for wet locations, backfill and compaction and minimum concrete coverage over conduits and other requirements. Section 300.7 on page 70-139 has expansion and expansion deflection and deflection fittings requirements. Section 310.2 on page 70-145 has round cross sectional requirements. Section 310.15, on pages 70-146,147 and 148, shows spacing using PVC spacers and mounts between raceways as requirements. Article 352 Rigid Polyvinyl Chloride Conduit: Type PVC on pages 70-202 and 203 shows 352.3 Securing and Supporting requirements.

Clearly the intent of these requirements as shown in paragraph 110.12 page 70-44 which notes that acceptable industry practices are described in reference specification ANSI/NECA 1-2015. These references have at their cores describe the intent that all installations be carefully inspected prior to concrete placement. (see attachment #16)

7) Of 15 each Field Density Soils Reports from Terracon provided, none are noted as occurring at electrical duct bank locations. (see attachment #18) All nine performed at trench locations were at storm drain pipe locations. None of those reports indicates the existence of a required mud slab or support anchoring slabs for conduit or duct bank construction. None indicates testing of Class 1 or 2 "Select Fill" for pipe bedding as required in Specification Section 312333 Trenching, Backfilling, Compacting for Utility Systems Embedment Materials paragraph 2.6.1 and.2 on page 312333-5 for storm drain piping (see attachment #19) and NFPA 70 300.5 (F) on page 70-136 Backfill for Underground Conduit Installations. (see attachment #16) In fact, Specification Section *312333 2.6 A.4.(see attachment #20)* indicates that all the trench backfill as noted in the Terracon reports is the least desirable material listed, Class IV. So, instead of select fill soils which are listed in the specifications, unsatisfactory were utilized.

8) Because the work was supervised as indicated by the general contractor in the January 27, 2020 board meeting and Mr. Neal on December 9, 2019 there are indications that the work was performed by forces not licensed to do this work. The electrical subcontractor probably had not been mobilized since to do so he would have been working without a subcontract. The work on the building contract had not yet been approved because the Guaranteed Maximum Price had not yet been submitted. Electrical specifications were not included under the Early Site Work Bid Set. To know for certain we need to know the date that the electrical subcontractor mobilized. I have requested that the district ask the construction manager at risk for this information. (see attachment #21)

9) Beach Laboratory Services Reports, i.e., # 73191119.0023, # 73191119.0030 and # 73191119.0032 are soils classifications reports which are identified as unsatisfactory soils

Attachment #1, pg. 4 is included with the minutes of the 01/13/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

for use as listed in Section 312000 1.7 C. page 312000-S of Project Manual for Elementary School #13. These soils were used on this project anyway. (see attachment #22)

One of the soils used shown on Laboratory Services Report # 73191119.0011 dated 10/14/2020 has a maximum dry density weight less than the 95 PCF as specified in Section 312000 1.7 B Soils Materials which should have also rendered it unsatisfactory for use. (see attachment #23)

It should be noted that I brought it to the attention of Mr. Neal and attorney Michael Montgomery during contract negotiations with the construction manager at risk that unclassified excavation should have been included in the Contract for Construction. At the time, we were told that it would have been cost prohibitive to include unclassified excavation in the requirements. But, we have already agreed to pay up to an additional $175,000.00 for the Soils Plasticity Remediation Allowance which is allowance # 2 Exhibit C Allowances in the BUILDING GMP approved December 9, 2019 even though each bidder possessed the soils reports at time of bid. Incredibly, this work is related to site paving not buildings but was approved as an allowance under the Building GMP. (see attachment # 24) It certainly appears that the Owner is taking on and paying for the contractor's risk here because all of this was known at the time of the bid.

Attachment #1, pg 5 is included with the minutes of the 12/15/2020 meeting, at the request of Board member [signature]
pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise set upon the contents of this attachment.

Of the 15 each Field Density Reports nine each relate to tests in confined trenches and six each relate to general fill soils installed in large unconfined areas. The site is approximately 24 acres which is 1,045,440 square feet. If one third of it was compacted fill that would require 104 tests per 8" lift of fill soils installed. There are embankments noted where at least 48"of fill soils have been installed. That makes the approximate order of magnitude number of soils compaction tests required (35 times 6 each 8" lifts) equal to 210 tests. Yet, in the general fill areas which are not the trench areas through and including November 11, 2019, there were only 11 individual Field Density Tests made. I cannot say for certain but for a project this large where 1 test is to be done in 8" lifts of fill soils placed per 10,000 sf of surface area in pavement areas and 1 test per 2,500 sf under building footprint area is required per 8' lift (see page 18 Fill Compaction requirements of the Final Geotechnical Engineering report Lex 5/Amicks Ferry Site by ECS Southeast, LLP dated June18, 2019,) (see attachment #25) the number of 11 each tests seems inordinately low. It appears that only approximately 5% of the required number of tests may have been performed.

The 9 each trench tests reported above were on storm drain lines. None were done on Electrical Duct Bank Construction and none were done on the day which Susan Baker observed the work being placed on the night of 12/6/2019.

10) There is correspondence from the previous board chair which states that access to the site and documents under the control of the construction manager at risk are somehow not obtainable by the Owner.(See attachment # 1) Please refer to the General Conditions to the Contract for Construction A 201 -2007 article 3.16 on page 18. "The Contractor shall

provide the Owner and Architect access to the Work in preparation and progress wherever located." (see attachment #26)

Under article 13.5.2 page 37 should the "Architect, Owner or public authorities having jurisdiction determine that portions of the Work require additional testing inspection or approval under 13.5.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing , inspection or approval by an entity acceptable to the Owner...."(see attachment #27)

Article 13.5.4 states "Required certificates of testing, inspection and approval shall, unless otherwise required by the Contract Documents, be secured and promptly delivered to the Architect." (see attachment #27)

Further, the Project Manual under 14000 1.8 A. Contractor's Quality Control Plan states that within 10 days of the Notice to Proceed and not less than five days prior to the preconstruction conference that the Contractor is to submit a comprehensive plan of quality control to include a schedule of testing and inspection. It also requires continuous inspection of workmanship. (see attachment # 28)

Under 013300 pages 5, 6 and 7 of the Project Manual H 3. And 5. Material Test Reports and Product Test Reports are to be submitted to the Architect for review. This includes design mixes for concrete, select backfill embedment and pipe bed material and PVC electrical conduit. (see attachment # 29). By contract these are to be made available to the Owner upon request.

Under AIA Document A 201-2007 article 3.11 page 16 Documents and Samples at the Site The Contractor is to maintain for the Owner one of submittals. This includes the requested items in the paragraphs above. (see attachment #30)

Under article 3.12.7 the Contractor is to perform no portion of the work on site which require submittals until the submittals have been approved by the Architect. (see attachment # 31) This includes the requested items in the paragraphs above.

Finally, under A 133 -2009 page 8 article 2.3.8.8, it states" The construction Manager shall also keep, and make available to the Owner and Architect, a daily log containing a record each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect the progress of the work, accidents, injuries, and other information required by the Owner." (see attachment #32)

In addition to the documents requested in paragraph one of this letter, I ask that you as district superintendent also provide the answers to the following questions for the period from the inception of the project until December 9, 2019:

Attachment #1, 12-19-19 is included with the minutes of the 12/19/2019 meeting, at the request of Board member Elwurd pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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A) Were safety protocols noted in # 2) above followed in regard to illumination and trench safety? If not, what is being done about it?

B) Were concrete mix designs submitted by the general contractor and each subcontractor for each type mix used or to be used on the project? Provide a copy of each approved mix design.

C) Were the specified mixes placed at each location as required? Provide a copy of the material delivery tickets and location of each batched placed.

D) Was a schedule of required tests submitted and approved as in 14000 1.8 A. for concrete and earthwork provided? Provide a copy of the schedule. Which contractor or subcontractor was responsible for coordination and scheduling of the testing agency? Were the tests performed per the schedule?

E) Were the tests performed in proper number and locations as specified? If not, what will be done about it?

F) When was each contractor or subcontractor mobilized? Who was on the site each day? What problems were reported? Provide copies of contractor and subcontractor daily reports. Provide a listing the other information required by the owner as above under A 133-2009 page 8 article 2.3.2.7.

G) Was schedule 80 PVC conduit with proper spacers and supports used at duct bank construction? Was select fill pipe bedding and embedment material installed at storm drain and duct bank locations. Was a concrete mud slab or anchoring slab used at duct bank locations? Was the installation inspected? If so, provide the inspection report. If not, what will be done to insure the installation was done properly?

H) Has the district taken on and paid for the contractor's risk as in #9 above? If so, how will that be rectified?

In summary, applicable building codes and/or the Project Manual may not have been followed. As you can see, the district through its paid consultants must require the contractors follow the contract documents. We, as the board, must act accordingly by overseeing and insisting that our administrative group investigate and rework as necessary for quality assurance.

Please keep in mind that only the Architect may change project specification requirements issued after the contract has been signed. He or she may only do so a change order executed by the Owner (the board).

I hope that we are good stewards for future citizens. We teach our children the scientific method. Carl Sagan said: "Something my father dearly loved is the scientific method, and it's founded in this element of humility. The idea is that you pursue truth wherever it goes; you need to evidence, and if you can –you see if it's repeatable." Why would we teach our children this and then not want to know? Ronald Reagan said it best when he said, "Trust but verify."

I request action and a reply on these matters within the next two weeks.

Attachment #1, pg. 7 is included with the minutes of the 6th of April 2010 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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Please act accordingly.

Respectfully submitted,

Kenneth B. Loveless, Trustee

Attachment #1, pg. 8 is included with the minutes of the 4/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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Response By District Consultant

Dan Neal, PE (ret)
[redacted]

April 20, 2020

Dr. Christina Melton, Ed. D.
Superintendent,
School District Five of Lexington and Richland Counties
1020 Dutch Fork Road
Irmo, SC 29063

Dear Dr. Melton,

Please find attached a letter, with enclosures, from Mr. Greg Hughes, President of Contract Construction, Inc. Mr. Hughes answers in detail the concerns raised by Trustee Ken Loveless in his letter dated March 24, 2020. I agree with Mr. Hughes letter in its entirety. In my opinion, Contract Construction, Inc. is one of the premiere K-12 construction firms in the state and we are fortunate to have them working on this project for District 5. Please let me know if you have any additional questions.

Sincerely,

Dan Neal

Dan Neal, PE (ret)

Attachment #2, pg.1 is included with the minutes of the 6/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

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4/20/20

Responses to Questions Raised by Ken Loveless

Dan Neal, PE (ret)
[redacted]

Attachment #3, pg. 1 is included with the minutes of the 6/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

RE: Letter Dated 3/24/20 from Ken Loveless

Dear Dan:

I am writing in response to the above-referenced correspondence (which I enclose for reference purposes) and will respond to items that I feel require a response from us in the order in which issues were identified. Before I begin, I want to make it clear that I take immediate exception to Mr. Loveless' inference that we should not be currently working on the school during the "present geopolitical occurrences". Construction has been deemed essential and we are taking each day with a newly elevated level of caution to protect the workers on our project. The safety of our workers is our top priority and I am disappointed that Mr. Loveless would attempt to portray otherwise.

Regarding Mrs. Susan Baker's observation:

As you may be aware, we had record-breaking quantities of rainfall in the latter part of 2019 so we did then and still do now take advantage of every single opportunity to get work completed so our project can remain on schedule, and that includes nights and weekends. Proper illumination has been questioned based on a video taken from across the street, the illumination provided was deemed safe by our project superintendent for the task at hand and the work was completed under our direct supervision in accordance with the contract documents.

Item 2:

safety record

I would like to start by stating that Contract Construction has a 35-year impeccable safety record and enjoys a very good relationship with OSHA, who has commented on a number of occasions that we are in fact "highly regarded" in the OSHA organization. We are also an active participant in OSHA's Office of Voluntary Programs and invite them regularly to all of our jobsites. We have constructed over a billion dollars worth of educational facilities across the state of South Carolina with very few OSHA violations. Furthermore, our Experience Modification Rate (MOD) has been 0.75 for the past three years, we are a member of the National Safety Council, and have been awarded the highest safety award offered by our 180-member General Contractor's Captive Insurance Group 8 years in a row. So, with all that said, the students in LR5 have the rare opportunity to experience the process in real life, from one of the top school-builders in the state, and we would welcome the chance to go into the classrooms to enhance their learning experience.

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#3.M.2

meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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1. As noted above, illumination for the curb and gutter pour was adequate and appropriate and no one was put at any risk during this placement. However, since illumination levels have been questioned from hundreds of yards away, we have rented light towers, which hopefully will not disturb surrounding neighbors. If documentation of illumination levels is going to be deemed necessary by LR5, please let us know and we will begin to record this information.
2. We take exception to Mr. Loveless' guestimate on the depth of the trench. The trench was 40" deep and at no point has any worker been endangered by entering excavations over 60" without proper benching or use of trench boxes. Regarding the proximity of the excavation equipment, there was and has not been any displacement of trench walls caused by the weight of excavation equipment and any statement to the contrary is simply a supposition.

Item 3:

Please see attached letter from Bruce Todd of ADC Engineers, the civil engineer of record, explaining the strength of the concrete curb and gutter. In addition, it should be noted that the curb installed will be in place for approximately 18 months prior to turning over to the Owner and any damaged or compromised curb will be replaced accordingly.

Item 4:

Chris Patrick of the Simms Group, Electrical Engineer of record offers the following:

> "The electrical specifications state that concrete encasement shall be either 2000 psi or 3000 psi. The electrical specifications do not specifically require testing of the concrete encasement. The company that provided the concrete should provide written confirmation of the compressive strength of the concrete delivered and used for concrete encasement of conduit."

Attached are the delivery tickets for the concrete placed in the electrical duct bank, substantiating that a 3000psi mix design was used. One should note that this concrete was in-fact sold to West Electric, a properly licensed electrician. This also provides substantiation to our response to item 8.

Item 5:

Chris Patrick of the Simms Group, Electrical Engineer of record, explaining the erroneous interpretation of the electrical code as it relates to the activity in question:

> "NEC 230-50(A) addresses "*Protection Against Physical Damage*" of "*Underground Service-Entrance Conductors*", which is the application addressed in 260500, 3-03 where PVC Schedule 40 is permitted for this project. NEC 230-50(A) references NEC 300.5, where the use of PVC Schedule 40 is permitted for underground installations of service-entrance conductors. NEC 230-50(B)(3), the section referenced in the March 24 letter, addresses "*Protection Against Physical Damage*" of "*All Other Service-Entrance Conductors*" (i.e. not underground). 260500, 3-03 does not permit PVC Schedule 40 in these cases, and in fact, specifically states, "*PVC is not permitted above grade.*" The electrical specifications require Galvanized Rigid Metal Conduit (RMC) or Intermediate Metal Conduit (IMC) for the condition described in

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#3, 19.3
the minutes of the 6/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CONTRACT CONSTRUCTION

NEC 230-50(B), which is permitted in 230-50(B)(1) and 230-50(B)(2). The installation as specified in 260500 complies with the requirements of NEC 230-50."

Item 6:

Terracon report number 73191119.0037 states clearly, "the installation of the schedule 40 conduits are installed in accordance with the plans."

Item 7:

I am not sure I follow this question. The electrical duct bank was excavated into virgin soils and is not a structural component of the building, so compaction testing was not required nor necessary. The duct bank being questioned is also concrete encased so I cannot fathom why there would be a concern with settlement of this utility.

Item 8:

In order to maintain the early sitework schedule, Contract Construction proceeded at risk to get the conduits installed so sitework would not be interrupted. We did so with the clear understanding that we would not be paid for this work if the GMP was not approved. West Electric, a properly licensed electrical contractor, performed this work. By Contract Construction doing this, the Owner gained the benefit of accelerating the project with no risk. To be clear, the GMP documents were complete at the time of installation and used for this construction.

Item 9:

The reason that it is fiscally irresponsible to put the risk of unclassified excavations on the CMR / Site Contractor is that the numbers will be unnecessarily padded to cover unknown quantities of unsuitable materials, and then the subcontractor will reap all the rewards of savings. It is true that we included an allowance in the GMP for soils plasticity remediation in the amount of $170,000. However, through many discussions with our site contractor, geotechnical engineer, civil engineer, and special inspector we were able to improve the in-place soils using soil cement, were able to do so within the early sitework GMP, and have not had to use one cent of the $170,000 allowance to date. In this scenario, all allowance savings will be returned to the Owner and not kept by a subcontractor that was asked to bid an unclassified site.

Regarding the suitability of the soils, Terracon notified the project team on or about Oct. 4th that the onsite soils did not meet the project specifications for structural fill. Terracon was directed to do additional onsite soil classification in multiple areas across the project area. The project team, consisting of the Owner, Terracon, ECS Southeast (geotechnical engineer of record), Contract Construction, Coogler Construction (site contractor), Quackenbush, ADC (Civil) and Johnson and King (Structural) had multiple discussions about how to mitigate and move forward with the onsite soils, which are natural and typical for this area. These methods included a stone base for the building area and modified soil cement subgrade for the pavement subgrades. To be very clear, there are no subsurface conditions beneath in-place construction that have been deemed unsatisfactory.

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Attachment #3, pg. 4 is included with the minutes of the 6/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Item 10:

a. Documents and site access have been made available to our Owner Representative on site. We are not obligated to provide information or access to anyone other than those named in our contract.
b. No additional testing has been deemed necessary by the designers of record. In addition, Contract Construction will provide warranties and guarantees as specified in the contract documents at the conclusion of the project.
c. The testing company works for Lexington-Richland School District Five, so these reports are provided directly from Terracon to LR5.
d. We did conduct a pre-construction conference on 9/12/19 with Terracon and Lexington County. It was at that meeting that our Quality Control Plan was reviewed, as well as, the Schedule of Special Inspections which dictates exactly what is required to be tested.
e. All of these items have been submitted and approved by the design team and have been made available to our Owner Representative.
f. All items are being maintained at the project site and are readily available for our Owner Representative to review.
g. Daily reports have and continue to be maintained since the inception of this project and are readily available to our Owner Representative.

Answers to questions posed:

a. Yes, and we continue to monitor worker safety every single day.
b. Yes. Approved mix designs are maintained in our submittals folder on site.
c. Yes. Terracon can confirm this as fact. If material delivery tickets are to be matched to locations placed, that would be an additional service for Terracon and should be negotiated with them.
d. The Schedule of Special Inspections is clearly listed in section 14000 and is being strictly adhered to. Contract Construction arranges for all inspections. Terracon will confirm that inspections have been conducted in accordance with the schedule of special inspections.
e. Terracon can confirm that tests have been performed in proper number and locations.
f. Subcontractor mobilizations and any issues encountered are documented in our daily reports by our site superintendent.
g. 1. Schedule 40 was specified, installed and signed off on by Terracon as being in accordance with the contract documents. 2. Where utilities were installed in fill locations, such fill was deemed appropriate for use by Terracon. Waterlines and Sanitary Sewer were bedded with 57 stone per the Town of Chapin requirements. 3. No mud slab or anchoring slab was used or deemed necessary by Terracon during the installation of the electrical duct bank. See attached report as requested.
h. The District gained all the benefit regarding the scenario mentioned in item 9.

o: 803.781.7058 | f: 803.732.3064 | P.O. Box 269, Ballentine SC 29002 | www.contractconstruction.net

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CONTRACT
CONSTRUCTION

I conclude by stating that we are not perfect and never will be, but every single day we strive to do things better than the day before and to be more like a thermostat affecting our surroundings, instead of a thermometer that merely reacts to them. When we encounter issues, we work with the project team to resolve them. In addition to Contract Construction's very high level of daily quality control, LR5 has hired trust-worthy individuals and firms that include a dedicated Owner Representative, Architect, Professional Engineers, and Special Inspectors to verify our work. I believe that everyone on this project team will confirm that this project is being managed very professionally and with very few deficiencies for this size project.

Please do not hesitate to let me know if I have not adequately responded to any of the issues presented by Ken Loveless.

Sincerely,

Greg Hughes
President

Attachment #3, Pg. 5 is included with the minutes of the 10/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

o: 803.781.7058 | f: 803.732.3064 | P.O. Box 269, Ballentine SC 29002 | www.contractconstruction.net

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ADC ENGINEERING
7436 Broad River Rd– Suite 212
Irmo S.C. 29063

March 31, 2020

Quackenbush Architects + Planners
1217 Hampton Street
Columbia, SC 29201

Attn: Barb Haller, AIA, LEED AP

Re: Amicks Ferry Road Elementary School – Curb and Gutter Testing

Dear Barb:

This letter is in response to item #3 of a correspondence between Ken Loveless (Trustee – LRSD5) and Dr. Christina Melton (Superintendent- LRSD5) dated March 24, 2020. The item is in reference to testing for structural strength of concrete poured for curb and gutters.

