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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 II OF II**

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Certificate of Counsel

E I Y I S E H

41:45 Motions in similar forms can also be used to make a question that is not pending a general order. In this connection, however, it should be noted that a majority can thus prevent a matter from coming before the assembly until a future time, but after a majority has taken such action, nothing less than a two-thirds vote can change it unless it is reconsidered (37). If a main motion to make a question that is not pending an order of the day for a future time is introduced, any member who would prefer to consider the matter immediately should speak in debate against the motion that would make it an order of the day. If that motion is voted down, he can then introduce the subject of the proposed order as a main question.

41:46 **Relation of Orders of the Day to the Established Order of Business.** In assemblies that follow the "standard" order of business explained above, orders of the day for a given session, day, or meeting that are not set for particular hours are taken up under the headings of *Special Orders* and *Unfinished Business and General Orders* (see 41:18-26). In cases where an ordinary society has adopted its own order of business for regular meetings, it usually includes similar headings covering such orders of the day. Where an organization's order of business does not provide such headings, special orders not set for particular hours are taken up before unfinished business and general orders, or (if there are neither of these), at all events before new business. Under the same conditions, general orders are taken up after any unfinished business (that is, business pending at the adjournment of the previous meeting, if any.

and orders of the day not disposed of at the time of its adjournment), and before new business unless a later hour is specified (see below).

41:47 The most common instances of orders of the day set for particular hours occur in conventions.

41:48 In any type of assembly, in cases where orders of the day have been set for particular hours, their consideration at the proper time may cause interruption or modification of the order of business as it exists apart from these orders of the day; and different orders of the day may come into conflict. Rules governing such cases are as follows:

41:49 **Rules of precedence affecting general orders for particular hours.** As stated above, a general order that has been set for a particular hour cannot be considered before that hour unless the rules are suspended by a two-thirds vote, or unless the vote that made the general order can still be reconsidered. This is the principal effect of making a subject a general order for a particular hour. Since the making of a general order does not suspend any rules, even if it is designated for a particular hour, delay in its consideration when that hour arrives may arise from a number of causes. Even though the hour fixed for a general order has arrived, the order can be taken up only when all of the following additional conditions are fulfilled:

- a) no other business is pending;
- b) no special order interferes;
- c) no motion to *Reconsider* (37) that may then be moved or called up interferes;
- d) the category of General Orders in the prescribed order of business

Attachment #2, pg. 6 is included with the minutes of the 2-9-2021 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.

has been reached or passed; and
 e) all general orders that were made before this order was made, except any that were set for a time that has not yet arrived, have been disposed of.

As soon after the designated hour as conditions (a), (b), (d), and (e) are met, the chair announces the general order as the pending business; but as he starts to do so, any member can rise and address the chair for the purpose of moving or calling up a reconsideration.

41:50 The rule that a general order for a particular hour does not interrupt a pending question when that hour arrives holds even when the pending question is a general order that was made later.⁶ But if a general order for an earlier time is not reached by the time set for another general order that was made before it was, the general order that was made first is taken up in preference to the one for the earlier time.

41:51 **Example.** A motion is postponed to 4:30 P.M. Later, another motion is postponed to 4:15 P.M. If the 4:15 motion is taken up at that time (or at least before 4:30) and is not disposed of by 4:30, it continues under consideration and is not interrupted. But if the 4:15 motion is not reached by 4:30, the 4:30 motion, having been postponed first, has preference and will be taken up first. Unless something else affects the situation, the 4:15 motion in such a case will be considered after the disposal of the 4:30 motion.

41:52 If several general orders were made for the same time, they are taken up in the order in which they were made. If several general orders were made for the same time in the same motion, they are taken up in the order in which they are listed in the motion. If all of this business is not disposed

of before adjournment, it is treated as described in 21:7 and 41:23.

41:53 **Rules of precedence affecting special orders for particular hours.** A special order for a particular hour cannot be considered before that hour except by a two-thirds vote. But when the designated hour arrives, the special order automatically interrupts any business that may be pending except: (a) a motion relating to adjournment or recess; (b) a question of privilege; (c) a special order that was made before the special order set for the present hour was made; or (d) the special order for a meeting, as described below. The chair simply announces the special order at the proper time, as shown in 44:22.