The SCDOT testing standards referenced in the letter are correct. However, it was never the intent on this project, or any project, to test the structural strength of concrete being used in a non-structural application like curb and gutter.

It is my professional opinion as the Engineer of Record, that even though the concrete strength specified for curb and gutters is 3000 psi, that they are not considered a structural element. Therefore, testing of concrete in the construction of curb and gutter sections is an unnecessary expense.

However, if it is desired to confirm the structural strength of concrete previously poured, it is suggested that the testing firm propose a plan for non-destructive testing of poured in place curb and gutter.

Sincerely,

Bruce Todd, P.E., LEED AP BD+C
803-781-3141 x.306
brucet@adcengineering.com

Attachment #4, pg.1 is included with the minutes of the 4/15/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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SCEC_Subpoena_000109

Knight's REDI-MIX

OFFICE:
PO BOX 3408
SUMMERVILLE, SC 29484
PHONE: 843-821-7600
FAX: 843-821-7627

MIDLANDS DISPATCH
803-754-8633

No. 713598

PLANT LOCATIONS
PLANT 6 BLYTHEWOOD
PLANT 7 IRMO, SC
PLANT 8 LUGOFF, SC
PLANT 9 WINNSBORO, SC

Attachment #4 Pg. 2 is included with the minutes of the 12/1/2020 meeting, at the request of Board member Ed Wuckert

pursuant to South Carolina Code Ann. Section 30-4-90(a)(1) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise opinion the contents of this attachment.

UNLOADING

Drivers are not permitted to add water to the mix to exceed the maximum slump. Drivers are prohibited from delivering concrete except under the truck's own power, and where site conditions permit the safe and proper operation of this equipment. Drivers are not permitted to go beyond the curb line, except upon the authorization of the customer and his acceptance of risk for any loss or damage to the property or our equipment. This includes any wrecker or towing charges for getting out of the location.

Water added.

_____ Gallons

RECEIPT AND RELEASE

Customer's representative

RECEIVED SUBJECT TO CONDITIONS ON REVERSE SIDE

CAUTION

May cause eye or skin injury. Contains Portland cement. Fresh cement, mortar, concrete, or grout may cause skin injury.

TAKE THESE PRECAUTIONS:

1. Avoid all contact with eyes.
2. Wear rubber boots and gloves, and avoid prolonged contact directly with skin or through porous materials.
3. In case of contact with skin or eyes, FLUSH THOROUGHLY WITH WATER.
4. If irritation persists, get medical attention promptly.
5. Keep children away.

TERMS: Net 30 Days

CUSTOMER ID	P.O. NUMBER	ZONE	ORDERED BY	TIME	DATE	TICKET
001269				11:19 AM	11/14/19	14667

SOLD TO	DELIVER TO	Leave Plant / Arrive Job Site	Leave Job Site / Arrive Plant
WEST [illegible] ST NEWBE[illegible]	AM[illegible] ROAD AMI[illegible] FERRY ROAD	1140	1230 105

QUANTITY THIS LOAD	QUANTITY ORDERED	QUANTITY DELIVERED	PRODUCT CODE	PRODUCT DESCRIPTION	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
5.00	5.00	5.00	F30M	F30M - 3000 ASH RES MI			
1.00	1.00	1.00	ENVFEEM	ENVIRONMENTAL FEE MIDL			
1.00	1.00	1.00	FUEL[illegible]	FUE[illegible] SURCHARGE MIDLAND			

TRUCK	DRIVER	SLUMP	DUE AT JOB	USE OF CONCRETE		
82	DALE	4.00	11:44 AM	[illegible]INGS	SUB TOTAL	
CALCIUM	WATER REDUCER	AIR ENTRAIN	PHONE		TAX	
				GAL/CY MAY BE ADDED NOT TO EXCEED W/C RATIO	TOTAL	

DELIVERY INSTRUCTIONS [illegible]L[illegible]NG [illegible] A DITCH

10 MINUTES PER YARD ALLOWANCE

$60.00 PER HOUR OVERTIME

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SCEC_Subpoena_000110

OFFICE:
PO BOX 3408
SUMMERVILLE, SC 29484
PHONE: 843-821-7600
FAX: 843-821-7627
MIDLANDS DISPATCH
803-754-8633

No. 713599

PLANT LOCATIONS:
PLANT 6 BLYTHEWOOD, SC
PLANT 7 IRMO, SC
PLANT 8 LUGOFF, SC
PLANT 9 WINNSBORO, SC

Attachment #4 to the minutes of the 11-3-2020 meeting, at the request of Board member Manning.

pursuant to South Carolina Code Ann. Section 7-7-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

UNLOADING

Drivers are not permitted to add water to the mix to exceed the maximum slump. Drivers are prohibited from delivering concrete except under the truck's own power, and where site conditions permit the safe and proper operation of this equipment. Drivers are not permitted to go beyond the curb line, except upon the authorization of the customer and his acceptance of risk for any loss or damage to the property or our equipment. This includes any wrecker or towing charges for getting out of the location.
Water added.

RECEIPT AND RELEASE:

Gallons

Customer's representative

RECEIVED SUBJECT TO CONDITIONS ON REVERSE SIDE

CAUTION

May cause eye or skin injury. Contains Portland cement. Fresh cement, mortar, concrete, or grout may cause skin injury.

TAKE THESE PRECAUTIONS:
1. Avoid all contact with eyes.
2. Wear rubber boots and gloves, and avoid prolonged contact directly with skin or through porous materials.
3. In case of contact with skin or eyes, FLUSH THOROUGHLY WITH WATER.
4. If irritation persists, get medical attention promptly.
5. Keep children away.

TERMS: Net 30 Days

CUSTOMER ID	P.O. NUMBER	ZONE	ORDERED BY	TIME	DATE	TICKET
001269				12:45 PM	11/14/19	14668

SOLD TO	DELIVER TO	Leave Plant	Arrive Job Site
[illegible]	AMI FERRY [illegible] AMICKS FERRY ROAD [illegible]	100	145
		Leave Job 154	Arrive Plant

QUANTITY THIS LOAD	QUANTITY ORDERED	QUANTITY DELIVERED	PRODUCT CODE	PRODUCT DESCRIPTION	UNIT OF MEASURE	UNIT PRICE	EXTENDED PRICE
.00	.00	7.00	F30M	F30M - 3000 ASH [illegible]			
1.00	1.00	2.00	ENVFEEM	ENVIRONMENTAL FEE MIDL			
1.00	1.00	2.00	FUELM	FUEL SURCHARGE MIDLAND			
1.00	1.00	1.00	MIN LOAD	MINIMUM LOAD CHARGE MI			

TRUCK	DRIVER	SLUMP	OPERATION	USE OF CONCRETE
[illegible]	TIPPS,	4.00	1:23 PM	FOOTINGS

ADMIXTURE	WATER REDUCER	AIR ENTRAIN	PHONE

GALS/CY MAY BE ADDED NOT TO EXCEED W/C RATIO

SUB TOTAL
TAX
TOTAL

DELIVERY INSTRUCTIONS [illegible] NB [illegible] A DI [illegible]

10 MINUTES PER YARD ALLOWANCE
$60.00 PER HOUR OVERTIME

Proper Board Role in Construction

the South Carolina Freedom of Information Act. Please see the following link for exemptions provided for in SC FOIA: https://www.scstatehouse.gov/code/t30c004.php

3] How can some board members deny other board members access to LR5 building sites? How or why does one have that power? Shouldn't all building have oversight by all board members? Construction contracts give control of construction sites to the general contractor. Managing the construction contractor is an administrative function. The District, with Board approval, contracted for Contract Construction to serve as the District's Construction Manager at Risk for Elementary School 13. The terms of the contract give Contract Construction the responsibility to maintain a safe and secure job site. The District's administration is responsible for the day to day management of the District's operations. Board Policy BBA describes the Board's Powers and Duties, including Visits to Schools. Oversight is the responsibility of the Board collectively. Board Policy BB notes that "All powers of the board lie in its action as a body." Board members acting as individuals have no authority over personnel or school affairs. Board Policy BCA notes that board members basic function is policymaking, not administration.

The Superintendent and the administration operate and supervise the day to day functions of the District including construction projects.

The District retains a consultant to represent the District's interest and ensure the terms of the contract are being met. This professional acts as the owner's representative on the project. In addition to Contract Construction and the District's consultant, the District also engages the services of a third-party inspection company that is paid by and answers to School District Five.

Michael Cates
School Board Chairman
School District Five of Lexington & Richland Counties

4] When can we expect the redistricting information? Withholding this information (which should have been completed before deciding where to build #13) is very inconsiderate to LR5 families with school age children. No official timeline has been provided for the Milone & MacBroom report, but one will be provided publicly to the school board at the appropriate time.

5] And 5) When will the Amicks Ferry /#13 traffic patterns be resolved? There are no traffic pattern issues to resolve. The District is complying with all elements of a traffic study, which has been accepted and approved by SCDOT.

Your questions and comments were shared with all members of the Board of Trustees and posted publicly on the District's website.

Attachment #5, pg. 1 is included with the minutes of the 10/19/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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District Five OF LEXINGTON & RICHLAND COUNTIES

Minutes
Board Meeting – July 13, 2020

The Board of Trustees of School District Five of Lexington and Richland Counties conducted an in-person meeting at The Center for Advanced Technical Studies with the following members present:

Mr. Michael Cates, Chairman
Ms. Beth Hutchison, Vice Chairman (via video/phone conference call)
Mr. Robert Gantt, Secretary (via video/phone conference call)
Mrs. Nikki Gardner
Mrs. Jan Hammond (via video/phone conference call)
Mr. Ken Loveless
Mr. Ed White
Dr. Christina Melton, District Superintendent

The following staff members attended in person or virtually via video/phone conference call:

Mrs. Katrina Goggins, Director, Office of Communications
Mr. Michael Guliano, Chief Instructional Officer
Dr. Michael Harris, Chief Planning and Administrative Officer
Dr. Allison Jacques, Chief Human Resources Officer
Mr. Len Richardson, Chief Finance Officer

A livestream video link was provided to the public for the meeting.

During the July 13, 2020 school board meeting the following took place:

Chairman Cates called the meeting to order at 7:02 p.m. and offered welcoming remarks.

The Invocation and Pledge of Allegiance were given by Chairman Cates.

During the Superintendent's Report, Dr. Christina Melton highlighted recent district events and accolades to include: Adult Education's virtual graduation; The Center for Advanced Technical Studies teacher, Joe Chapman, named SkillsUSA National Advisor of the Year; and Spring Hill High School Teacher, Sarah Gams, named the 2021 South Carolina Teacher of the Year. In addition, an update on the progress and processes of growth forecasting and redistricting was provided by Milone and MacBroom, Inc. Finally, an AccelerateED Committee update was provided which highlighted the progress of the District's reentry plan for the 2020-2021 school year.

The minutes from the June 15, 2020 board meeting were approved.

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During public participation, Kim Murphy spoke regarding FOIA, budget and transparency. The following attendees spoke regarding school reentry and concerns related to the COVID-19 mandated closure: James Hugh Ryan, Rebecca Hines, Daniel Aaron Ashley, Cynthia Hope Clark, Dr. Mike Nunnery, and Stacy Reinsel.

ACTION AGENDA

Action was taken as necessary or appropriate on matters discussed in Executive Session: a. Receipt of legal advice regarding Board Policy KLGA; b. Selected employment items (Exhibit A) (Action); c. Selected employment items (Exhibit B)(Information Only).

First reading of the FY2020-21 General Fund Budget was presented by Len Richardson (Exhibit C).

DISCUSSION AGENDA

The meeting was adjourned at 10:52 p.m.

The next regular scheduled board meeting will be held on August 10, 2020 at a location to be determined.

Record of Voting

School District Five of Lexington and Richland Counties

Meeting of July 13, 2020

	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
1. M. Loveless S. Hutchison Approve the agenda and enter Executive Session to consider #3, items a, b, and c.	X	A	X	A	X	X	A
2. M. White S. Gardner Approve the minutes of the June 15, 2020 board meeting	X	X	N	N	X	N	X
3. M. Loveless S. – *(Alternative Motion ruled out of order by Chairman Cates)* Alternative motion to add to the amendment submitted by Mr. White herewith to include the entire letter of March 24, 2020 from me to Dr. Melton referencing construction at Elementary School #13 to include the 32 attachments shown in my letter.	-	-	-	-	-	-	-

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

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	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
4. M. Gardner S. Hammond Action as necessary or appropriate on matters discussed in Executive Session, selected employment items, Exhibit A-Action and selected employment items, Exhibit B-Information Only.	X	X	X	X	X	X	X
5. M. Gardner S. Hammond Approve first reading FY 2020-21 General Fund Budget as presented and shown in Exhibit C.	X	X	X	X	X	X	X
6. M. Hutchison S. Gardner Adjourn the meeting at 10:52 p.m.	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

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Kenneth B. Loveless

[redacted]

Mrs. Janis Hammond

Chairperson of the Board of Trustees

School District Five of Lexington-Richland Counties

1020 Dutch Fork Road

Irmo, SC 29063

Re: Recusal of Kenneth B. Loveless on certain matters

Dear Mrs. Hammond:

In accordance with the requirements of SC Code Section 8-13-700(B)(1), I am advising you, as Chairperson of the Board of Trustees for School District Five of Lexington and Richland Counties, of my affiliation with Contract Construction, Inc. My affiliation with Contract Construction, Inc. is that the company which I am employed and a stockholder, Loveless Commercial Contracting, Inc. operates as a subcontractor on the S.C. Law Enforcement Division Forensics Lab project, Columbia, SC. The association began on March 12,2020 and will end at the completion of the construction project.

Please be advised that effective immediately, I will recuse myself from any and all votes, deliberations, and other actions on any matter that comes before the Board of Trustees relating to Contract Construction, Inc.

Please publish my statement to the Board and the public at the Board's next meeting on February 8,2021 and include a copy of this statement with the minutes of that meeting.

Yours Truly,

Kenneth B. Loveless

Vice Chairman of the Board of Trustees

School District Five of Lexington-Richland Counties

Attachment #3, pg.1 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Jan Hammond pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Attachment #4.189.1 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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February 8,2021

To everyone listening, please accept my sincerest apologies. As evidenced by the amount of time wasted at the previous board meeting, the ambush style attacks of the September 14,2020 board meeting and the promise of future attacks, the record must be set straight. This situation is about a group of past and present board members trying to keep another board member from doing his duty: reviewing a school under construction. I asked to be able to review the Piney Woods Elementary School project accompanied by the District Project Representative and fellow board member Nikki Gardner. I also had questions which I posed to Dr. Melton during March,2020.

I have always been told that "You don't retire FROM something; you retire TO something". At present, I am spending 60% of my time with efforts toward serving the public as trustee on the school board.

My wife Jondy and I are giving back to the community. We take immense pride in our ability to donate time and treasure. In short, we enjoy seeing the positive effects wrought from our efforts.

I neither take a salary from the district nor have I received reimbursement for hotel, mileage or per diem charges related to travel required by the position. Neither Jondy nor I receive social security because here-to-fore, we have not needed it.

Our goal is to die penniless. We are busy donating to reach our goal. We are neither motivated by money nor influence as opponents on this board prefer to paint us.

Having heard our goals, do the claims that Mr. Ed White levelled at me: "Mr. Loveless put the business of the district on the street!" make any sense? He accused me of that during the board meeting September 14,2020.

The small business corporation with whom I am employed and stockholder, Loveless Commercial Contracting, Inc. has about 50 employees all from the Midlands. We have three profit centers. One acts as general contractor, two are subcontractors to general contractors in the capacity of industrial scale concrete subcontractors. Since I am near retirement, we moved a few years back to the profit center style business plan. Each profit center is headed by an independent manager who develops, bids and builds his own projects.

I researched company records to find the following information:

The S.C. Law Enforcement Division Forensic Lab Project was bid by one of our profit center managers, Trey McDaniel. It was bid in the normal course of business without direct input or participation from me. It was bid on October 23,2019 to 14 general contractors: M.B. Kahn, J.M. Cope, Gleeson Constructors, EE Reed, Contract Construction, Hogan Construction Group, Poettker Construction, Edcon, Inc., Mashburn Construction, Leitner Construction, IAP-GSP, Thomas Construction, M. Dillon Construction and Cleveland Construction. There were other subcontract bidders in our trade, Concrete Construction. Loveless earned the right to do the work on this project through competitive bidding.

Cleveland Construction protested the general contract bid over an alleged licensing irregularity connected with Contract Construction and its electrical contractor listed bidder.

Contract Construction issued a Letter of Intent to contract in an email to Trey McDaniel during November,2019. I was unaware of the email. Contract Construction issued the Letter of Intent without

Attachment #4, Pg. 2 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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legal authority to do so because it had not been awarded the contract at that point in time. In fact it was almost three months later that Contract Construction stated in another email dated January 24,2020 that it expected to be awarded a contract pending the expiration of Cleveland's appeal rights. Contract Construction stated that it expected to receive its Notice to Proceed effective February 3,2020.

Had Cleveland Construction been successful with its protest and therefore, the award, Loveless might have been working with Cleveland, not Contract Construction.

Loveless received a subcontract agreement for review from Contract Construction dated February 11,2020. Loveless received an executed subcontract on March 12,2020.

In relationship to Elementary School # 13 (Piney Woods Elementary School), I have researched district records and found the following:

A) Contract Construction was selected as Construction Manager-at-Risk by the Selection Review Committee chaired by Robert Gantt on September 18,2018 prior to my election to the board.
B) At the December 10,2018 board meeting, Jan Hammond introduced a motion to delay construction at the Amick's Ferry site until an alternate site already purchased by the board could be explored. I vote "YES" to that motion. At the same meeting, I voted "NO" to the motion to approve the Contract for Construction to Contract Construction, Inc. I also voted "NO" to approve $30 million in 8% bonds to build Amick's Ferry.
C) At the September 9,2019 board meeting I introduced and voted "YES" to a motion to have discussions about the Early Site Work Guaranteed Maximum Price moved from executive session to open session. Further, I voted "NO" to the motion that Contract Construction's Early Site Work Guaranteed Maximum Price be approved.
D) At the December 9,2019 board meeting, I introduced and voted "YES" to restrict the total outlay on the project to the lesser of $30 million in 8% bonds approved at the December 10,2018 meeting or the architect's stated and required budget of total construction cost at $24 million plus soft costs. Finally, I voted "NO" to the motion to approve Contract Construction's Guaranteed Maximum Price for the Building which put the total construction costs at more than $26.6 million, greater that the budget of $24 million.

In summary, I voted against the wishes of Contract Construction, Inc. a total of seven times. All the motions were voted before the S.C. Law Enforcement Division Forensic Lab Project was awarded. The last vote occurred December 9,2019. Loveless Commercial Contracting, Inc. had no contractual relationship until March 12,2020 which is over three months after the last vote. I was not aware of the status of any of the above until after the contract for review dated February 11,2020 had been received.

The same the board member who has now made me the target of his accusations, made accusations in public at the September 14, 2020 board meeting. It is obvious that he was working in consort with Contract Construction, Inc. against me for political gain. Once the accusations were made, I then in September,2020 contacted Courtney Laster, General Counsel of the S.C. State Ethics Commission. As advised, I have since recused myself from any board actions to be taken on matters affecting Contract Construction, Inc.

I would like to say that I now realize that I should have recused myself earlier in time but I was not aware of the facts until after the September 14,2020 board meeting. Second, I was a board member

with about one year's experience. Board members who were and are on the board for multiple terms including Mr. White's 17 years did nothing to discuss with me any perceived ethics liability before the September 14,2020 meeting. For the discussion in the September 14,2020 board meeting other board members were obviously made aware of the situation by Contract Construction. Instead of speaking with me they chose to attack me in public. At least one former board member and others made potentially slanderous attacks against Loveless Commercial Contracting, Inc.by expressing untrue and misleading statements about confidential company information.

Why are board members doing this? As Ed White wrote Dr. Melton on February 5,2021: "This is a part of a larger conversation about individual board members trying to assume responsibility for inspecting construction projects as opposed to third-party independent experts who have a legal responsibility directly to the district."

This accusation is also way off target. No one has attempted to do as Mr. White has alleged.

Quite the contrary: the public expects its trustees to review a project in which it has invested more than $32 million in tax dollars.

The larger questions I believe is: "What relationships are past and present trustees attempting to hide? What is it they don't want us to see?"

To those on this board trying to escribe false motives while wasting valuable time holding Perry Mason style mock prosecutions, you should remember: represent the people, not your own ambitions. In a fiduciary sense, we make certain that the community's needs are met, not our own. I am on this board to represent and advocate for those who have no voice, the students. That said, I do not understand how reckless spending and cozy relationships with vendors helps educate students.

Attachment #4, pg.3 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Ken Loveless pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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District Five OF LEXINGTON & RICHLAND COUNTIES

Minutes
Board Meeting – September 14, 2020

The Board of Trustees of School District Five of Lexington and Richland Counties conducted an in-person meeting at Irmo High School with the following members present:

Mr. Michael Cates, Chairman
Ms. Beth Hutchison, Vice Chairman
Mr. Robert Gantt, Secretary (via video/phone conference call)
Mrs. Nikki Gardner
Mrs. Jan Hammond
Mr. Ken Loveless
Mr. Ed White
Dr. Christina Melton, District Superintendent

The following staff members attended in person or virtually via video/phone conference call:

Mrs. Katrina Goggins, Director, Office of Communications
Mr. Michael Guliano, Chief Instructional Officer
Dr. Michael Harris, Chief Planning and Administrative Officer
Dr. Allison Jacques, Chief Human Resources Officer
Mr. Len Richardson, Chief Finance Officer

A livestream video link was provided to the public for the meeting.

Chairman Cates called the meeting to order at 7:03 p.m. and offered welcoming remarks. Mr. Cates also gave the invocation and led the Pledge of Allegiance.

During the Superintendent's Report, Dr. Christina Melton provided an update entitled: *2020-2021 School Reentry Overview: Part V*, which highlighted reentry for the 2020-2021 school year.

During public participation, the following people spoke regarding the school reentry plan: Trey Hodges, Matt Hogan, Jennifer Weed, Cali Foxworth, Amye Hawkins, Lisa Harris, Todd Howell, Kim Stutts, Jessica Loudermilk, Shannon Boyd, Susan Snyder, Brian Bilbro, Jason Valek, Brittney Conrad, Rebecca Blackburn Hines, Deana Berley, Chad Stefaniak, Catherine Huddle, James Ryan and Kevin Scully. In addition, Jondy Loveless spoke regarding construction policy, and Danny Brabham spoke regarding land purchases.

At the conclusion of public participation, a short recess (approximately 10 minutes) was called by Chairman Cates.

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ACTION AGENDA

Action was taken as necessary or appropriate on matters discussed in Executive Session: Selected employment items shown in Exhibit A, for Action; and, selected employment items shown in Exhibit B, for Information Only.

By acclamation, Nikki Gardner was elected as the delegate, and Ken Loveless was elected as the alternate, for the 2020 SCSBA Delegate Assembly as shown in Exhibit C. The certification of the delegates was approved unanimously.

DISCUSSION AGENDA

An update on the construction of Piney Woods Elementary School was given by Dan Neal, consultant, and Greg Hughes, of Contract Construction. A discussion regarding concrete testing took place between board members and included questions directed to Mr. Neal, Mr. Hughes, Mr. (Doug) Quackenbush, of Quackenbush Architects, and Mr. (Mike) Montgomery, of Montgomery Willard, LLC.

Following the Piney Woods Elementary School discussion, Chairman Cates tabled the final two agenda items, District Construction and Legal Services, due to the late hour.

The meeting was adjourned at 11:22 p.m.

INFORMATION AGENDA

The next regular scheduled board meeting will be September 28, 2020. Location to be determined.

Record of Voting

School District Five of Lexington and Richland Counties

Meeting of September 14, 2020

	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
1. M. Hammond S. Hutchison Approve the agenda	X	X	X	X	X	X	X
2. M. Hutchison S. Hammond Enter Executive Session to consider selected employment items, Exhibit A, Action, and Exhibit B, Information	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

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	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
3. M. Hammond S. Loveless I move we direct the Superintendent to move forward with the re-entry plan presented on July 23rd which provided for face to face 5 days a week on October 8th. Furthermore, if there is evidence of an increase in COVID numbers within Lexington County that may cause greater safety issues, a revision can be made to the board but only after the evidence is presented, discussed and approved by the entire board.	N	N	X	X	N	X	N
M. White S. Hammond Support moving to 5 day face to face as soon as possible and we encourage the Superintendent to work towards 5 day face to face on the target date of October 8 or such other date as Superintendent deems safe to do so.	X	X	N	N	X	N	X
M. Gardner S. Hammond Amend Mr. White's motion to add "with board approval"	N	N	X	X	N	X	N
4. M. Hutchison S. Loveless Approval of the minutes from the August 24, 2020 board meeting	X	X	X	X	X	X	X
S. M. Loveless S. Hammond Action as necessary on appropriate matters discussed in Executive Session to approve selected employment items as shown in Exhibit A	X	X	X	X	X	X	X
6. M. Hammond S. Hutchison By acclamation, elect Nikki Gardner as delegate, and Ken Loveless as alternate, for the 2020 SCSBA Delegate Assembly as shown in Exhibit C	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

		Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
7. M. Hutchison	S. Hammond	X	X	X	X	X	X	X
Adjourn at 11:22 p.m.								

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

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ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Ed White

From: Edward White <ewhite@lexrich5.org>
Sent: Monday, June 15, 2020 12:46 PM
To: Ed White
Subject: Fwd: Concrete Inspection ans Testing Related matter December 6, 2019

Attachment #1, p1 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

External Email - From: ewhite@lexrich5.org

---------- Forwarded message ---------
From: **Kenneth Loveless** <kloveless@lexrich5.org>
Date: Thu, Feb 13, 2020 at 6:08 PM
Subject: Concrete Inspection ans Testing Related matter December 6, 2019
To: Robert Gantt <RGantt@lexrich5.org>, Beth Hutchison <bhutchison@lexrich5.org>, Michael Cates <michaelcates@lexrich5.org>, Jan Hammond <jhammond@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Board Member Ed White <EWhite@lexrich5.org>, Dr. Christina Melton <csmelton@lexrich5.org>

Mr, Gantt,

When Dr.Melton, Dan Neal and I met on December 9,2019, she asked that I call Mr.Neal directly about observations and questions. Dr. Melton requested Mr.Neal to give me his business card with contact information, which he did. Last year we were instructed to contact administrative staff members directly to ask questions and make observations in their respective areas of expertise.I have been doing that. In the email dated February 12, 2020 from you, I am now being required to submit questions directly to you and Dr. Melton.

I spoke to Mr.Neal yesterday. He stated to me that he could not give me answers to my requests.I called Mr.Neal to find the times and dates he could possibly to meet on site to review documents and review the work related to the matter. Mr.Neal said to me that he was under orders from you, the board chair and the superintendent not to meet with me or to provide documents without a directive from the two of you.I believe that neither of you has the power to do as Mr.Neal says.

First, I was elected by the public, am peer to you. Further, I am not an employee and as such, do not take orders from Dr. Melton.

Second, the requests for documents are targeted to specific items and timeframes and are not overly burdensome. They are not attorney work product and are not the product of any executive session since the causative event was brought to the entire board's attention during the public participation session of the December 9,2019 board meeting. The documents requested are all items which are required in the Project Manual or contract documents.If the documents have been submitted and maintained as the Project Manual and contract documents require, all can be sent to me with as little as two hours clerical effort.

Additionally, since we are paying one half million dollars for testing, I do not believe we would would be putting any imposition upon the consultants to answer the legitimate concerns of the public.

In as far as Mr. Neal is concerned,for December 9,2019, I was attempting to arrange a meeting with Mr.Neal to ask questions prior to the board meeting that night.I wanted to meet with Dan Neal without the architect and construction manager present because I had concerns which an owner might want to keep confidential. In a December 5,2019 email to me from you, Robert Gantt it was stated:" As you know, Mr. Neal is a Mechanical Engineer and a Professional Engineer.He is the District 5 representative looking out for our interest He is not however an architect nor the Prime Contractor for D5 on the new elementery school. He may not have the have all the detail for design and construction you may be seeking."

In your February 12,2020 email you state " Our consultant Mr. Dan Neal is a professional engineer with advanced degrees and a career with vast experiences that benefit the district in the pursuit of excellence in this construction". It appears to me that you want it both ways. I don't fathom the reversal in your opinion of him.

I, too,have experience and degrees.The longer it takes to gain the answers to my questions and obtain the documents requested, the more costs and the long term safety could be jeopardised.

And, here's the kicker, Mr. Gantt, I was elected to bring oversight so that we will not have projects such as the Chapin High School Renovations where the experts were aware that work was not per specification and it ended up costing the taxpayers millions to correct defects.

And, I am a bargain. It is not costing you anything for an extra set of eyes. My intent ,regardless of Ed White's ascertains, is to have an exceptionally well built project. I believe that all of us have the same goal. I come with my own insurance so there is no liability. I will not give directives.

Please provide me the documents that I have requested.

Respectfully submitted,

Kenneth B. Loveless

All Board Members have the same rights and responsibilities,

Mr. Loveless is not credentialed to sign off on this project.

This is incorrect. Mr. Loveless was not on the Board during the Settlement.

See and listen to September 14, 2020 Board recording.

Total deficiencies at Chapin High School less than $25,000, Settlement discussion to be on subsequent meeting.

Attachment #1, pg 2 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Ed White pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

SCEC_Subpoena_000124

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For the Record - 9/14/2020
Beth Hutchison

District Five of Lexington & Richland Counties

Attachment #2, pg 1 is included with the minutes of the 9/14/2020 meeting at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Fwd: familyneals@aol.com has sent you a file from the Terracon CDW

1 message

Kenneth Loveless <kloveless@lexrich5.org> Thu, Jul 16, 2020 at 5:17 PM
To: Michael Cates <michaelcates@lexrich5.org>, Beth Hutchison <bhutchison@lexrich5.org>, Robert Gantt <RGantt@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Christina Melton <csmelton@lexrich5.org>, Janis Hammond <jhammond@lexrich5.org>, Edward White <EWhite@lexrich5.org>

All,

After receiving Terracon Report # 37, I offer the following:

Please review the attached photos above from the letter from Dan Neal to Dr.Melton dated 4:45 PM 7/13/2020. The letter contains Terracon report # 37 of which the photos are a part. The electrical code, NFPA 70 article 352.30 (B) requires 2' PVC conduit to be supported at no greater than 5'0" O.C. Look at the second photo. Do you see anything supporting the conduit off the earth? There is nothing there.

Both photos show the conduit is penned down to the floor of the ditch with piles of dirt,not on PVC conduit spacer racks with restraints as required. Those dirt piles are still there right now separating the conduit from the concrete. The concrete is not homogeneous because the concrete has dirt mixed in with it.The conduit is on the ditch bottom held down by the dirt following the contour of the excavation, not suspended in the concrete as required. The conduit can be punctured by the mass of the concrete and backfilled earth above the concrete bearing on it. This mass can force the conduit into sharp rocks or other objects in the ditch bottom.That is why the NFPA 70 calls for such conduit to be Schedule 80 rather than schedule 40 as constructed.Had the duct bank been constructed properly, the schedule 40 PVC conduit would have been acceptable. Did Mr. Sims,the electrical engineer, know the full story when he wrote his letter in defense of Mr. Hughes? Why was Mr.Sims prompted to write the letter without full knowledge? Whether or not Mr. Sims agrees or not, best practices were not installed with the conduit on the ditch bottom. It's a simple concept.

Article 352.44 requires expansion fittings where there will be temperature changes. I don't see any.

Mr. Hughes says in his letter of 4/20/20 that all has been signed off by Terracon. Mr. Hughes knows that Terracon is not the deciding entity. Terracon works for the district to insure the district testing protocols are followed. As such, Terracon does not take on the role of interpreting the specifications for the contractor. Only the Architect can do that and the Architect must be informed before the work can continue or the contract is responsible for his actions.

I invite everyone to read this: The Project Manual Section 14000 1.8 B.states :"Project quality-control manager may also serve as Project superintendent."There is a built-in conflict of interest. The fox is guarding the hen house. Does anyone seriously believe that the same person who is paid to push production and schedule is going to also demand quality when that would mean slowing the schedule and production? Can you imagine any homeowner building a house who would cede to his builder the owner's right to control quality? Would any of you? Yet, the district did just that.

I have studied the Terracon reports that were provided to date.There are a minimum of 238 reports which are supposed to have been posted through 7/6/2020. 76 are actually posted. Of those 76, ten reports show deviations from the specifications. You can read them. They show that there are more than just a few instances where Terracon indicated discrepancies but the quality-control manager/ Project superintendent proceeded on without stopping.

See other side →

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July 16, 2020 Email

Mr.Gantt sent me Terracon reports 1-35 when he was chairman. Of those 35 reports only 1-18,23 and 31A are shown on the website. I have the remainder and can prove that they came from the district. Contrary to the Director of Communications,the district has reports that it is not sharing with the public. Will they be shared today? What's in the remaining more than 162 reports? Why are they not being shared? You should ask that.

I have asked for all the missing reports through 7/6/2020. My wife has sent a FOIA request for the same. Other parties have sent FOIA requests for the same.To date, the website does not list the full complement of reports.

A package of concrete delivery tickets came anonymously in the mail. I have reviewed those and found serious problems which I forward in a letter to Mr. Cates and Dr. Melton on 7/14/2020. My letter of March 24,2020 to Dr. Melton asked for other important information which has apparently been ignored. You should ask why I cannot see the things for which I have asked.

Please review and act accordingly by understanding that quality construction takes a group effort. I am trying to help the group.

Ken Loveless

---------- Forwarded message ----------
From: **Christina Melton** <csmelton@lexrich5.org>
Date: Tue, Jul 14, 2020 at 9:06 AM
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW
To: Katrina Goggins <kgoggins@lexrich5.org>

This message is being blindcopied to all Board of Trustees. An attachment is included for your information.

Christina S. Melton, Ed.D.
Superintendent
School District Five of Lexington & Richland Counties
office: 803.476.8169 or 803.476-8116
www.lexrich5.org

Pursuing Excellence for Tomorrow's Challenges

#2, pg 2

Attachment #2, pg 2 is included with the minutes of the 7/21/2020 meeting of the Board meeting at the request of Board member Debra Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

---------- Forwarded message ----------
From: **Dan Neal** <familyneals@aol.com>
Date: Mon, Jul 13, 2020 at 4:45 PM
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW
To: csmelton@lexrich5.org <csmelton@lexrich5.org>

Here is the requested report 37.

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P.O Box 3408
Summerville, SC 29484-3408

Office (843) 821-7600
Fax (843) 821-7627

September 14, 2020

Mr. Greg Hughes
Contract Construction
P.O. Box 269
Ballentine, SC 29002

Re: Amick's Ferry Elementary School Project

Dear Greg:

On or around April 17, 2020 Ken Loveless requested copies of concrete delivery tickets as it pertains to curb & gutter concrete supplied to Coogler Concrete for the above referenced project. At Mr. Loveless's request the delivery tickets were mailed to his attention.

Please contact me should you have any questions or if you need any additional information.

Respectfully,

Pete Knight
President

Attachment #2, Pg 3 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Bulwinkle pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

SCEC_Subpoena_000127

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For the Record of school board meeting on 9/14/2020
by Beth Hutchison

Attachment #2, p4 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Source: SC State Ethics Commission, Advisory Opinions
Topic 3 Conflicts of Interests/Economic Interests
Economic Interests 2002-003(PDF)

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SEC AO2002-003 November 14, 2001

SUBJECT: ECONOMIC INTEREST

SUMMARY: The economic interest of an immediate family member, an individual with whom associated and a business with which associated is imputed to the public official, public member, and public employee for purposes of Section 8-13-700, etal.

QUESTION: Having noted the inconsistencies between Section 8-13-100(11) and Section 8-13-700 and Section 8-13-725 the Commission issues an Advisory Opinion on whether the economic interest of an immediate family, an individual with whom associated and a business with which associated is imputed to the public official, public member, and public employee for purposes of Section 8-13-700, etal.

DISCUSSION: The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act no. 248 of 1991; Section 2-17-5 et seq. and Section 8-13-100 et seq., as amended, 1976 Code of Laws of South Carolina). This opinion does not supersede any other statutory or regulatory restrictions or procedures which may apply to this situation. Failure to disclose relevant information may void the opinion.

Section 8-13-700 provides in part:

(A) No public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated. This prohibition does not extend to the incidental use of public materials, personnel, or equipment, subject to or available for a public official's, public

Attachment #2, pg5 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

member's, or public employee's use which does not result in additional public expense.

(B) No public official, public member, or public employee may make, participate in making, or in any way attempt to use his office, membership, or employment to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated has an economic interest. A public official, public member, or public employee who, in the discharge of his official responsibilities, is required to take an action or make a decision which affects an economic interest of himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated shall:

(1) prepare a written statement describing the matter requiring action or decisions and the nature of his potential conflict of interest with respect to the action or decision;

Section 8-13-725 provides in part:

(A)No public official, public member, or public employee may use or disclose confidential information gained in the course of or by reason of his official responsibilities in any way that would affect an economic interest held by himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated.

A public official, public member, or public employee (hereinafter "public official") may not knowingly use his office to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated or a business with which he is associated. Additionally, a public official may not make, participate in making, or in any way attempt to use his office to influence a governmental decision in which he, a member of his immediate family, an individual with whom he is associated or a business with which he is associated has an economic interest. Finally, a public official may not use or disclose confidential information that would affect the economic interest of himself, a member of his immediate family, an individual with whom he is associated or a business with which he is associated. However, the definition of economic interest found at Section 8-13-100(11)(a) states it is "an interest distinct from that of the general public in a purchase, sale, lease contract, option or other transaction or arrangement involving property or services in which a *public official, public member, or public employee* may gain an economic benefit of fifty dollars or more." (emphasis added). The definition does not include any reference to an immediate family member, an individual with whom associated or a business with which associated.

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Attachment #2, pg 6 is included with the minutes of the 4/19/2010 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

The practice of the Commission, as well as the legislative ethics committees, has been to impute the economic interest of "a member of his immediate family, an individual with whom he is associated, or a business with which he is associated" to the public official. If the economic interest of those covered relationships is not imputed to the public official, then the inclusion of those individuals and entities in Sections 8-13-700 (A), 700(B) and 725 would be meaningless.

CONCLUSION: The economic interest of an immediate family member, an individual with whom associated and a business with which associated is imputed to the public official, public member, and public employee for purposes of Section 8-13-700, etal.