41:54 With the exception of the special order for a meeting, when special orders that have been made at different times come into conflict, the one that was made first takes precedence over all special orders made afterward, which rank in the order in which they were made. This rule holds even when special orders made later have been set for consideration at earlier hours. No special order can interfere with one that was made earlier than itself. If several special orders have been made at the same time for the same hour, they rank in the order in which they are listed in the motion by which they were made. If they were made at the same time for different hours, it is implied that the vote on each one will be taken when the hour for the next one arrives, and the same rules apply as those for taking up topics in an agenda (see 41:65).

41:55 **Example.** Assume that a special order has been made for 3

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 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.

assembly, by a two-thirds vote or by unanimous consent (4:58-63), can adopt a motion to "suspend the rules and take up" the desired question or, equivalently, "to pass" one or more items or classes of subjects in the order of business. After a question taken up out of its proper order by such a suspension of the rules has been disposed of, the regular order of business is resumed at the point where it was left off (see 25).

14:12 Postponement of a Subject That the Bylaws Set for a Particular Session. A matter that the bylaws require to be attended to at a specified session, such as the election of officers, cannot, in advance and through a main motion, be postponed to another session. It can be taken up at any time when it is in order during the specified session (that is, either as originally convened or at any adjournment of it); and it can be postponed to an adjourned meeting in the manner explained above, after first adopting, if necessary, a motion to *Fix the Time to Which to Adjourn*. The adjourned meeting, as already stated, is a continuation of the same session. The procedure of postponing such a matter to an adjourned meeting is sometimes advisable, as in an annual meeting for the election of officers on a stormy night when, although a quorum is present, the attendance is abnormally small. If the matter has actually been taken up during the specified session as required, it also may be postponed beyond that session in accordance with the regular rules for the motion to *Postpone*. It is usually unwise to do so, however, unless completing it during the session proves impossible or impractical.

14:13 Time at Which a Postponed Question Is Taken Up Again. A postponed question becomes an *order of the day* for the session, day, meeting, or hour to which it is postponed. It cannot be taken up before the time for which it is set, except by reconsidering (37) the vote on the motion to *Postpone*, or by suspending the rules by a two-thirds vote. The postponed question is taken up either at the specified time or later, as follows:

14:14 Orders of the day consist of *general orders* and *special orders*. If the motion to *Postpone* does not make the postponed question a special order, it becomes a general order, which cannot interrupt pending business even if the time for which it is set has arrived or passed. By a two-thirds vote, however, a question can be postponed and made a special order, giving it priority over general orders as well as the ability to interrupt pending business. If it is desired to reserve an entire meeting—or as much of it as necessary—for the consideration of a single subject, a matter can be made the special order for a meeting (see 41:57).

14:15 When set for a session, day, or meeting but not for a particular hour, special orders and general orders usually have their established places in the order of business (see 41:18-26 and 41:46).

14:16 The full rules regarding the priority of orders of the day, and their relation to each other and to the order of business, are given in 41.

14:17 When the appointed time has been reached for a postponed question to be taken up, and as soon as no other business of a higher priority interferes, the chair states the question as pending. (For examples, see 14:22, 41:19, and

Attachment #2, pg. 8 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.

§11:24.) Therefore, no further motion is normally needed to bring the question before the assembly; however, if the chair fails to state the question at the correct time, any member may then demand that the postponed question be taken up as ordered, by making a *Call for the Orders of the Day* (18).

14:18 Effect on Motions Adhering to a Postponed Question.

When a main motion is postponed, one or more of the subsidiary motions to *Postpone Indefinitely*, *Amend*, and *Commit* or incidental motions for *Division of a Question* and *Consideration by Paragraph or Seriatim* may be pending. All such adhering motions are postponed with the main question, and when consideration of that question is resumed at the specified time, the business is in the same condition, so far as possible, as it was immediately before the postponement, with the exceptions noted in the next paragraph. Similarly, when a main motion is postponed, it also carries with it any adhering debatable appeals (24) or adhering points of order (23) that the chair has submitted to the judgment of the assembly and that are then debatable. (No question can be postponed while an *undebatable* appeal or point of order is pending.)

14:19 Effect on Subsequent Debate and Methods of Voting.

When consideration of a postponed question is resumed at a later session, any orders limiting or extending the limits of debate or for the *Previous Question* that were adopted at the original session are exhausted (see 15:18, 16:11–12), and debate takes place according to the regular rules. But when consideration is resumed at the *same* session—even on another day, as may happen in a convention—all such

applicable orders remain in effect. Except for the effect of an unexhausted order limiting or closing debate as just stated, when a question is taken up on a *different day* from the one on which it was postponed, the right of members to debate it begins over again, as if the question had not previously been debated; that is, each member can again speak twice to each debatable question, regardless of whether the member had already done so before the postponement (see 43). For the rules relating to the exhaustion of an order prescribing the method of voting on a question, see 30:7.