KEY WORDS:	economic interest, immediate family member, individual with whom associated, business with which associated
ANNOTATIONS:	8-13-100(11), 8-13-700(A), 8-13-700(B) and 8-13-725

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Attachment #2, pg 7 is included with the minutes of the 9/14/2020 meeting at the request of Board member Vicki Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

DEVIATION LOG

Report Date: 9/14/2020

Terracon
521 Clemson Rd
Columbia, SC 29229-4307
803-741-9000

Client

School District Five of Lexington & Richland Counties
Attn: A. Len Richardson
1020 Dutch Fork Road
Irmo, SC 29063

Project

ES No. 13
814 Amicks Ferry Road
Chapin, SC

Project Number: 73191119

Deviation No.	Report No.	Service	Service Date	Description/Comments	How Resolved	Date Resolved	Status
D000001	0019	Field Density Testing	10/24/19	Moisture content and % compaction don't comply, Test 1	Re-test passed	10/25/19	Closed
D000002	0019	Field Density Testing	10/24/19	Moisture content and % compaction don't comply, Test 2	Re-tests passed	10/25/19	Closed
D000003	0052D	Concrete Compressive Strength Test	01/10/20	Slump does not comply, Set 1	Specified strength achieved at 28d	02/10/20	Closed
D000004	0072A	Concrete Compressive Strength Test	01/30/20	Slump does not comply, Set 1	28d strength achieved at 7d	02/10/20	Closed
D000005	0072B	Field Density Testing	01/30/20	Percent compaction does not comply, Test 1	Accepted per RFI#9	02/21/20	Closed
D000006	0072B	Field Density Testing	01/30/20	Percent compaction does not comply, Test 3	re test passed	02/11/20	Closed
D000007	0072B	Field Density Testing	01/30/20	Percent compaction does not comply, Test 4	re test passed	02/11/20	Closed
D000008	0072B	Field Density Testing	01/30/20	Percent compaction does not comply, Test 9	re test passed	02/11/20	Closed
D000009	0072B	Field Density Testing	01/30/20	Percent compaction does not comply, Test 10	re test passed	02/11/20	Closed
D000010	0072B	Field Density Testing	01/30/20	Percent compaction does not comply, Test 11	Accepted per RFI#9	02/21/20	Closed
D000011	0072B	Field Density Testing	01/30/20	Percent compaction does not comply, Test 12	Accepted per RFI#9	02/21/20	Closed
D000012	0072B	Field Density Testing	01/30/20	Percent compaction does not comply, Test 13	re test passed	02/11/20	Closed
D000013	0072B	Field Density Testing	01/30/20	Percent compaction does not comply, Test 14	Accepted per RFI#9	02/21/20	Closed

SCEC_Subpoena_000131

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Attachment #2, pg 8 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Fritzsche pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

DEVIATION LOG

Report Date: 9/14/2020

Terracon
521 Clemson Rd
Columbia, SC 29229-4307
803-741-9000

Client

School District Five of Lexington & Richland Counties
Attn: A. Len Richardson
1020 Dutch Fork Road
Irmo, SC 29063

Project

ES No. 13
814 Amicks Ferry Road
Chapin, SC

Project Number: 73191119

Deviation No.	Report No.	Service	Service Date	Description/Comments	How Resolved	Date Resolved	Status
D000014	0072B	Field Density Testing	01/30/20	Percent compaction does not comply, Test 15	Accepted per RFI #9	02/21/20	Closed
D000015	0076A	Masonry Observations	02/04/20	Deficient vertical lap for rebar coming out of footing under opening at West wall of Multi-purpose room B-125 (Contractor got verbal approval to drop in rebar to continue to FF, but not written approval) See also this days report for addtl information (second item)	Lap length and placement methods approved for this location by EOR	02/06/20	Closed
D000016	0077A	Concrete Compressive Strength Test	02/05/20	Slump does not comply, Set 1	Specified strength achieved at 28d	03/04/20	Closed
D000017	0077A	Concrete Compressive Strength Test	02/05/20	Slump does not comply, Set 2	Specified strength achieved at 28d	03/04/20	Closed
D000018	0081	Field Density Testing	02/10/20	Percent compaction does not comply, Test 1	Retest passed	03/19/20	Closed
D000019	0108	Field Density Testing	03/19/20	Moisture content and % compaction don't comply, Test 5	Retest passed	03/20/20	Closed
D000020	0108	Field Density Testing	03/19/20	Percent compaction does not comply, Test 6	Retest passed	03/20/20	Closed
D000021	0118B	Masonry Observations	04/02/20	Grout mix not approved per submittal. W/C ratio of mix exceeded.	Grout mix approved 4/3/20. 7d strength exceeded specified 28d strength	04/10/20	Closed
D000022	0123	Masonry Observations	04/08/20	Approved W/C ratio exceeded for grout. See report for details.	7d strength exceeded specified 28d strength	04/15/20	Closed
D000023	0148D	Concrete Compressive Strength Test	05/08/20	Slump does not comply, Set 1	28d strength met specified requirements.	06/05/20	Closed

SCEC_Subpoena_000132

ROA 000443

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DEVIATION LOG

Report Date: 9/14/2020

Attachment #2, Pg 9 is included with the minutes of the 9/14/2020 meeting at the request of Board member Beth Kutzler pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Terracon
521 Clemson Rd
Columbia, SC 29229-4307
803-741-9000

Client

School District Five of Lexington & Richland Counties
Attn: A. Len Richardson
1020 Dutch Fork Road
Irmo, SC 29063

Project

ES No. 13
814 Amicks Ferry Road
Chapin, SC

Project Number: 73191119

Deviation No.	Report No.	Service	Service Date	Description/Comments	How Resolved	Date Resolved	Status
D000024	0176	Structural Steel Observations	06/10/20	Shear studs Area A 2nd floor do not meet requirements	Contractor repaired non-compliant items	06/11/20	Closed
D000025	0189A	Concrete Compressive Strength Test	06/19/20	Slump does not comply, Set 1	Specified strength achieved at 28d	07/20/20	Closed
D000026	0189	Concrete Observation	06/19/20	Slump for set 1 exceeded specificaiton requirements	Specified strength achieved at 28d	07/20/20	Closed
D000027	0201A	Concrete Observation	07/01/20	Concrete mix for generator pad was not from approved mix list	Specified strenght achieved at 28d	07/29/20	Closed
D000028	0214B	Masonry Observations	07/17/20	Control joint/ bond beam conflict room A204	See RFI 048	07/24/20	Closed
D000029	0216C	Concrete Compressive Strength Test	07/21/20	Average compressive strength does not comply, Set 1 Age 28	Dev. #29 based on 4,000 PSI @28d. Per sheet E-602, specified strength @28d is 3,000 PSI. Specified strength achieved at 28d.	09/14/20	Closed
D000030	0248A	Structural Steel Observations	09/08/20	Nuts on the anchor bolts on south side of column M-7 do not meet project requirements	Repaired /re-worked, see report .0250	09/09/20	Closed

SCEC_Subpoena_000133

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ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Philoma Skipper

From:	Greg Hughes
Sent:	Monday, September 14, 2020 7:52 AM
To:	Philoma Skipper
Cc:	Kyle Farley
Subject:	Fwd: Response to Ken Loveless concerns regarding electrical duct bank, Ryan Drafts, and Curb and Gutter Concrete
Attachments:	Dennis Core Results (1).pdf; CC&I ES 13 Electrical Service Letter.pdf; Letter from Knights.pdf; Rebound Hammer Test Amicks Ferry.pdf; Curb Concrete Submittal.pdf

Philoma,

Please print me 4 copies of this (including attachments), paperclip, and put in a folder for Kyle to bring to the board meeting tonight. Thanks.

Greg Hughes, President
Contract Construction, Inc.
803.781.7058 o
803.513.8090 c
P.O. Box 269, Ballentine, SC 29002
www.contractconstruction.net

Attachment #2, pg 10 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CONTRACT CONSTRUCTION

Begin forwarded message:

From: Dan Neal <familyneals@aol.com>
Subject: Fwd: Response to Ken Loveless concerns regarding electrical duct bank, Ryan Drafts, and Curb and Gutter Concrete
Date: August 2, 2020 at 8:35:42 AM EDT
To: "csmelton@lexrich5.org" <csmelton@lexrich5.org>, "lrichard@lexrich5.org" <lrichard@lexrich5.org>, "michaelcates@lexrich5.org" <michaelcates@lexrich5.org>
Cc: "ghughes@contractconstruction.net" <ghughes@contractconstruction.net>, "dquackenbush@quackenbusharchitects.com" <dquackenbush@quackenbusharchitects.com>, "mhm@montgomerywillard.com" <mhm@montgomerywillard.com>
Reply-To: Dan Neal <familyneals@aol.com>

Dr. Melton,

Please see attached Mr. Hughes' comments on Mr. Loveless' concerns in recent emails. I absolutely agree with everything in Mr. Hughes' email and especially his comments about Ryan Drafts and as the email states, the concrete strengths speak for themselves. I do not yet have the comments from Mr. Quackenbush on the electrical duct band, but I expect them before we have our meeting on Tuesday.

Dan Neal

Attachment #2 pg 11 is included with the minutes of the 9/9/2020 meeting, at the request of Board member Dean Rutledge pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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-----Original Message-----
From: Greg Hughes <ghughes@contractconstruction.net>
To: Dan Neal <familyneals@aol.com>
Sent: Thu, Jul 30, 2020 9:32 am
Subject: Response to Ken Loveless concerns regarding electrical duct bank, Ryan Drafts, and Curb and Gutter Concrete

Dan,

In response to emails from Ken Loveless that have been forwarded to me I offer the following responses:

1. Regarding the electrical duct bank installation, see attached letter from CC&I, special inspection subcontractor to Terracon, explaining why Mr. Loveless' assertions are incorrectly applied to this installation. You will note that this is not just the opinion of the inspection agency, but also the opinion of Mid Carolina Electric Cooperative (the ultimate authority for this installation) and the Electrical Engineer of record. You may also want to get Quackenbush Architects and Planners to weigh in on this issue with their "interpretation" of their specifications, as Mr. Loveless points out as protocol.
2. Now I will address Mr. Loveless' attack on our Project Superintendent, Ryan Drafts. Ryan takes his job very seriously and is arguably one of the best school builders in this state. His attention to quality assurance is apparent by the speed at which he corrects discrepancies identified and his level of quality control is illustrated by the small number of discrepancies noted by Terracon. This is a testament to how he personally identifies issues and has them corrected prior to scheduled inspections. Mr. Loveless seems to think it is impossible to be exemplary in both quality and schedule but I can assure you that Ryan is nearly perfect at both. What is most disturbing is that on June 18, Mr. Loveless visited the jobsite with other board members and Dr. Melton and was very complimentary of Ryan's management of the jobsite and the flow at which he has constructed the facility. If Mr. Loveless still doubts Ryan's capabilities, I will be happy to provide a number of reference letters on Ryan's behalf that will be testimonials to Ryan's unique abilities to push a schedule without sacrificing quality.
3. Lastly, Mr. Loveless refers to an anonymous package of concrete tickets that came in tha mail. These were not at all anonymous. Mr. Loveless used his recent re-established relationship with Pete Knight, Owner of Knight's Redi-Mix, as well as his position on the Board of Trustees to have Pete provide him with Coogler Construction's concrete delivery tickets for the curb and gutter. He went on to specifically request that they not be emailed, but mailed to him. Pete Knight is our preferred concrete supplier and has done business with us for many years and Mr Loveless manipulated him under the guise that "as a board member he was trying to help put an issue to bed related to the concrete used for curb and gutter on Elementary School 13". Now that the manner in which these tickets were received has been cleared up, let's talk about the concrete itself. Mr. Loveless points out a number of tickets that have water added or have time limit issues. We decided to simply let the concrete speak for itself and did so using two different testing methods (you will note that we also tested the "identifying concrete" poured over the electrical duct bank since this was also a concern of Mr. Loveless in previous correspondences). Attached are the results of 20 concrete cores taken by Dennis Corporation, 17 of which were from curb and gutter and 3 of which were from the electrical duct bank. The average of the 17 cores in the curb and gutter was 4478 psi compared to the specified requirement of 3000 psi. The three cores taken at the electrical duct bank averaged 3780 psi, for concrete that had no specified strength requirements. As a second level of verification, Coogler Construction requested that Knights Redi-Mix perform non-destructive testing at 8 other locations and those results averaged 4686, which is very consistent with the destructive testing performed by Dennis Corporation. We utilized two different companies to perform testing so there would be no "fox watching the hen house" accusations. Knights goes further to explain the reason they were not concerned with the placement of concrete from trucks that had exceeded the normal time limitations for concrete.

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In closing, we feel that we have gone above and beyond to address the issues that Mr. Loveless felt were detrimental to the project, and hope that we have provided information that proves, beyond a shadow of a doubt, that the work in place meets and exceeds the project requirements.

Feel free to contect me if there are any further questions regarding these matters.

Greg Hughes, President
Contract Construction, Inc.
803.781.7058 o
803.513.8090 c
P.O. Box 269, Ballentine, SC 29002
www.contractconstruction.net

Attachment #2 pg 12 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CONTRACT CONSTRUCTION

On Jul 21, 2020, at 9:15 PM, Dan Neal <familyneals@aol.com> wrote:

Greg, please research these issues and let me know when you can provide a full report to me so that I can brief Dr. Melton. Thanks.

Dan

-----Original Message-----
From: Christina Melton <csmelton@lexrich5.org>
To: familyneals@aol.com
Sent: Tue, Jul 21, 2020 8:35 pm
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW

Dan ,
Upon your review , reach out to Erin for us to schedule a time to discuss this information.

Christina S. Melton , Ed.D.
Superintendent of School District 5 of Lexington & Richland Counties

Sent from my IPhone

Begin forwarded message:

From: Michael Cates <michaelcates@lexrich5.org>
Date: July 16, 2020 at 6:21:54 PM EDT
To: Ken Loveless <kloveless@lexrich5.org>
Cc: Beth Hutchison <bhutchison@lexrich5.org>, Robert Gantt <RGantt@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Christina Melton <csmelton@lexrich5.org>, Jan Hammond <jhammond@lexrich5.org>, Ed White <EWhite@lexrich5.org>
Subject: Re: familyneals@aol.com has sent you a file from the Terracon CDW

Mr. Loveless,

All Terracon reports are on the district website. The reports are listed by month some months have multiple pages and the district has been maintaining the site for some time. I am not sure how many

because I have not taken the time to count them. I see reports I-200 with some numbers having multiple reports (a,b,c) are listed. If you need help accessing them please let me know. They can be found at https://www.lexrich5.org/Page/24735

If, and I say if, what you are describing is so, what remedy are you sugesting?

Michael Cates
School Board Trustee, Board Chair
District Five of Lexington & Richland Counties
803 518-4567
michaelcates@lexrich5.org

Attachment #2, 1913 is included with the minutes of the 7/14/2020 meeting, at the request of Board member Beth Rutherford pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

On Jul 16, 2020, at 5:17 PM, Kenneth Loveless <kloveless@lexrich5.org> wrote:

All,

After receiving Terracon Report # 37, I offer the following:

Please review the attached photos above from the letter from Dan Neal to Dr.Melton dated 4:45 PM 7/13/2020. The letter contains Terracon report # 37 of which the photos are a part. The electrical code, NFPA 70 article 352.30 (B) requires 2' PVC conduit to be supported at no greater than 5'0" O.C. Look at the second photo. Do you see anything supporting the conduit off the earth? There is nothing there.

Both photos show the conduit is penned down to the floor of the ditch with piles of dirt,not on PVC conduit spacer racks with restraints as required. Those dirt piles are still there right now separating the conduit from the concrete. The concrete is not homogeneous because the concrete has dirt mixed in with it.The conduit is on the ditch bottom held down by the dirt following the contour of the excavation, not suspended in the concrete as required. The conduit can be punctured by the mass of the concrete and backfilled earth above the concrete bearing on it. This mass can force the conduit into sharp rocks or other objects in the ditch bottom.That is why the NFPA 70 calls for such conduit to be Schedule 80 rather than schedule 40 as constructed.Had the duct bank been constructed properly, the schedule 40 PVC conduit would have been acceptable. Did Mr. Sims,the electrical engineer, know the full story when he wrote his letter in defense of Mr. Hughes? Why was Mr.Sims prompted to write the letter without full knowledge? Whether or not Mr. Sims agrees or not, best practices were not installed with the conduit on the ditch bottom. It's a simple concept.

Article 352.44 requires expansion fittings where there will be temperature changes. I don't see any.

Mr. Hughes says in his letter of 4/20/20 that all has been signed off by Terracon. Mr. Hughes knows that Terracon is not the deciding entity. Terracon works for the district to insure the district testing protocols are followed. As such, Terracon does not take on the role of interpreting the specifications for the contractor. Only the Architect can do that and the Architect must be informed before the work can continue or the contract is responsible for his actions.

I invite everyone to read this: The Project Manual Section 14000 1.8 B.states :"Project quality-control manager may also serve as Project superintendent."There is a built-in conflict of interest. The fox is guarding the hen house. Does anyone seriously believe that the same person who is paid to push production and schedule is going to also demand quality when that would mean slowing the schedule and production? Can you imagine any homeowner building a house who would cede to his builder the owner's right to control quality? Would any of you? Yet, the district did just that.

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I have studied the Terracon reports that were provided to date.There are a minimum of 238 reports which are supposed to have been posted through 7/6/2020. 76 are actually posted. Of those 76, ten reports show deviations from the specifications. You can read them. They show that there are more than just a few instances where Terracon indicated discrepancies but the quality-control manager/ Project superintendent proceeded on without stopping.

Mr.Gantt sent me Terracon reports 1-35 when he was chairman. Of those 35 reports only 1-18,23 and 31A are shown on the website. I have the remainder and can prove that they came from the district. Contrary to the Director of Communications,the district has reports that it is not sharing with the public. Will they be shared today? What's in the remaining more than 162 reports? Why are they not being shared? You should ask that.

I have asked for all the missing reports through 7/6/2020. My wife has sent a FOIA request for the same. Other parties have sent FOIA requests for the same.To date, the website does not list the full complement of reports.

A package of concrete delivery tickets came anonymously in the mail. I have reviewed those and found serious problems which I forward in a letter to Mr. Cates and Dr. Melton on 7/14/2020. My letter of March 24,2020 to Dr. Melton asked for other important information which has apparently been ignored. You should ask why I cannot see the things for which I have asked.

Please review and act accordingly by understanding that quality construction takes a group effort. I am trying to help the group.

Ken Loveless

Attachment #2, Pg 14 is included with the minutes of the 8/14/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

---------- Forwarded message ---------
From: **Christina Melton** <csmelton@lexrich5.org>
Date: Tue, Jul 14, 2020 at 9:06 AM
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW
To: Katrina Goggins <kgoggins@lexrich5.org>

This message is being blindcopied to all Board of Trustees. An attachment is included for your information.

Christina S. Melton, Ed.D.
Superintendent
School District Five of Lexington & Richland Counties
office: 803.476.8169 or 803.476-8116
www.lexrich5.org

Pursuing Excellence for Tomorrow's Challenges

---------- Forwarded message ---------
From: **Dan Neal** <familyneals@aol.com>
Date: Mon, Jul 13, 2020 at 4:45 PM
Subject: Fwd: familyneals@aol.com has sent you a file from the Terracon CDW
To: csmelton@lexrich5.org <csmelton@lexrich5.org>

Here is the requested report 37.

Dan Neal, PE (ret)

<Rpt.0037_General Observation_ES No. 13_2019-12-06.pdf>

Attachment #2, 19 15 is included with the minutes of the 7/14/2020 meeting at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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DENNIS CORPORATION

Attachment #2/1516 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

www.denniscorporation.com

Client:	Contract Construction	Date:	7/16/2020
Inspector:	Tommy Stabler – Matthew Goethe	Project Name:	Amicks Ferry Rd Elementary
Weather:	Clear		
Temp:	85 deg. F	Contractor(s):	Contract Construction
Mileage:	NA	Location:	Chapin, SC
		Time:	

Construction Activities:

By request, Dennis inspector Tommy Stabler and Matthew Goethe were on site to core duct bank for testing of compressive strength. Three test cores were collected from random chosen location in duct bank. While onsite inspectors also cored and collected 17 cores from previous poured curb/gutter. Please see attached map noting approx locations for collected samples. Break results will be forth coming.

Test Performed and Results:

Discussion with On-Site Personnel (Include Name):
Superintendant-Ryan Drafts

Signature of Approved Report by Contractor _____ Print Name _____

Signature: Tommy Stabler

SITE REPORT

1800 Huger Street • Columbia • South Carolina • 29201 • Ph 803-252-0991 • Fax 803-733-6787

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Attachment #2, Pg 18 is included with the minutes of the 9/14/2020 meeting at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

F&ME
CONSULTANTS
3112 Devine Street
Columbia, South Carolina 29205
GEOTECHNICAL / ENVIRONMENTAL / MATERIALS

CONCRETE CORE COMPRESSION TEST
ASTM C-42

Job Name: Antioch Ferry Road Elementary

Job Number: C7131 Date Cored: 7/16/2020

Required Strength: 3000 psi @ 28 days Batch Strength:

Contractor: Concrete Supplier:

Location of Core: Curb And Gutter

Specimen Marking	20-1870D C-1	20-1870E C-2	20-1870F C-3	20-1870G C-4	20-1870H C-5	20-1870I C-6
Date Tested	07/27/20	07/27/20	07/27/20	07/27/20	07/27/20	07/27/20
Age (Days)						
Concrete Thickness (in.)	6.600	3.500	5.450	5.250	6.000	5.850
Tested Length (in.)	3.851	3.445	3.832	3.852	3.827	3.828
Diameter (in.)	1.768	1.749	1.762	1.766	1.766	1.765
Radius (in.)	0.884	0.875	0.881	0.883	0.883	0.883
Cross Sectional Area (in^2)	2.46	2.41	2.44	2.45	2.45	2.45
Unit Weight (lb/cf)	139	144	138	137	139	137
Load (lbs.)	8,122	9,881	11,700	10,480	15,491	7,375
Unit Load (Psi)	3310.00	4100.00	4800.00	4280.00	6320.00	3015.00
Correction Factor						
Initials	MJ	MJ	MJ	MJ	MJ	MJ

Signature:

NOTES:

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Attachment #2, pg 9 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Dr. Ha Hoffman pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

F&ME
CONSULTANTS
3112 Devine Street
Columbia, South Carolina 29205
GEOTECHNICAL / ENVIRONMENTAL / MATERIALS

CONCRETE CORE COMPRESSION TEST
ASTM C-42

Job Name: Arnicks Ferry Road Elementary

Job Number: C7131 Date Cored: 7/16/2020

Required Strength: 3000 psi @ 28 days Batch Strength:

Contractor: Concrete Supplier:

Location of Core:

Specimen Marking	20-1870J C-7	20-1870K C-8	20-1870L C-9	20-1870M C-10	20-1870N C-11	20-1870O C-12
Date Tested	07/27/20	07/27/20	07/27/20	07/27/20	07/27/20	07/27/20
Age (Days)						
Concrete Thickness (in.)	6.400	5.900	6.050	5.400	7.750	5.500
Tested Length (in.)	3.720	3.711	3.788	3.817	3.906	3.700
Diameter (in.)	1.766	1.768	1.765	1.733	1.730	1.733
Radius (in.)	0.883	0.884	0.883	0.867	0.865	0.867
Cross Sectional Area (in^2)	2.45	2.46	2.45	2.36	2.35	2.36
Unit Weight (lb/cf)	143	143	145	140	144	135
Load (lbs.)	10,866	13,891	12,645	13,140	11,645	9,362
Unit Load (Psi)	4435.00	5660.00	5170.00	5570.00	4955.00	3970.00
Correction Factor						
Initials	MJ	MJ	MJ	MJ	MJ	MJ

Signature:

NOTES:

SCEC_Subpoena_000143

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Attachment #2, pg 20 is included with the minutes of the [illegible] meeting at the request of Board member [illegible] pursuant to South Caroline Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

F&ME
CONSULTANTS
3812 Devine Street
Columbia, South Carolina 29205
GEOTECHNICAL / ENVIRONMENTAL / MATERIALS

CONCRETE CORE COMPRESSION TEST
ASTM C-42

Job Name: Arnicks Ferry Road Elementary

Job Number: C7131 Date Cored: 7/16/2020

Required Strength: 3000 psi @ 28 days Batch Strength:

Contractor: Concrete Supplier:

Location of Core: Curb And Gutter

Specimen Marking	20-1870P C-13	20-1870Q C-14	20-1870R C-15	20-1870S C-16	20-1870T C-17	
Date Tested	07/27/20	07/27/20	07/27/20	07/27/20	07/27/20	
Age (Days)						
Concrete Thickness (in.)	5.200	3.500	5.800	7.000	7.400	
Tested Length (in.)	3.692	3.665	3.802	3.778	3.754	
Diameter (in.)	1.766	1.736	1.756	1.758	1.759	
Radius (in.)	0.883	0.868	0.878	0.879	0.880	
Cross Sectional Area (in^2)	2.45	2.37	2.42	2.43	2.43	
Unit Weight (lb/cf)	136	142	140	144	140	
Load (lbs.)	10,591	9,982	7,616	9,679	11,830	
Unit Load (Psi)	4325.00	4215.00	3145.00	3985.00	4870.00	
Correction Factor						
Initials	MJ	MJ	MJ	MJ	MJ	

Signature: [signature]

NOTES:

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Attachment #2 pg 21 is included with the minutes of the 9/14/2020 meeting at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

F&ME
CONSULTANTS
3112 Devine Street
Columbia, South Carolina 29205
GEOTECHNICAL / ENVIRONMENTAL / MATERIALS

CONCRETE CORE COMPRESSION TEST
ASTM C-42

Job Name: Amicks Ferry Road Elementary

Job Number: C7131 Date Cored: 7/16/2020

Required Strength: 3000 psi @ 28 days Batch Strength:

Contractor: Concrete Supplier:

Location of Core: Duct Bank

Specimen Marking	20-1870A DB-1	20-1870B DB-2	20-1870C DB-3			
Date Tested	07/27/20	07/27/20	07/27/20			
Age (Days)						
Concrete Thickness (in.)	7.760	8.400	8.000			
Tested Length (in.)	3.861	3.881	3.867			
Diameter (in.)	1.734	1.742	1.736			
Radius (in.)	0.867	0.871	0.868			
Cross Sectional Area (in^2)	2.36	2.38	2.37			
Unit Weight (lb/cf)	143	144	144			
Load (lbs.)	6,979	9,216	10,701			
Unit Load (Psi)	2955	3865	4520			
Correction Factor						
Initials	MJ	MJ	MJ			

Signature:

NOTES: Core Numbers Assigned By F&ME

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CC&I Services, LLC

Helping Ensure a Safe Built Environment

July 22, 2020

Mr. Clay Cannon
Director of Facilities Operations
1020 Dutch Fork Rd.
Irmo, SC 29063

Attachment #2, pg 22 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Subject: Primary Electrical Service Raceways
Reference: Amicks Ferry Elementary School #13

Mr. Cannon,

As requested, we have reviewed concerns relating to the primary conduit provided for the utility company to the utility transformer for the New Elementary School #13. These concerns were presented in an email to Mr. Dan Neal dated 7/20/20. This question appears to have derived from photos within Terracon Report #37 conducted by our firm. We have made contact with each of the parties involved, I hope that the findings below help to relieve any concerns that may be present within the report.

The 2014 National Electrical Code referenced in the Form F3 Approved Code Analysis for the project on Sheet LS100 would not be the applicable installation standard to reference. Compliance for this installation is to be in accordance with the direction provided from the utility company Mid-Carolina Electric Cooperative, INC. Power companies do not typically include requirements for spacers/ supports for direct burial conduit on sub grade or thermal expansion fittings for constant temperature locations.

Correspondence was also requested from Mid-Carolina Electric Cooperative, INC by the Project Manager Mr. Ott of Contract Construction to ensure their guidelines are adhered to. That correspondence is included below and Mid-Carolina Electric Cooperative, INC comments are in italics and blue font.

> Good Morning Jim,
>
> Below are the answers to your questions of request. Feel free to reach out to me or Brian with any further questions!
>
> Thanks
> Allan – MCEC Engineering Services

CC&I Services, LLC
4795 S. Church St. Ext. Roebuck, SC 29376
864-426-1295

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

CC&I Services, LLC
Helping Ensure a Safe Built Environment

Attachment #2, 1923 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Thank you for taking the time to talk to me today. As discussed on the phone I have a couple of questions;

1. Does MCEC Require the use of spacers for their conduit or can the conduit be direct buried? *"No. We do not require the use of spacers for our conduits for underground primary conductor. Conduits are direct buried with one medium voltage cable installed per conduit. No separation is required unless there is a different in voltage or there is a different utility using the same trench."*
2. Can you review the email below and let me know if MCEC falls under the NFPA code sited? I have also attached the report that is being referenced for you reference. *"NFPA nor NEC has no jurisdiction or authority over the installation of MCEC's electrical primary system. MCEC is required to follow the NESC (National Electrical Safety Code) for proper installation and clearances above and below ground. The installation of MCEC's conduits are installed within the guidelines of NESC Section 32 – Underground conduit systems."*
3. Are expansion fittings required for this? *"No, they are not"*

We have contacted the electrical engineer of record for this project and requested his professional opinion as well. This review was to ensure compliance was achieved with contract documents for the installation in question and to verify the required standard for this specific installation. His response to this is as follows:

"Josh, in response to your question on what governs the installation of the primary service lateral conductors/conduit, here is my professional opinion.

The drawings state that the Contractor is to install the primary conduit "*PER POWER COMPANY SPECS.*" (Detail 1 on E-602).

NEC 90.2(A) list what is covered by NEC, and (3) of this paragraph states, "*Installations of conductors and equipment that connect to the supply of electricity.*" This would be up to the pad mounted transformer. NEC 90.2(B) list what is not covered by NEC, and (5)(a) of this paragraph states, "*Installations under the exclusive control of an electric utility where such installations (a) Consist of service drops or service laterals, and associated metering,*". Utility-owned conductors before the service point (pad mounted

Attachment #2, P324 is included with the minutes of the 9/14/2020 meeting at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

CC&I Services LLC
Helping Ensure a Safe Built Environment

transformer in this case) are outside of the scope of the NEC per 90.2(A)(3) and NEC 90.2(B)(5)(a).

The installation of the primary conduit and conductors from the pad mounted transformer to the power company pole are not covered by the NEC, they are to be installed per the Power Company specifications/requirements." (Mr. Patrich, Sims Group)

We hope that this information is found to be helpful to the district. It is always our goal as an inspection firm to provide the best possible service to help the community in which you serve have a safe building with the quality you have come to expect.

Sincerely,
Josh Christian, CBO, FCS
ICC Master Code Professional
Chief Operations Officer

CC&I Services, LLC
CC: Terracon Consultants, Inc.

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P.O Box 3408
Summerville, SC 29484-3408

Office (843) 821-7600
Fax (843) 821-7627

Mr. Coogler,

I have attached the submittals for the Arnick's Ferry Elementary School project for Coogler Construction, and the rebound hammer test and locations for your review. The mix design submitted for curb is F30CCSFM. This mix design has Delvo, a hydration stabilizer, built into the mix to provide additional placement time. In addition to Delvo, the customer requested a dose of retarder on several of the pours. The retarder gives concrete an extended time of plasticity, while the Delvo will stop hydration for a period of time. Knights was confident that with these products and the ambient temperatures being what they were, that the performance of the concrete would be fine with an extended delivery time.

The results from the Rebound Hammer show that the in place concrete exceeds the design strength. The results also show that the concrete strength is very consistent between the locations tested.

Feel free to contact me if you need any other information, or have any questions on the test results.

Rick Barfield
Quality Control Manager
Cell (843)200-0767

Attachment #2 19 25 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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Knight's REDI-MIX

Rebound Hammer Test
ASTM C805

	7/24/2020 9:35
Customer:	Coogler Construction LLC.
Project:	Amicks Ferry Elementary
Weather Conditions:	Sunny
Technicians:	Andrew Cirulis

Date of Testing:	7/22/2020		Design Strength Tested:	3000 Psi.
Mix Design:	F3OCCSFM			
Orientation:	V	V	V	V
Surface Condition	Broom Rough	Broom Rough	Broom Ground	Broom Ground
Location	#1	#2	#3	#4
Test Number	1	2	3	4
1	40	44	40	42
2	40	42	38	44
3	40	43	38	44
4	40	44	44	38
5	42	40	42	38
6	42	38	40	46
7	44	40	40	42
8	40	38	38	44
9	38	44	38	46
10	40	42	40	42
11	40	40	38	44
12	40	41	40	42
Average	40	42.5	40	42
Adjusted Average	40	43	40	42
Compressive PSI	4600	4945	4600	4830

Discard readings differing from average of 14 readings by more that 6 units and determine the average of the remaining readings.Discard the Lowest and Highest reading and average the remainder 12 tests

Swiss Hammer tested using Steel Anvil Callibration.(Rebound reading between 95-100). Concrete samples made with 6x12 cylinders tested for compression verses rebound testing on the specimen at point of failure.

Attachment #2 pg 26 is included with the minutes of the 11/14/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

SCEC_Subpoena_000150

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Knight's REDI-MIX

Rebound Hammer Test
ASTM C805

	7/24/2020 9:35
Customer:	Coogler Construction LLC.
Project:	Amicks Ferry Elementary
Weather Conditions:	Sunny
Technicians:	Andrew Cirulis

Date of Testing:	7/23/2020		Design Strength Tested:	3000 Psi.
Mix Design:	F30CCSFM			
Orientation:	V	V	V	V
Surface Condition	Broom Rough	Broom Rough	Broom Ground	Broom Ground
Location	#5	#6	#7	#8
Test Number	5	6	7	8
1	38	42	40	44
2	38	40	40	40
3	38	40	38	40
4	38	44	38	42
5	38	40	40	40
6	40	42	38	40
7	36	42	40	40
8	38	40	42	40
9	38	42	40	42
10	38	40	40	38
11	36	40	38	38
12	38	40	40	40
Average	38	41	40	42
Adjusted Average	38	41	40	42
Compressive PSI	4370	4715	4600	4830

Discard readings differing from average of 14 readings by more that 6 units and determine the average of the remaining readings.Discard the Lowest and Highest reading and average the remainder 12 tests

Swiss Hammer tested using Steel Anvil Calibration,(Rebound reading between 95- 100). Concrete samples made with 6x12 cylinders tested for compression verses rebound testing on the specimen at point of failure.

Attachment #2, Pg 27 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchenson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

SCEC_Subpoena_000151

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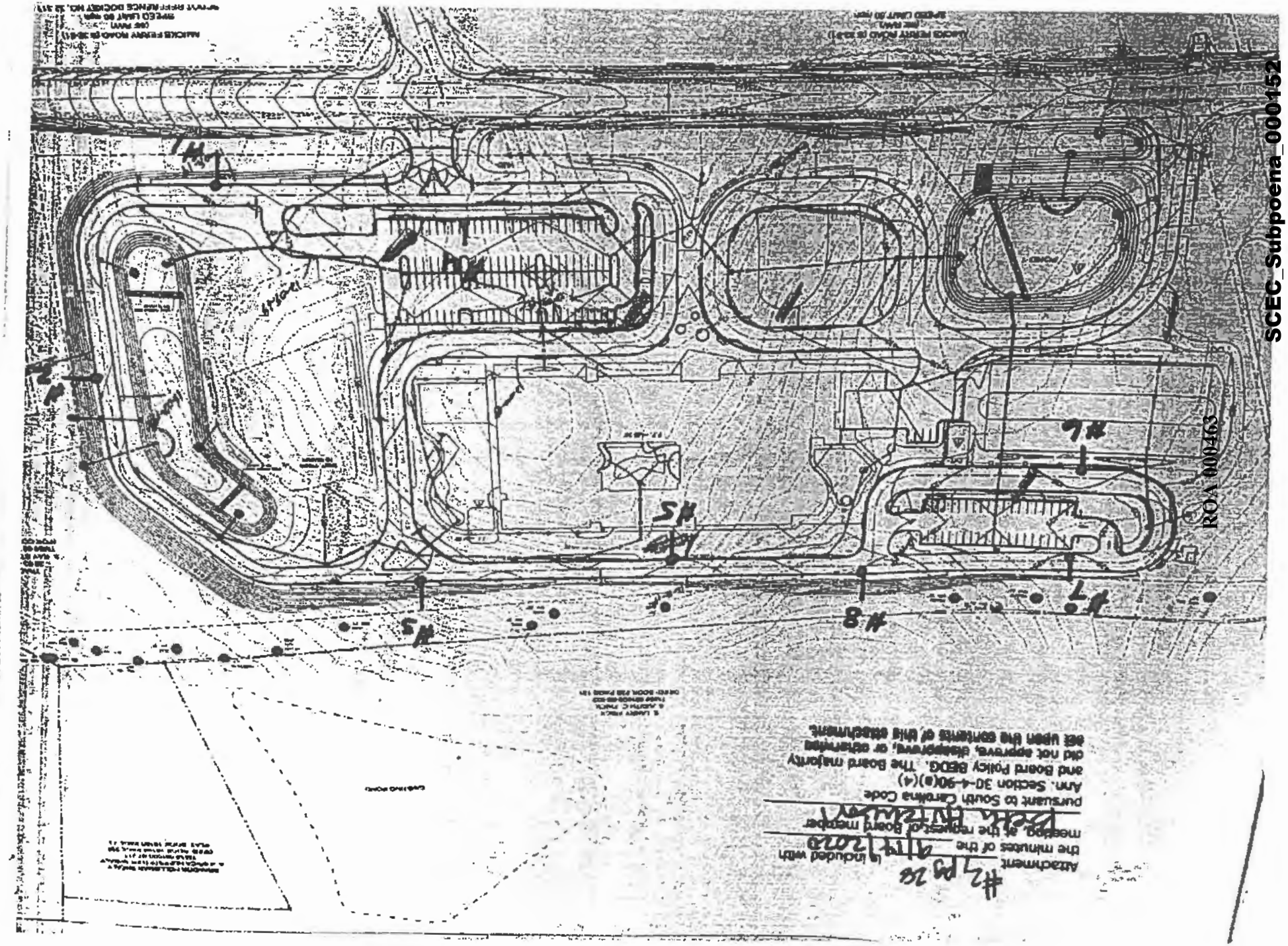

Attachment #2 PG 28 is included with the minutes of the 4/17/2018 meeting, at the request of Board member Paula Hartzog pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

SCEC_Subpoena_000152

ROA 000463

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CELEBRATING 50 YEARS

Knight's COMPANIES

October 29, 2019

COOGLER CONSTRUCTION

AMICKS FERRY ELEMENTARY SCHOOL

Attachment #2, pg 29 is included with the minutes of the 9/14/2020 meeting at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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CELEBRATING 50 YEARS 2019

Knight's COMPANIES

Attachment #2 Pg 30 is included with the minutes of the 9/14/2020 meeting at the request of Board member Beth Rutherford pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Project: Amicks Ferry Elementary School

Thank you for letting Knight's Redi-Mix submit the following mix designs for the project noted above.

Mix Code	Description	Use
F30CM	3000 PSI	Sidewalks
F30CCSFM	3000 PSI	Slipform Curb & Gutter
F40M	4000 PSI	Heavy Duty Pavement

Please use mix codes above when placing orders.

Due to unexpected or unavoidable shortages in the supply of raw materials, Knight's Redi-Mix shall not be held liable for delay damages, or other claims because of an inability to fulfill concrete orders.

Should the purchaser choose not to purchase temperature control measures, the purchaser shall resume liability for any rejected loads due to temperature.

Knight's Redi-Mix warrants that all concrete delivered to the above-mentioned project will meet or exceed all strength requirements when tested in accordance with ASTM standards.

All concrete batch plants operated by Knight's Redi-Mix are S.C.D.O.T. certified.

In accordance with ASTM C-94, please sign and return copy of this letter to our office authorizing Knight's Redi-Mix to receive copies of concrete break reports from the independent engineering testing firm.

_____ Signature _____ Date

_____ Print Name _____ Title

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Knight's READI-MIX

MIX DESIGN

Attachment #2 pg 31 is included with the minutes of the 11-4-2020 meeting, at the request of Board member Pedro Huffman pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

SEE MIX III Mix Report
F30CM-3000 PSI [0]
Strength Compressive: 3000 psi
10/29/2019

Customer : Coogler Construction	
Project : Amicks Ferry Elementary School	

Compressive Strength :	3000 psi at 28 days
Aggregate size :	1" -- 25 mm
Air :	4.5 ± 1.5 %
Water/Cement ratio :	0.487
Slump :	4.00 ± 1.00 in
Slump after SP:	6.00 to 8.00 in

Source of Concrete : Knights Redi-Mix	
Construction type :	
Placement :	
Unit Weight : 143.56 pcf	
Design Date : 05/25/2017	

Constituents :	Quantity	Density	Volume
Type I/II (Argos)	430 lb	3.150	2.19
Type F (Sefa McMeekin)	120 lb	2.250	0.85
City Water ()	268 lb	1.000	4.29
57 granite (Vulcan (Dreyfus))	1800 lb	2.660	10.84
FA-10 Sand (Blue Grass (Edmund))	1258 lb	2.650	7.81
MB AE 90 (BASF)	1.30 floz (US)/yd³	1.000	0.00
POLYHEED 997 (BASF)	22.00 floz (US)/yd³	1.000	0.00
Air	4.5 %.		1.22
Total :	3878		27.00

Remarks :

Reported by : Brian Sheffler	Approval by :
Date : 08/23/2019	Date : / /

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Knight's REDI-MIX

Statistical Analysis – 3000 PSI AE

Str. Req'd: 3000 psi at 28 Days

	Date Molded	Ticket #	Slump, in	Air, %	F'c, psi (7days)	psi (28d.	Avg of 3
1	03/11/2017	460925	4.75	4.2	3250	4300	4352
2	03/11/2017	460925	5.00	3.9	3180	4180	4140
3	04/01/2017	461670	3.00	3.7	2960	4150	4210
4	04/01/2017	461670	6.00	3.8	2490	3430	3920
5	04/29/2017	465630	6.00	4.0	3550	4360	3977
6	04/29/2017	465630	4.50	3.5	3890	4700	4160
7	05/13/2017	466018	5.50	4.0	3580	4350	4467
8	05/13/2017	466018	6.00	4.0	3420	4160	4403
9	06/04/2017	467018	5.50	4.5	3750	4280	4263
10	06/04/2017	467018	4.50	3.8	3550	4120	4187
11	06/24/2017	467633	4.25	4.5	3550	4220	4207
12	06/24/2017	467633	5.00	5.0	3770	4600	4313
13	08/15/2017	468532	6.00	4.3	3650	4515	4445
14	01/09/2018				3640	4950	4688
15	02/20/2018				3550	4840	4788
16	06/20/2018				4010	5190	4993
17	06/27/2018				3870	4830	4953
18	07/10/2018				3540	4710	4910
19	08/23/2018				4370	5280	4940
20	10/31/2018				3300	4850	4947
21	01/15/2019	406342	3.00	3.8	3550	4805	4978
22	02/06/2019	408124	6.00	4.0	2930	4070	4575
23	03/07/2019	408130	7.25	5.0	2840	3740	4205
24	03/15/2019	408503	6.00	3.5	3860	4050	3953
25	03/26/2019	408964	6.00	4.0	3660	5050	4260
26	03/26/2019	408982	6.00	4.1	3900	4370	4490
27	03/26/2019	408995	5.00	3.4	4820	5240	4887
28	03/26/2019	409016	4.00	3.5	4580	5260	4957
29	04/26/2019	410216	5.00	3.9	3600	4560	5020
30	05/23/2019	411413	5.00	3.6	3580	4530	4783

Average:	5.14	4.00	3606	4523	4512
Stnd. Dev.:	1.01	0.43	480.25	457.19	359.15
C. of V.:	19.55	10.84	13.32	10.11	7.96
ACI 318 F'cr:				3613	
ACI 318 F'cr:				3565	

Attachment #2,1932 is included with the minutes of the 9/14/2020 meeting at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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Knight's REDI-MIX

MIX DESIGN

Attachment #2, 19333 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

SEE MIX III Mix Report
F30CCSFM-Hand Placed Curb and slip form [-1]
Strength Compressive: 3000 psi
10/29/2019

Customer : Coogler Construction	Contractor : Coogler Construction
Project : Amicks Ferry Elementary School	

Compressive Strength :	3000 psi at 28 days	Source of Concrete : Knights Redi-Mix	
Aggregate size :	1" -- 25 mm	Construction type : CURB	
Air :	5.0 ± 1.0 %	Placement : exterior	
Water/Cement ratio :	0.404	Unit Weight : 142.43 pcf	
Slump :	1.50 to 6.00 in	Design Date : 11/25/2013	

Constituents :	Quantity	Density	Volume
Type I/II (Argos)	500 lb	3.150	2.54
SEFA-WINYAH STATION-CLASS F	170 lb	2.250	1.21
Water	271 lb	1.000	4.34
57 granite (Vulcan (Dreyfus))	400 lb	2.660	2.41
789 granite (Vulcan (Dreyfus))	800 lb	2.660	4.82
FA-10 Sand (Blue Grass (Edmund))	1703 lb	2.650	10.30
Delvo	42.00 floz (US)/yd³	1.000	0.00
Pozz 700N	25.00 floz (US)/yd³	1.000	0.03
Air	5.0 %.		1.35
Total :	3846		27.00

Remarks :

Reported by : Brian Sheffler	Approval by :
Date : 08/23/2019	Date : / /

Attachment #2, pg 34 is included with the minutes of the 5/17/2022 meeting, at the request of Board member Beatty Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Statistical Analysis – 3000 PSI MC

Str. Req'd: 3000 psi at 28 Days

	Date Molded	Ticket #	Slump, in	Air, %	'c, psi (7day	'c, psi (28days	Avg of 3
1	04/28/2017	328089	1.50	3.0	3980	5020	
2	05/23/2017	330968	1.00	1.4	4300	6050	
3	07/15/2017	330588	1.00	2.5	3780	5820	5630
4	07/15/2017	330575	1.00	3.5	3260	5880	5917
5	07/15/2017	330566	1.25	5.0	3740	5330	5677
1	07/15/2017	330598	1.00	3.2	3460	5145	5452
2	07/17/2017	330717			3900	5215	5230
3	07/19/2017	330897	1.00	2.8	4380	6950	5770
4	07/19/2017	330842	1.00	3.0	3620	5475	5880
5	07/19/2017	330842	1.00	3.0	3620	4280	5568
6	07/19/2017	330897	1.00	2.8	4380	4700	4818
7	08/08/2017	331350	1.50	3.7	4470	4950	4643
8	08/08/2017	331330	1.50	3.5	3760	4970	4873
9	08/08/2017	331320	1.50	3.0	3810	5235	5052
10	08/08/2017	331350	1.50	3.7	4470	6460	5555
11	01/30/2018	335384	1.00	3.9	3370	4865	5453
12	01/30/2018	335399	1.00	4.2	3500	4765	5297
13	01/30/2018	335406	1.00	4.2	3920	4495	4642
14	01/31/2018	335424	3.00	3.9	3690	4865	4708
15	01/31/2018	335426	1.50	3.7	3960	4855	4738
16	01/31/2018	335428	1.50	3.8	3930	4745	4822
17	02/10/2018	337049	1.50	2.0	4680	5925	5175
18	02/12/2018	335664	2.50	3.0	3450	4205	4958
19	03/04/2018	347851	3.00	4.0	3470	5000	5043
20	03/10/2018	348012	3.00	4.0	3510	3890	4365
21	03/18/2018	348312	2.50	4.5	2900	4810	4567
22	03/24/2018	348458	2.50	3.8	3720	4430	4377
23	04/08/2018	348062	2.00	4.5	3140	4080	4440
24	04/08/2018	348049	2.00	5.0	3340	4170	4227
25	04/11/2018	348106	2.00	4.3	3140	4420	4223
26	03/21/2019	512624	2.00	4.4	3610	4920	4503
27	03/21/2019	13587	2.50	4.2	3870	5045	4795
28	03/25/2019	13688	1.50	4.5	4080	5364	5110
29	03/25/2019	13705	2.50	3.7	3490	4780	5063
30	03/25/2019	13712	3.00	3.8	3500	4980	5041
							4880
							4980

Average:	1.7	3.6	3749	5025	5019
Stnd. Dev.:	0.70	0.80	416.10	668.60	486.06
C. of V.:	40.98	21.99	11.10	13.30	9.69
ACI 318 Fcr:				3896	
ACI 318 Fcr:				4058	

SCEC_Subpoena_000158

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Knight's READY-MIX

MIX DESIGN

Attachment #2, pg 35 is included with the minutes of the 11/21/22 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

SEE MIX III Mix Report
F40M-4000 PSI [0]
Strength Compressive: 4000 psi
10/29/2019

Customer : Coogler Construction	
Project : Amicks Ferry Elementary School	

Compressive Strength :	4000 psi at 28 days	Source of Concrete :	Knights Redi-Mix
Aggregate size :	1" -- 25 mm	Construction type :	
Air :	4.5 ± 1.5 %	Placement :	
Water/Cement ratio :	0.443	Unit Weight :	143.70 pcf
Slump :	5.00 ± 1.00 in	Design Date :	07/24/2017

Constituents :	Quantity	Density	Volume
Type I/II (Argos)	475 lb	3.150	2.42
Type F (Sefa McMeekin)	130 lb	2.250	0.93
City Water ()	268 lb	1.000	4.29
57 granite (Vulcan (Dreyfus))	1800 lb	2.660	10.84
FA-10 Sand (Blue Grass (Edmund))	1207 lb	2.650	7.30
MB AE 90 (BASF)	1.50 floz (US)/yd³	1.000	0.00
POLYHEED 997 (BASF)	24.20 floz (US)/yd³	1.000	0.00
Air	4.5 %.		1.21
Total :	3880		27.00

Remarks :

Reported by : Brian Sheffler	Approval by :
Date : 08/23/2019	Date : / /

Attachment #2 1 of 36 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Statistical Analysis -- 4000 PSI AE

Str. Req'd: 4000 psi at 28 Days

	Date Molded	Ticket #	Slump, in	Air, %	F'c, psi (7days)	F'c, psi (28days)	Avg of 3
1	3/24/2018	464210	6.00	4.3	4020	5240	5267
2	3/25/2018	464220	5.75	4.2	3860	5190	5247
3	8/17/2018	167823	5.50	4.9	3650	5150	5228
4	8/17/2018	167833	5.00	4.0	4160	5780	5320
5	8/17/2018	167841	5.50	4.4	3560	5910	5613
6	9/5/2018	8081	5.00	4.5	3450	4950	5547
7	9/5/2018	168001	5.00	4.3	3590	5290	5383
8	9/5/2018	168011	5.00	4.1	3610	5460	5233
9	10/3/2018	168162	5.00	4.1	3720	4990	5247
10	10/15/2018	404049	5.00	4.2	3750	5050	5050
11	10/16/2018	404104	5.50	4.0	3530	5225	5138
12	11/06/2018	168484	5.25	4.2	3900	5090	5122
13	11/06/2018	404744	5.50	3.2	3840	5230	5182
14	11/07/2018		4.00	3.8	3590	5160	5160
15	11/09/2018	141343	2.25	4.8	3990	5210	5200
16	11/12/2018		3.75	3.3	4230	5530	5300
17	11/16/2018		3.75	4.5	3890	5250	5330
18	11/21/2018	141577	2.50	5.2	3780	5360	5380
19	11/30/2018	405405	2.00	5.2	4470	5440	5350
20	12/06/2018	168632	7.25	4.5	4410	5920	5573
21	01/15/2019	168853	2.50	3.6	4860	6180	5847
22	01/22/2019	168294	2.50	4.2	4760	5230	5777
23	02/06/2019		4.50	4.4	4395	5370	5593
24	02/08/2019	169027	3.00	3.8	4400	5865	5488
25	04/03/2019	198684	6.50	4.3	3900	4920	5385
26	04/16/2019	169489	6.25	4.4	4340	5290	5358
27	04/23/2019	169040	6.50	4.0	3720	5010	5073
28	05/10/2019	169901	6.25	3.5	3780	4990	5097
29	05/13/2019	169911	6.00	3.9	3660	4930	4977
30	05/16/2019	169924	6.50	4.2	3860	5040	4987
							4985

Average:	4.86	4.21	3957.0	5306.6	5311.9
Stnd. Dev.:	1.41	0.46	360.01	317.59	211.27
C. of V.:	29.07	10.93	9.10	5.98	3.98
ACI 318 F'cr:				4426	
ACI 318 F'cr:				4240	

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Argos Cement USA
Carolinas District
P.O. Box 326
Harleyville, SC 29448
803-238-7705
803-782-7048

February 1, 2019

Brian Sheffler
Knight's Redi-Mix Concrete
480 Hodge Road
Summerville, SC 29484

Dear Brian:

This letter certifies that Argos' Type I/II (HE) cement, produced at our Harleyville Plant, Harleyville, South Carolina has been manufactured under strict quality control standards and will meet "Specifications of Portland Cement" designations:

- ASTM C150-18 Standard Specifications for Type I & Type II low alkali and moderate sulfate resistant cement which **will not exceed** 0.60% expressed as Na_2O equivalent.
- AASHTO M85-18 Standard Specifications for Portland Cement Type I & Type II low alkali and moderate sulfate resistant cement which **will not exceed** 0.60% expressed as Na_2O equivalent.

This product supplied to Knight's Redi-Mix is shipped from our Harleyville terminal and is approved by the South Carolina Department of Transportation.

If you have any questions, please call me with any concerns.

Respectfully,

Bruce Walker
Sr. Technical Sales Representative
Argos Cement
bwalker@argos-us.com
803-238-7705

Attachment #2, Pg 37 is included with the minutes of the 1/14/2020 meeting at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Attachment #2, 19 38 is included with the minutes of the 9/19/2020 meeting at the request of Board member Beth Hutchens pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

ARGOS

Cement Mill Test Report

Month of Issue: August 2019

Plant:	**Harleyville, South Carolina**
Product:	**Portland Cement Type I and Type I/II(MH)**
Silo:	**1, 2, 4, 5, 7, 9**
Manufactured:	**July 2019**

ASTM C150 and AASHTO M 85 Standard Requirements

CHEMICAL ANALYSIS

Item	Spec limit	Test Result
Rapid Method, X-Ray *(C114)*		
SiO2 (%)	---	20.1
Al2O3 (%)	6.0 max	4.9
Fe2O3 (%)	6.0 max	3.3
CaO (%)	---	63.8
MgO (%)	6.0 max	1.3
SO3 (%)	3.0 max †	2.9
Loss on Ignition (%)	3.5 max	2.9
Insoluble residue (%)	1.5 max	0.21
NaEq (%)	--- §	0.45
CO2 (%)	---	1.6
Limestone (%)	5.0 max	2.3
CaCO3 in Limestone (%)	70 min	92
Inorganic Processing Addition (%) (Baghouse Dust)	5.0 max	2.0
Adjusted Potential Phase Composition *(C150)*		
C3S (%)	---	64
C2S (%)	---	16
C3A (%)	8 max	7
C4AF (%)	---	10
C3S+4.75*C3A (%)	100 max	85
ASTM C150 and AASHTO M 85 Optional Chemical Requirements:		
Chloride (%) (for information only)		0.02

PHYSICAL ANALYSIS

Item	Spec limit	Test Result
Air content of mortar (%) *(C185)*	12 max	8
Blaine Fineness (m2/kg) *(C204)*	280 - 430	407
-325 (%) *(C-430)*	---	97.3
Autoclave expansion (%) *(C151)*	0.80 max	0.00
Compressive strength (MPa, [PSI]) *(C109)*		
1 day	---	14.3 [2070]
3 days	12.0 [1740] min	25.8 [3740]
7 days	19.0 [2760] min	31.7 [4600]
28 days (Reflects previous month's data)	---	41.2 [5975]
Time of setting (minutes)		
Vicat initial *(C191)*	45 - 375	112
Heat of Hydration (kJ/kg) *(C1702)*		
3 days (for information only) ‡	---	309
Mortar Bar Expansion (%) *(C1038)* ‡	0.020 max	0.004
Density (g/cm3)		3.15

* Dashes in the spec limit mean Not Applicable

† May exceed 3.0% SO3 maximum based on our C1038 results of < 0.020% expansion at 14 days.

‡ Current production run not available - most recent provided.

§ Please refer to ASTM C1778 for guidance on reducing the risk of alkali aggregate reaction in concrete.

We certify that the above described cement, at the time of shipment, meets the chemical and physical requirements of applicable GDOT, TDOT, MDOT, SCDOT, NCDOT, VDOT, and MDDOT Specifications for Type I and Type I/II(MH) ; and FDOT 921 Specifications for Type I and Type I/II(MH);
ASTM C150 & AASHTO M 85 STANDARD SPECIFICATIONS FOR TYPE I AND TYPE I/II(MH) CEMENT;

Certified By:

Sean J. Mekene - Quality Manager
Report created: 8/7/2019

Argos USA
Harleyville Plant
463 Judge Street, Harleyville, South Carolina 29448
Phone: 843-462-7651

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SEFA

Attachment #2 Pg 39 is included with the minutes of the 9/17/2019 meeting, at the request of Board member Beth Hufstetler pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

January 2, 2019

Attention: SEFA Customer

Re: 2019 Certification

The SEFA Group certifies through this letter that the fly ash from McMeekin Station located in Columbia, SC complies with the requirements set forth in ASTM C 618, Class F, when sampled and tested in accordance with ASTM C 311. Unless you receive written notification regarding a change in status from The SEFA Group, this certification will apply to any and all phases on construction projects.

Fly ash is a 100% recycled material, made in the USA. It is the by-product of burning pulverized coal in an electrical generating station. The Environmental Protection Agency (EPA) under Section 6002 (e) of the Resource Conservation and Recovery Act (RCRA) of 1976 targeted a number of recovered materials, including fly ash. The EPA recognizes that fly ash can be used in concrete to lessen the solid waste problem and that fly ash has technical advantages in cementitious materials. Fly ash is considered a Post- Industrial, Pre-Consumer recycled product.

The SEFA Group offers full field service with the purchases of our product. Our technical representatives are available to aid you with field-testing and quality control.

Thank you for your interest in our product. If you need further assistance, please call our administrative office at (888) 339-7332.

Sincerely,

Bert Nunn
Vice President, Sales

(803) 520-9000 www.sefagroup.com 217 Cedar Road | Lexington, SC 29073

Attachment #2 Pg 40 is included with the minutes of the 11/4/2020 meeting at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment. Date: December 4, 2017

TEC Services
Testing • Engineering • Consulting

Client: Mr. Tom Hendrix
The SEFA Group
P.O. Box 6
Moncks Corner, SC 29461

TEC Services I.D.: TEC 06-0509
Lab No.: 17-998-MC

REPORT OF FLY ASH TESTS

Sample I.D. No.: MC093017 — Date Sampled: September 30, 2017
Manufacturer: McMeekin Station (Thermally Beneficiated) — Date Received: October 3, 2017

Chemical Analysis	Test Date	Results (wt%)	Specification (Class F) ASTM C618-15	Specification (Class F) AASHTO M295-11
Silicon Dioxide (SiO_2)		49.9	----	----
Aluminum Oxide (Al_2O_3)		27.2	----	----
Iron Oxide (Fe_2O_3)		12.41	----	----
Sum of Silicon Dioxide, Iron Oxide & Aluminum Oxide (SiO_2+Al_2O_3+Fe_2O_3)		89.4	70 % min.	70 % min.
Calcium Oxide (CaO)		2.7	----	----
Magnesium Oxide (MgO)		1.1	----	----
Sodium Oxide (Na_2O)		0.42	----	----
Potassium Oxide (K_2O)		2.46	----	----
"Sodium Oxide Equivalent (Na_2O+0.658K_2O)"		2.03	----	----
Sulfur Trioxide (SO_3)		0.20	5 % max.	5 % max.
Loss on Ignition		1.0	6 % max.	5 % max.
Moisture Content		0.1	3 % max.	3 % max.
Available Alkalies				
Sodium Oxide (Na_2O) as Available Alkalies		0.26	----	----
Potassium Oxide (K_2O) as Available Alkalies		1.56	----	----
Available Alkalies as "Sodium Oxide Equivalent (Na_2O+0.658K_2O)"		1.29	----	1.5 % max.*
Physical Analysis	**Test Date**			
Fineness (Amount Retained on #325 Sieve)	10/19/17	13.2%	34 % max.	34 % max.
Strength Activity Index with Portland Cement				
At 7 Days: Control Average, psi: 5050 / Test Average, psi: 4310	10/24/17	85%	75 % min.† (of control)	75 % min.† (of control)
At 28 Days: Control Average, psi: 6040 / Test Average, psi: 5600	11/14/17	93%	75 % min.† (of control)	75 % min.† (of control)
Water Requirements (Test H_2O/Control H_2O) Control, mls: 242 / Test, mls: 237	10/17/17	98%	105% max.† (of control)	105% max.† (of control)
Autoclave Expansion:	10/17/17	-0.04%	± 0.8 % max.	± 0.8 % max.
Uniformity Requirements	**Test Date**	**Variation**		
Specific Gravity: 2.43 — Average: 2.36	10/18/17	3.0%	5 % max. from average	5 % max. from average
% Retained #325 Sieve: 13.2 — Average: 13.1	10/19/17	0.1%	5 % max. from average	5 % max. from average

† Meeting the 7 day or 28 day strength activity index will indicate specification compliance
* Optional
**Chemical Analysis performed on December 6, 2017

The results of our testing indicate that this sample complies with ASTM C618-15 and AASHTO M295-11 specifications for Class F pozzolans.

Respectfully Submitted,
Testing, Engineering & Consulting Services, Inc.

Dean Roosa
Project Manager

Shawn P. McCormick
Laboratory Principal

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Vulcan
Materials Company

Rick Barfield
Knight's Companies

February 2, 2018

RE: Aggregate Certification

This letter is in reference to a request for certification of No. 57, No. 67 and No. 789 produced at our Dreyfus and Columbia quarries. The Dreyfus and Columbia quarries are SCDOT certified and in good standing with all appropriate certifications. The No. 57, No. 67 and No. 789 are in compliance with the applicable product requirements as set forth in the *SCDOT 2007 Standard Specifications for Highway Construction*. Average gradations are attached.

Please contact me if you have any questions or concerns.

Sincerely,

Preston Gosnell

Preston Gosnell
Vulcan Materials Company
Supervisor - Technical Services
864-327-6248 (Cell)
gosnellp@vmcmail.com

MyVulcan.

Attachment #2, Pg 41 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Vulcan Materials Company

Basic Quality Statistical Summary Report

Plant 252 (2005)-Dreyfus
Product 570-SC No. 57 Stone 25290
Specification ASTM No. 57 Stone
Period 11/02/2017 - 02/02/2018

Sieve/Test	Tests	Average	St Dev	Target	Specification
1 1/2" (37.5mm)	51	100.0	0.00	100-100	100-100
1" (25mm)	52	98.4	0.64	98-100	95-100
3/4" (19mm)	52		4.94	80-95	
1/2" (12.5mm)	52	36.2	6.35	28-48	25-60
3/8" (9.5mm)	52	19.1	5.61	8-20	
#4 (4.75mm)	52	5.0	2.12	2-7	0-10
#8 (2.36mm)	52	2.1	0.76	0-3	0-5
Pan	52	0.00	0.000		

Vulcan Materials Company

Basic Quality Statistical Summary Report

Plant 251 (2004)-Columbia
Product 570-SC No. 57 Stone 25290
Specification ASTM No. 57 Stone
Period 11/02/2017 - 02/02/2018

Sieve/Test	Tests	Average	St Dev	Target	Specification
1 1/2" (37.5mm)	64	100.0	0.00	100-100	100-100
1" (25mm)	64	97.4	1.33	95-99	95-100
3/4" (19mm)	64	78.4	5.89	75-90	
1/2" (12.5mm)	64	32.6	7.42	30-50	25-60
3/8" (9.5mm)	64	17.3	5.75	10-25	
#4 (4.75mm)	64	5.0	2.29	3-8	0-10
#8 (2.36mm)	64	2.0	0.80	1-3	0-5
Pan	64	0.00	0.000		

Attachment #2, pg 42 is included with the minutes of the 9/14/2020 meeting at the request of Board member Beth Whitlock pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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Charlie Bagley
SC QC Manager

February 7, 2019

Attachment #2 Pg 43 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Richardson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Mr. Brian Sheffler
Knight's Companies
480 Hodge Road
Summerville, SC 29484

Material Certification

Dear Mr. Sheffler:

The purpose of the letter is to certify that the C-33 sand produced at our Edmund Sand Plant will meet all requirements of the SCDOT's *Standard Specifications for Roads and Structures* for aggregate for Portland Cement Concrete and also meet all requirements of ASTM C-33 "Standard Specification for Concrete Aggregate", except as noted below. Also, Edmund Sand is listed on SCDOT's Approved Source List and is active participant in the SCDOT's QC/QA Program.
Aggregate may naturally contain materials that are deleteriously reactive with alkalis. In accordance with ASTM C33-03 paragraphs 7.3 and 11.2, for concrete exposed to given conditions, cement used with siliceous aggregate should contain less than 0.60% alkalis calculated as sodium oxide equivalent (NaO +0.658K2O) or material should be added that has been shown to prevent harmful expansion due to the alkali-aggregate reaction.

Sincerely,

Charlie Bagley

Charlie Bagley
South Carolina QC Manager

Martin Marietta Materials is providing these test results for information purposes only. There are a variety of tests that can be used in connection with determining suitability of aggregates in specific applications and a variety of methods to mitigate potential degradation and deterioration depending upon the end use of the product and other circumstances. Nothing in this letter or report represents or warrants (1) the reliability of the tests used herein (2) whether other tests would be more appropriate or reliable, and/or (3) whether any mitigation factors referenced in this letter or report are effective or the most appropriate, all of which you would determine based on the end use and other factors. MARTIN MARIETTA MATERIALS AND ITS AFFILIATES HEREBY EXCLUDES ANY AND ALL WARRANTIES OF MERCHANTABILITY AND ALL WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE, AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE PERFORMANCE OF ITS AGGREGATES

Carolina South District
8701 Red Oak Blvd, Suite 540, Charlotte, NC28217
t. (843) 753-4205 m. (843) 509-9838 e. charlesb@martinmarietta.com
www.martinmarietta.com

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Martin Marietta

Basic Quality Statistical Summary Report

Plant	Edmund Sand-51103
Product	C33 Concrete Sand-4528
Specification	C33 Concrete
Period	01/01/2019 - 02/07/2019

Sieve/Test	Tests	Average	St Dev	Target	Specification
3/8" (9.5mm)	55	100	0.0		100-100
#4 (4.75mm)	55	100	0.2		95-100
#8 (2.36mm)	55	97	0.5		80-100
#16 (1.18mm)	55	79	1.9		50-85
#30 (0.6mm)	55	35	1.9		25-60
#50 (0.3mm)	55	13	1.7		5-30
#100 (0.15mm)	55	3.21	0.430		0-10
#200 (75µm)	55	0.68	0.215		0-3
Pan	55	0.00	0.000		

Query

Query Selections
Date Created 02/07/2019
Date Range 01/01/2019 - 02/07/2019
Plant Edmund Sand
Sample Type Shipping

Attachment #3 pg 44 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(e)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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BASF

The Chemical Company

MB-AE™ 90

Air-Entraining Admixture

Description

MB-AE 90 air-entraining admixture is for use in concrete mixtures. It meets the requirements of ASTM C 260, AASHTO M 154 and CRD-C 13.

Applications

Recommended for use in:

- Concrete exposed to cyclic freezing and thawing
- Production of high-quality normal or lightweight concrete (heavyweight concrete normally does not contain entrained air)

Features

- Ready-to-use in the proper concentration for rapid, accurate dispensing

Benefits

- Improved resistance to damage from cyclic freezing and thawing
- Improved resistance to scaling from deicing salts
- Improved plasticity and workability
- Reduced permeability – increased watertightness
- Reduced segregation and bleeding

Performance Characteristics

Concrete durability research has established that the best protection for concrete from the adverse effects of freezing and thawing cycles and deicing salts results from: proper air content in the hardened concrete, a suitable air-void system in terms of bubble size and spacing, and adequate concrete strength, assuming the use of sound aggregates and proper mixing, transporting, placing, consolidation, finishing and curing techniques. MB-AE 90 admixture can be used to obtain adequate freeze-thaw durability in a properly proportioned concrete mixture, if standard industry practices are followed.

Air Content Determination: The total air content of normal weight concrete should be measured in strict accordance with ASTM C 231, "Standard Test Method for Air Content of Freshly Mixed Concrete by the Pressure Method" or ASTM C 173/C 173M, "Standard Test Method for Air Content of Freshly Mixed Concrete by the Volumetric Method." The air content of lightweight concrete should only be determined using the Volumetric Method. The air content should be verified by calculating the gravimetric air content in accordance with ASTM C 138/C 138M, "Standard Test Method for Density (Unit Weight), Yield, and Air Content (Gravimetric) of Concrete." If the total air content, as measured by the Pressure Method or Volumetric Method and as verified by the Gravimetric Method, deviates by more than 1-1/2%, the cause should be determined and corrected through equipment calibration or by whatever process is deemed necessary.

Guidelines for Use

Dosage: There is no standard dosage for MB-AE 90 admixture. The exact quantity of air-entraining admixture needed for a given air content of concrete varies because of differences in concrete-making materials and ambient conditions. Typical factors that might influence the amount of air entrained include: temperature, cementitious materials, sand gradation, sand-aggregate ratio, mixture proportions, slump, means of conveying and placement, consolidation and finishing technique.

Attachment #2, pg 45 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Master Builders

Attachment #2, pg 46 is included with the minutes of the 3/19/2020 meeting at the request of Board member Bess Hutchison pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise endorse the contents of this attachment.

Product Data: MB-AE™ 90

The amount of MB-AE 90 admixture used will depend upon the amount of entrained air required under actual job conditions. In a trial mixture, use 1/4 to 4 fl oz/cwt (16-260 mL/100 kg) of cementitious material. Measure the air content of the trial mixture, and, if needed, either increase or decrease the quantity of MB-AE 90 admixture to obtain the desired air content.

In mixtures containing water-reducing or set-control admixtures, the amount of MB-AE 90 admixture needed may be somewhat less than the amount required in plain concrete.

Due to possible changes in the factors that can affect the dosage of MB-AE 90 admixture, frequent air content checks should be made during the course of the work. Adjustments to the dosage should be based on the amount of entrained air required in the mixture at the point of placement.

If an unusually high or low dosage of MB-AE 90 admixture is required to obtain the desired air content, consult your BASF Construction Chemicals representative. In such cases, it may be necessary to determine that, in addition to a proper air content in the fresh concrete, a suitable air-void system is achieved in the hardened concrete.

Dispensing and Mixing: Add MB-AE 90 admixture to the concrete mixture using a dispenser designed for air-entraining admixtures, or add manually using a suitable measuring device that ensures accuracy within plus or minus 3% of the required amount.

For optimum, consistent performance, the air-entraining admixture should be dispensed on damp, fine aggregate. If the concrete mixture contains fine lightweight aggregate, field evaluations should be conducted to determine the best method to dispense the air-entraining admixture.

Precaution

In a 2005 publication from the Portland Cement Association (PCA R&D Serial No. 2789), it was reported that problematic air-void clustering that can potentially lead to above normal decreases in strength was found to coincide with late additions of water to air-entrained concretes. Late additions of water include the conventional practice of holding back water during batching for addition at the jobsite. Therefore, caution should be exercised with delayed additions of water to air-entrained concrete. Furthermore, an air content check should be performed after any post-batching addition to an air-entrained concrete mixture.

Product Notes

Corrosivity – Non-Chloride, Non-Corrosive: MB-AE 90 admixture will neither initiate nor promote corrosion of reinforcing and prestressing steel embedded in concrete, or of galvanized floor and roof systems. No calcium chloride or other chloride-based ingredients are used in the manufacture of this admixture.

Compatibility: MB-AE 90 admixture may be used in combination with any BASF Construction Chemicals admixture, unless stated otherwise on the data sheet for the other product. When used in conjunction with other admixtures, each admixture must be dispensed separately into the concrete mixture.

Storage and Handling

Storage Temperature: MB-AE 90 admixture should be stored and dispensed at 31 °F (-0.5 °C) or higher. Although freezing does not harm this product, precautions should be taken to protect it from freezing. If MB-AE 90 admixture freezes, thaw at 35 °F (2 °C) or above and completely reconstitute by mild mechanical agitation. ***Do not use pressurized air for agitation.***

Shelf Life: MB-AE 90 admixture has a minimum shelf life of 18 months. Depending on storage conditions, the shelf life may be greater than stated. Please contact your BASF Construction Chemicals representative regarding suitability for use and dosage recommendations if the shelf life of MB-AE 90 admixture has been exceeded.

Safety: Chemical goggles and gloves are recommended when transferring or handling this material.

Packaging

MB-AE 90 admixture is supplied in 55 gal (208 L) drums, 275 gal (1040 L) totes and by bulk delivery.

Related Documents

Material Safety Data Sheets: MB-AE 90 admixture.

Additional Information

For additional information on MB-AE 90 admixture, or its use in developing a concrete mixture with special performance characteristics, contact your BASF Construction Chemicals representative.

The Admixture Systems business of BASF Construction Chemicals is a leading provider of innovative additives for specialty concrete used in the ready mix, precast, manufactured concrete products, underground construction and paving markets throughout the NAFTA region. The Company's respected Master Builders brand products are used to improve the placing, pumping, finishing, appearance and performance characteristics of concrete.

BASF Construction Chemicals, LLC
Admixture Systems
www.masterbuilders.com
United States 23700 Chagrin Boulevard, Cleveland, Ohio 44122-5544 n Tel: 800 628-9990 n Fax: 216 839-8821
Canada 1800 Clark Boulevard, Brampton, Ontario L6T 4M7 n Tel: 800 387-3662 n Fax: 905 792-0651

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BASF
The Chemical Company

POLYHEED® 997

Mid-Range Water-Reducing Admixture

Description

PolyHeed 997 admixture is a patented multi-component, non-chloride, mid-range water-reducing admixture. PolyHeed 997 admixture meets ASTM C 494/C 494M requirements for Type A, water-reducing, and Type F, high-range water-reducing, admixtures.

Applications

Recommended for use in:

- Conventionally placed concrete mixes containing a wide range of cements, slag cement, Class C and F fly ashes, silica fume and aggregates
- Reinforced, precast, prestressed, lightweight or normal weight concrete and pumped concrete
- Residential/commercial flatwork and formed surfaces
- Rheodynamic® Self-Consolidating Concrete
- 4x4™ Concrete
- Pervious Concrete

Features

- True mid-range water reduction (5-15%) and excellent performance across a wide concrete slump range, especially the difficult slump range of 5-8 in. (125-200 mm)
- Superior workability, pumpability and finishability qualities even in concrete mixes containing low amounts of cementitious materials
- Compressive and flexural strength performance increased at all ages
- Strength performance comparable to chloride-bearing, water-reducing admixtures at all ages
- Superior finishing characteristics for residential/commercial flatwork and formed surfaces

Benefits

- Significantly reduced placement and finishing time resulting in lower in-place concrete costs
- Improved concrete durability to damage from freezing and thawing
- Increased service life of concrete structures

Performance Characteristics

Mixture Data: 500 lb/yd³ (295 kg/m³) of Type I cement; slump, 6-7 in. (150-180 mm); 5-6% air; concrete temperature 70 °F (21 °C); ambient temperature, 70 °F (21 ° C).

Setting Time Performance[1]

Mixture	Initial Set h:min	Difference h:min
Plain	6:01	–
PolyHeed 997 admixture @		
5 fl oz/cwt (325 mL/100 kg)	6:22	+0:21
10 fl oz/cwt (650 mL/100 kg)	8:57	+0:56
15 fl oz/cwt (980 mL/100 kg)	7:31	+1:30

Compressive Strength Performance

Mixture	7-Day psi	7-Day MPa	7-Day %	28-Day psi	28-Day MPa	28-Day %
Plain	2360	16.3	100	3320	22.9	100
PolyHeed 997 admixture @						
5 fl oz/cwt (325 mL/100 kg)	3060	21.1	129	3930	27.1	118
10 fl oz/cwt (650 mL/100 kg)	3740	25.8	158	4610	31.8	139
15 fl oz/cwt (980 mL/100 kg)	4620	31.9	196	5460	37.7	165

[1]*Note: The data shown are based on controlled laboratory tests. Reasonable variations from the results shown here may be experienced as a result of differences in concrete making materials and jobsite conditions.*

Attachment #2, 1947 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

Master Builders

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Product Data: POLYHEED® 997

Guidelines for Use

Dosage: PolyHeed 997 admixture has a recommended dosage range of 3-15 fl oz /cwt (195-980 mL/100 kg) of cementitious material for most concrete mixes.

As the dosage of PolyHeed 997 admixture increases to 15 fl oz/cwt (980 mL/100 kg) of cementitious materials, normal concrete setting characteristics are maintained and early and ultimate compressive strengths increase.

BASF Construction Chemicals does not recommend the use of dosages outside the recommended range without trial testing. Consult your local BASF Construction Chemicals sales representative for assistance in determining the dosage for optimum performance.

Product Notes

Corrosivity – Non-Chloride, Non-Corrosive: PolyHeed 997 admixture will neither initiate nor promote corrosion of reinforcing or prestressing steel embedded in concrete, or of galvanized steel floor and roof systems. PolyHeed 997 admixture does not contain intentionally added calcium chloride or other chloride-based ingredients.

Compatibility: PolyHeed 997 admixture may be used in combination with any BASF Construction Chemicals admixtures. When used in conjunction with other admixtures, each admixture must be dispensed separately into the concrete mixture.

Storage and Handling

Storage Temperature: If PolyHeed 997 admixture freezes, thaw at 35 °F (2 °C) or above and completely reconstitute by mild mechanical agitation. ***Do not use pressurized air for agitation.***

Shelf Life: PolyHeed 997 admixture has a minimum shelf life of 18 months. Depending on storage conditions, the shelf life may be greater than stated. Please contact your BASF Construction Chemicals representative regarding suitability for use and dosage recommendations if the shelf life of PolyHeed 997 admixture has been exceeded.

Packaging

PolyHeed 997 admixture is supplied in 55 gal (208 L) drums, 275 gal (1040 L) totes and by bulk delivery.

Related Documents

Material Safety Data Sheets: PolyHeed 997 admixture.

Additional Information

For additional information on PolyHeed 997 admixture or its use in developing concrete mixtures with special performance characteristics, contact your BASF Construction Chemicals representative.

The Admixture Systems business of BASF Construction Chemicals is a leading provider of innovative additives for specialty concrete used in the ready mix, precast, manufactured concrete products, underground construction and paving markets throughout the NAFTA region. The Company's respected Master Builders brand products are used to improve the placing, pumping, finishing, appearance and performance characteristics of concrete.

Attachment #2 pg 48 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

BASF Construction Chemicals, LLC
Admixture Systems
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National Ready Mixed Concrete Association

Attachment #2 to the minutes of the [illegible] meeting of the Board of Directors with [illegible] pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

NRMCA

Certificate of Conformance For Concrete Production Facilities

THIS IS TO CERTIFY THAT

Columbia Plant 3, Columbia, SC

Knights Redi Mix, Inc.

"Facility does not meet all requirements for furnishing concrete in subfreezing weather"

has been inspected by the undersigned licensed professional engineer for conformance with the requirements of the *Check List for Ready Mixed Concrete Production Facilities.* As of the inspection date, the facilities met the requirements for production by

Truck Mixing with Automatic Batching and Recordings of Cementitious Materials, Aggregate, Water, and Chemical Admixtures

WM. KENNETH JOHNSON, JR. REGISTERED No. 0139 SOUTH CAROLINA PROFESSIONAL GEOLOGIST

(Seal)

Wm. Kenneth Johnson Jr. PG

Signature of Licensed Professional ~~Engineer~~ Geologist

January 08, 2019	*January 15, 2021*
Inspection Date	Certification Expiration Date

This company will maintain these facilities in compliance with the *Check List* requirements and will correct promptly any deficiencies which develop.

Rick Barfield

Signature of Company Official

Regional OPS Manager

Title of Company Official

NOTICE: The Check List indicates only that plant facilities are satisfactory for the production of concrete when properly operated. Conformance of the concrete itself with specification requirements must be verified by usual inspection methods in accordance with sales agreements.

This certificate is issued by the National Ready Mixed Concrete Association on verification that the production facility conforms to the requirements of the NRMCA Certification of Ready Mixed Concrete Production Facilities, QC3. Unauthorized reproduction or misuse of this certificate may result in legal action.

Plant ID #: 805527

Certification ID #: 23831

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National Ready Mixed Concrete Association 900 Spring Street • Silver Spring • Maryland 20910

National Ready Mixed Concrete Association

Attachment #2 is included with the minutes of the 11/4/2020 meeting at the request of Commissioners pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

NRMCA

Certificate of Conformance For Concrete Production Facilities

THIS IS TO CERTIFY THAT

Blythwood Plant 6, Blythewood, SC

Knights Redi Mix, Inc.

"Facility does not meet all requirements for furnishing concrete in subfreezing weather"

has been inspected by the undersigned licensed professional engineer for conformance with the requirements of the *Check List for Ready Mixed Concrete Production Facilities*. As of the inspection date, the facilities met the requirements for production by

Truck Mixing with Automatic Batching and Recordings of Cementitious Materials, Aggregate, Water, and Chemical Admixtures

WM. KENNETH JOHNSON, JR. REGISTERED No. 0139 SOUTH CAROLINA PROFESSIONAL GEOLOGIST

(Seal)

Wm. Kenneth Johnson Jr., PG

Signature of Licensed Professional Engineer Geologist

January 08, 2019	*January 08, 2021*
Inspection Date	Certification Expiration Date

This company will maintain these facilities in compliance with the *Check List* requirements and will correct promptly any deficiencies which develop.

Signature of Company Official

Regional Ops. Manager

Title of Company Official

NOTICE: The Check List indicates only that plant facilities are satisfactory for the production of concrete when properly operated. Conformance of the concrete itself with specification requirements must be verified by usual inspection methods in accordance with sales agreements.

This certificate is issued by the National Ready Mixed Concrete Association on verification that the production facility conforms to the requirements of the NRMCA Certification of Ready Mixed Concrete Production Facilities, QC3. Unauthorized reproduction or misuse of this certificate may result in legal action.

Plant ID #: 845670

Certification ID #: 23830

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National Ready Mixed Concrete Association

Attachment #2, pg 5 is included with the minutes of the 9/14/22 meeting at the request of Board member Beth Richardson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

NRMCA

Certificate of Conformance For Concrete Production Facilities

THIS IS TO CERTIFY THAT

Irmo Plant 7, Irmo, SC

Knights Redi Mix, Inc.

"Facility does not meet all requirements for furnishing concrete in subfreezing weather"

has been inspected by the undersigned licensed professional engineer for conformance with the requirements of the *Check List for Ready Mixed Concrete Production Facilities*. As of the inspection date, the facilities met the requirements for production by

Truck Mixing with Automatic Batching and Recordings of Cementitious Materials, Aggregate, Water, and Chemical Admixtures

WM. KENNETH JOHNSON, JR. REGISTERED No. 0139 SOUTH CAROLINA PROFESSIONAL GEOLOGIST

(Seal)

Wm. Kenneth Johnson, Jr. P.G.

Signature of Licensed Professional Engineer Geologist

January 08, 2019	January 08, 2021
Inspection Date	Certification Expiration Date

This company will maintain these facilities in compliance with the *Check List* requirements and will correct promptly any deficiencies which develop.

Rick Bagwell — Signature of Company Official

Regional Ops. Manager — Title of Company Official

NOTICE: The Check List indicates only that plant facilities are satisfactory for the production of concrete when properly operated. Conformance of the concrete itself with specification requirements must be verified by usual inspection methods in accordance with sales agreements.

This certificate is issued by the National Ready Mixed Concrete Association on verification that the production facility conforms to the requirements of the NRMCA Certification of Ready Mixed Concrete Production Facilities, QC3. Unauthorized reproduction or misuse of this certificate may result in legal action.

Plant ID #: 845671 Certification ID #: 23832

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National Ready Mixed Concrete Association

Attachment #2 to the minutes of the meeting at the request of Board member Bette Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment. 11-1-2017 is included with

NRMCA

Certificate of Conformance For Concrete Production Facilities

THIS IS TO CERTIFY THAT

Lugoff Plant 8, Lugoff, SC

KRM Midlands, LLC

"Facility does not meet all requirements for furnishing concrete in subfreezing weather"

has been inspected by the undersigned licensed professional engineer for conformance with the requirements of the *Check List for Ready Mixed Concrete Production Facilities*. As of the inspection date, the facilities met the requirements for production by

Truck Mixing with Automatic Batching and Recordings of Cementitious Materials, Aggregate, Water, and Chemical Admixtures

SOUTH CAROLINA LICENSED PROFESSIONAL ENGINEER No. 25934 H. ANDREW WHITFIELD (Seal)

June 9, 16

H Andrew Whitfield PE

Signature of Licensed Professional Engineer

September 20, 2017	*September 20, 2019*
Inspection Date	Certification Expiration Date

This company will maintain these facilities in compliance with the *Check List* requirements and will correct promptly any deficiencies which develop.

Signature of Company Official

Q.C Manager

Title of Company Official

NOTICE: The Check List indicates only that plant facilities are satisfactory for the production of concrete when properly operated. Conformance of the concrete itself with specification requirements must be verified by usual inspection methods in accordance with sales agreements.

This certificate is issued by the National Ready Mixed Concrete Association on verification that the production facility conforms to the requirements of the NRMCA Certification of Ready Mixed Concrete Production Facilities, QC3. Unauthorized reproduction or misuse of this certificate may result in legal action.

Plant ID #: 848995

Certification ID #: 23109

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National Ready Mixed Concrete Association 900 Spring Street • Silver Spring • Maryland 20910

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Accounting
Phone :(843) 821-7600
Fax: (843) 821-7627

P.O. Box 3408
Summerville, SC 29484-3408

Dispatch
Phone :(843) 873-2300
Fax:(843) 873-3279

Hot Weather Plan

1. Maintain Concrete Plant in good operating order so as to minimize equipment breakdowns especially during hot weather concrete placements.
2. Schedule Concrete Placements during early morning hours which ambient temperatures are more conducive to concreting operations.
3. Provide water sprinklers on course aggregate stockpiles to keep aggregates cool.
4. Keep Mixer Drums painted white as to reflect sunlight.
5. Under Section 701.4.4.3, All Concrete temperatures must be maintained such that the Concrete temperature does not exceed 90 degrees. The use of ice or chilled water will be used as requested by the contractor.
6. Under Hot Weather Conditions, the amount of mixing speed of the mixer should be held to a minimum. As soon as the concrete is mixed, all further drum rotation will be at the lowest agitating speed recommended by the mixer manufacturer.
7. The dispatching and delivery of the concrete shall be coordinated in a manner so as to avoid delays in arrival or waiting periods until concrete discharge.
8. Use of chemical admixtures to lower water demand and the use of Retarding Admixtures meeting ASTM C 494 Type D shall be utilized to offset hot weather effects on concrete.

Attachment #2 11953 is included with the minutes of the 7/14/2020 meeting at the request of Board member Beth Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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Summerville, SC 29484-3408

Dispatch
Phone: (843) 873-2300
Fax: (843) 873-3279

Cold Weather Plan

1. In accordance with SCDOT 701.4.4.2, paragraph A. "No concrete shall be batched when the ambient temperature is below 35 degrees".
2. All aggregate piles shall be maintained to be free of frozen particles.
3. Use of ASTM C-494 Type C and Type E, non –chloride based admixtures shall be utilized as per request of customer
4. Winterized concrete plants shall be kept from freezing.
5. Use of municipal water supplies shall be utilized

Attachment #2, pg 54 is included with the minutes of the 9/14/2020 meeting, at the request of Board member Bobby Hutchinson pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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District Five OF LEXINGTON & RICHLAND COUNTIES

Minutes
Board Meeting – February 8, 2021

The Board of Trustees of School District Five of Lexington and Richland Counties conducted an in-person meeting at Spring Hill High School with the following members present:

Mrs. Rebecca Blackburn Hines
Mrs. Nikki Gardner, Secretary
Mrs. Jan Hammond, Chair
Mr. Matt Hogan
Mrs. Catherine Huddle
Mr. Ken Loveless, Vice Chair
Mr. Ed White
Dr. Christina Melton, District Superintendent

The following staff members attended:

Mr. Todd Bedenbaugh, Executive Director of Operations
Mrs. Katrina Goggins, Director, Office of Communications
Mr. Michael Guliano, Chief Instructional Officer
Dr. Michael Harris, Chief Planning and Administrative Officer
Dr. Tamara Turner, Chief Human Resources Officer

A livestream video link was provided to the public for the meeting.

Mrs. Hammond called the meeting to order at 7:09 p.m. and offered welcoming remarks. Board member, Mr. Ken Loveless, gave the invocation and also led the Pledge of Allegiance.

During the Superintendent's Report, Dr. Melton acknowledged the first virtual Teacher Recruitment Event that took place on Saturday, February 6, 2021. Following, was the 2020-2021 School Reentry Overview, Part XI presentation, with no new recommendations. The second presentation, Flexible Innovative Virtual Education (FIVE) was a proposal for the 2021-2022 school year. The administration recommended approval of Tier I: Kindergarten through 12th grade.

During public participation, the following people spoke regarding school safety and COVID protocols: Gordon Johnstone and Peter Lauzon. Hugh Ryan spoke regarding the quarantine policy for sports. Renee Cabaup spoke regarding school safety, five day face-to-face and the need for a third instructional model. Kim Murphy spoke regarding rezoning issues.

<u>Action Agenda</u>
Action as necessary or appropriate on matters discussed in Executive Session.
Approval of proposed 2021-2022 school year calendar.
Second reading approval of revisions to Policy BDE "Board Committees".

<u>Discussion Agenda</u>
Financial relationship of board member with a vendor and recusal requirements.

The following board members submitted items for the record (attached): Ed White, Rebecca Blackburn Hines, Jan Hammond, Ken Loveless and Nikki Gardner.

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Record of Voting

School District Five
of
Lexington and Richland Counties

Meeting of February 8, 2021

	Blackburn Hines	Gardner	Hammond	Hogan	Huddle	Loveless	White
1. M. Loveless S. Huddle Approve the agenda	X	X	X	X	X	X	X
2. M. Loveless S. Huddle Enter Executive Session to discuss: a. Selected employment items (Exhibit A) (Action) b. Selected employment items (Exhibit B) (Information Only) c. Discussion and review of the Superintendent's Goals/Expectations and the Board/Superintendent Relationship d. Legal advice regarding one construction contract e. Legal advice related to Amicks Ferry Elementary School sewer line	X	X	X	X	X	X	X
3. M. Blackburn Hines S. White I move that we approve proposed revisions to policy IE "Organization of Instruction" and policy IJNDAA "Distance, Online and Virtual Education" presented at the last meeting ***(Motion withdrawn)***							
M. Blackburn Hines S. Hogan I move that the board approve the Tier I recommendation for the Flexible Innovative Virtual Education program (FIVE)	X	X	X	X	X	X	X
4. M. Gardner S. Loveless Approve the minutes of the January 25, 2021 board meeting.							
M. Huddle S. Gardner I move to amend the minutes of the January 25, 2021 Board Meeting to add the following after the sentence regarding Burkett, Burkett and Burkett: During the presentation, Mr. Hodges indicated they were unable to provide the review requested at the prior meeting and that doing so would require additional audit services at an estimated cost of $20,000. The board did not request this additional work at the time.	X	X	X	X	X	X	X
Vote on original motion	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

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	Blackburn Hines	Gardner	Hammond	Hogan	Huddle	Loveless	White
5. M. Loveless S. Gardner I move that we approve the selected employment items as discussed in Executive Session under Exhibit A	X	X	X	X	X	X	X
6. M. Loveless S. Blackburn Hines I make the motion that we authorize the district administration to send a letter to the Town of Chapin concerning the Amicks Ferry Rd. (Piney Woods Elementary School) sewer line matter	X	X	X	X	X	X	X
7. M. Blackburn Hines S. Hogan I move that the board approve the proposed 2021-2022 school year calendar in Exhibit C	X	X	X	X	X	X	X
8. M. Huddle S. Gardner I move that we approve the second reading of revisions to board policy BDE "Board Committees"							
M. White S. Blackburn Hines I move to amend the motion to insert a sentence in the third paragraph that says "The Board shall define the objectives of any such committee and tenure of such committee"	X	N	N	X	N	N	X
Vote on original motion	N	X	X	X	X	X	N
9. M. Huddle S. Loveless I move that we ask the SC Ethics Commission to rule on three (3) items: 1. What is the definition of recuse in the 9/25/20 letter to Mr. Loveless? 2. Given Mr. White's contributions from Contract Construction and two offices of Contract Construction should he recuse himself from matters involving Contract Construction? 3. If Mr. White is an equity partner in Nelson Mullins must he recuse himself from all matters involving customers of Nelson Mullins who also are vendors of District Five?							
M. Blackburn Hines S. Hogan Amend the motion to include a question of whether or not the SC Ethics opinion provided by Mr. Loveless precludes him from inspection of the Piney Woods Elementary School site	X	N	X	X	X	N	AB

A = Absent
AB = Abstain
N = No
X = Yes
= Recuse

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		Blackburn Hines	Gardner	Hammond	Hogan	Huddle	Loveless	White
Vote on original motion		X	X	X	X	X	X	AB
10. M. Blackburn Hines	S. Hogan	X	X	X	X	X	X	X
Adjourn at 9:20 p.m.								

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

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February 8, 2021

Submitted by Rebecca Blackburn Hines

The agenda item, 'Discussion and review of the Superintendent's Goals/Expectations and the Board/Superintendent Relationship,' was originally on the executive session agenda for the Jan. 25 meeting. However, with a 7-0 vote, the board moved that agenda item to the Discussion Agenda. Since the board adjourned before that agenda item was handled, it carries over to the next meeting and is considered "unfinished business" under Robert's Rule of Order. Therefore, it must remain in the Discussion Agenda of tonight's meeting since it was in that section of the meeting per the vote and when the meeting adjourned.

Attachment #2, pg.1 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Rebecca Blackburn Hines pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

the order of business. If a special order is on the table, it is in order to move to take it from the table under this heading when no question is pending (17, 34).

41:21 **5. *Unfinished Business and General Orders.*** The term *unfinished business*,[5] in cases where the regular business meetings of an organization are not separated by more than a quarterly time interval (9:7), refers to questions that have come over from the previous meeting (other than special orders) as a result of that meeting's having adjourned without completing its order of business (21:2(b)) and without scheduling an adjourned meeting (9, 22) to complete it.

41:22 A *general order* (as explained under *Orders of the Day*, below) is any question which, usually by postponement, has been made an order of the day without being made a special order.

41:23 The heading of *Unfinished Business and General Orders* includes items of business in the four categories that are listed below in the order in which they are taken up. Of these, the first three constitute "Unfinished Business," while the fourth consists of "General Orders":

a) The question that was pending when the previous meeting adjourned, if that meeting adjourned while a question other than a special order was pending.
b) Any questions that were unfinished business at the previous meeting but were not reached before it adjourned—taken in the order in which they were due to come up at that meeting as indicated under (a) and (c).
c) Any questions which, by postponement or otherwise, were set as general orders for the previous meeting, or for a particular hour during that meeting, but were not reached before it adjourned—taken in the order in which the general orders were made.
d) Matters that were postponed to, or otherwise made general orders for, the present meeting—taken in the order in which they were made.

Regarding the relationship between this heading in the order of business and general orders for particular hours, see 41:49–52.

41:24 The chair should not announce the heading of *Unfinished Business and General Orders* unless the minutes show that there is some business to come up under it. In the latter case, he should have all such subjects listed in correct sequence in a memorandum prepared in advance of the meeting. He should *not* ask, "Is there any unfinished business?" but should state the question on the first item of business that is due to come up under this heading; and when it has been disposed of, he should proceed through the remaining subjects in their proper order. If a question was pending when the previous meeting adjourned, for example, the chair might begin this heading by saying, "Under Unfinished Business and General Orders, the first item of business is the motion relating to use of the parking facilities, which was pending when the last meeting adjourned. The question is on the adoption of the motion 'That... [stating the motion]." Later under the same heading, in announcing a general order that was made by postponing a question, the chair might say, "The next item of business is the resolution relating to proposed improvement of our newly purchased picnic grounds, which was postponed to this meeting. The resolution is as follows: '*Resolved*, That... [reading the

Attachment #2, pg2 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Rebecca Blackburn Hines pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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resolution].' The question is on the adoption of the resolution."

41:25 Any item of business (in whatever class) that is on the table can be taken from the table under this heading at any time when no question is pending (17, 34). To obtain the floor for the purpose of moving to take a question from the table at such a time, a member can rise and address the chair, interrupting him as he starts to announce the next item of business after the previous one is disposed of.

41:26 It should be noted that, with the exception indicated in the preceding paragraph, a subject may not be taken up under Unfinished Business and General Orders unless it has acquired such status by one of the formal processes (a), (c), or (d) listed in 41:23. If brief consultation during a meeting leads to an informal understanding that a certain subject should be "brought up at the next meeting," that does not make it unfinished business. Instead, the matter would have to be introduced at the next meeting as new business, as explained below.

41:27 **6. *New Business.*** After unfinished business and general orders have been disposed of, the chair asks, "Is there any new business?" Members can then introduce new items of business, or can move to take from the table any matter that is on the table (17, 34), in the order in which they are able to obtain the floor when no question is pending, as explained in 3 and 4. So long as members are reasonably prompt in claiming the floor, the chair cannot prevent the making of legitimate motions or deprive members of the right to introduce legitimate business, by hurrying through the proceedings.

41:28 **Optional Headings.** In addition to the standard order of business as just described, regular meetings of organizations sometimes include proceedings in the categories listed below, which may be regarded as optional in the order of business prescribed by this book.

41:29 After the call to order and *before the reading of the minutes*, the next two headings may be included:

41:30 ***Opening Ceremonies or Exercises.*** Opening ceremonies immediately after the meeting is called to order may include the invocation (which, if offered, should always be placed first), the singing of the national anthem, the reciting of the Pledge of Allegiance to the flag, a ritual briefly recalling the objects or ideals of the organization, or the like.

41:31 ***Roll Call.*** In some organizations it is customary at meetings to call the roll of officers in order to verify their attendance—or, sometimes in very small societies, even to call the roll of members. If there is a roll call of this nature, it should take place at the end of the opening ceremonies unless a special rule of the organization assigns it a different position in the order of business. The chair announces it by saying, "The Secretary will call the roll of officers [or "will call the roll"]."

41:32 ***Consent Calendar.*** Legislatures, city, town, or county councils, or other assemblies which have a heavy work load including a large number of routine or noncontroversial matters may find a *consent calendar* a useful tool for disposing of such items of business. Commonly, when such a

Attachment #2, Pg. 3 is included with the minutes of the 2-8-2021 meeting, at the request of Board member: Rebecca Blackburn Hines pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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simply announcing, "If there is no objection, we will hear our speaker's address at this time."

Taking Up Business out of Its Proper Order

41:37 Any particular item of business can be taken up out of its proper order by adopting a motion to *Suspend the Rules* (25) by a two-thirds vote, although this is usually arranged by unanimous consent (4:58–63). Hence, an important committee report or an urgent item of new business can be advanced in order to assure its full and unhurried consideration. If desired, before the completion of the advanced question the regular order of business can be returned to by a majority vote—by adopting a motion to lay the pending question on the table (17).

41:38 To take up a motion out of its proper order—for example, to introduce an item of new business before that heading is reached—a member who has obtained the floor can say, "I ask unanimous consent to introduce at this time a resolution on financing better schools." If there is any objection, or the member anticipates that there may be, he can say, "I move to suspend the rules that interfere with the introduction at this time of..." If unanimous consent is given or if this motion is adopted by a two-thirds vote, the member is immediately recognized to introduce the resolution. If only one or two items stand ahead of the item it is desired to reach, it may be just as simple to lay the intervening items on the table individually (17), or to postpone them as they arise (14). It is not in order to lay on the table or postpone a *class* of questions, like committee reports, or anything but the question that is actually before the assembly. (See 14:10–11, 17:3(2), 17:14.)

41:39 The chair himself cannot depart from the prescribed order of business, which only the assembly can do by at least a two-thirds vote. This is an important protection in cases where some of the members principally involved in a particular question may be unable to be present through an entire meeting. When such a departure from the order of business is justified, however, it is usually easy for the chair to obtain the necessary authorization from the assembly. He can say, for example, "The chair will entertain a motion to suspend the rules, and take up..."; or (for obtaining unanimous consent), "If there is no objection, the chair proposes at this time to proceed to take up..." (see also illustration under the heading *Program* above).

Orders of the Day

41:40 An *order of the day*, as stated above, is a particular subject, question, or item of business that is set in advance to be taken up during a given session, day, or meeting, or at a given hour, provided that no business having precedence over it interferes. In cases where more than a quarterly time interval (9:7) will elapse before the next regular business session of the organization, an order of the day cannot be made for a time beyond the end of the present session. If the next regular business session will be held within a quarterly time interval, an order of the day cannot be made beyond the

Attachment #2, pg. 4 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Rebecca Blackburn Ehnes pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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end of that next session. An order of the day cannot be taken up before the time for which it is set, except by reconsidering (37) the vote that established the order (so long as a reconsideration is possible), or by suspending the rules (25) by a two-thirds vote.

41:41 Orders of the day are divided into the classes of *general orders* and *special orders*. A special order is an order of the day that is made with the stipulation that any rules interfering with its consideration at the specified time shall be suspended except those relating: (a) to adjournment or recess (8, 20, 21); (b) to questions of privilege (19); (c) to special orders that were made before this special order was made; or (d) to a question that has been assigned priority over all other business at a meeting by being made *the* special order for the meeting as described in 41:57. An important consequence of this suspending effect is that, with the four exceptions just mentioned, a special order for a particular hour interrupts any business that is pending when that hour arrives. Since the making of a special order has the effect of suspending any interfering rules, it requires a two-thirds vote (except where such action is included in the adoption of an agenda or program for a session having no prescribed order of business). Any matter that is made an order of the day without being made a special order is a general order for the time named.

41:42 An item of business can be made an order of the day in the following ways:

1) While the question is pending, it can be postponed (14) to the specified time by a majority vote (in which case it is a general order); or, by a two-thirds vote, it can be postponed to that time and made a special order.
2) A question that has not yet been brought before the assembly can be made a special order for a future time by means of a main motion adopted by a two-thirds vote. Similarly, it is possible, although less common, to make a question that is not pending a general order for a future time by a majority vote.
3) An agenda or program assigning a specific position or hour to the item of business can be adopted. The subject is then a general order or a special order, depending on the form of the agenda or program (see 41:58). For the vote required to adopt an agenda, see *Procedure for Adoption*, 41:61.

41:43 **Forms for Motions to Make General or Special Orders.** The forms in proposing to make a *pending* question an order of the day for a future time by means of the motion to *Postpone* are given in 14:20.

41:44 When a question that is *not pending* is made an order of the day, it is usually made a special order. A main motion to make a particular subject a special order can be introduced whenever business of its class or new business is in order and nothing is pending. It can be offered in this form: "I move that the following resolution be made a special order for the next meeting: '*Resolved*, That...'"; or, "I offer the following resolution and move that it be made a special order for 3 P.M.: '...'" In the case of a committee report, a resolution such as this may be adopted: "*Resolved*, That the report of the committee on the revision of the bylaws be made the special order for Wednesday morning and thereafter until it has been disposed of."

Attachment #2, Pg.5 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Rebecca Blackburn Finch pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

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