Form and Example

14:20 The form used in making this motion depends on the desired object:

- Simply to postpone the question to the next meeting, when it will have priority over new business: "I move to postpone the motion [or "that the question be postponed"] to the next meeting."
- To specify an hour before which the question will not be taken up (unless by a two-thirds vote or through reconsideration), and when it will come up automatically as soon as no business is pending and any remaining matters that have priority over it have been disposed of: "I move that the resolution be postponed until 3 P.M." [or "... until 9 P.M. at the meeting scheduled for February 15"].
- To postpone consideration of a motion until after a certain event in a meeting, when it will immediately be taken up (unless a special order intervenes): "I move to postpone the question until after the address by our guest speaker."
- To ensure that the question will come up at the next meeting and will

Attachment #2, pg. 9 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.

not be crowded out by other matters: "I move that the question be postponed to the next meeting and be made a special order." (Two-thirds vote required for adoption.)

- e) To ensure that the matter will come up at precisely a certain hour, even if it interrupts pending business: "I move that the resolution be postponed and be made a special order for 3 P.M. tomorrow." (Two-thirds vote required for adoption.)
- f) To postpone a subject—such as a revision of the bylaws—to an adjourned meeting at which the entire time can be devoted to it if necessary, a motion to *Fix the Time to Which to Adjourn* must first be made and adopted, and then the motion to *Postpone* may be made in this form: "I move that the question be postponed and made the special order for the adjourned meeting set for next Tuesday evening." (Two-thirds vote required for adoption.)

14:21 Assume that a controversial resolution is pending at a convention and that many of the delegates who are most interested and best informed on the subject will not be able to be present until tomorrow.

MEMBER A (obtaining the floor): I move to postpone the resolution until eleven o'clock tomorrow morning. (Second.)

CHAIR: It is moved and seconded to postpone the resolution until eleven o'clock tomorrow morning. [Pause.]

MEMBER B (after obtaining the floor and stating that in his opinion further consideration of the resolution should under no circumstances be delayed beyond 11 A.M. the next day): I move to amend the motion to postpone, by adding "and make it a special order." (Second.)

CHAIR: It is moved and seconded to amend the motion to postpone the resolution until eleven o'clock tomorrow morning by adding "and make it a special order." [Debate, if any.] The question is on amending the motion to postpone by adding "and make it a special order." Those in favor of the amendment, say *aye*.... Those opposed, say *no*.... The ayes have it and the amendment is adopted. The question now is on the motion, as amended, to postpone the resolution until eleven o'clock tomorrow morning and make it a special order. This motion now requires a two-thirds vote. [Pause.] Are you ready for the question? [Pause. No further debate.] Those in favor of the motion to postpone the resolution until eleven o'clock tomorrow morning and make it a special order will rise.... Be seated. Those opposed, rise.... Be seated. There are two thirds in the affirmative and the motion is adopted. The resolution is a special order for 11 A.M. tomorrow. The next item of business is...

14:22 If the amendment to make a special order is rejected, the chair proceeds in the usual manner to take a voice vote on the *unamended* motion to postpone. If the motion to postpone is not adopted, he again states the question on the resolution. But if the resolution *has* been made a special order for the following day at 11 A.M., as in the above example, then at the appointed time the chair says:

CHAIR: It is now eleven o'clock. The following resolution was made a special order for this time: "Resolved, That..." The question is on the adoption of the resolution....

Attachment #2, pg. 10 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.

Kenneth B. Loveless



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,

A handwritten signature in black ink, appearing to read 'Ken Loveless', written over a horizontal line.

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 B-EDG. The Board majority
did not approve, disapprove, or otherwise
act upon the contents of this attachment.

ROA 000504

SCEC_Subpoena_000193

Attachment #4 pg. 1 is included with the minutes of the 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.

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

ROA 000505

SCEC_Subpoena_000194

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.

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 than 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

ROA 000506

SCEC_Subpoena_000195

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 B&DG. The Board majority
did not approve, disapprove, or otherwise
act upon the contents of this attachment.

ROA 000507

SCEC_Subpoena_000196

2/2/2021



Attachment #5, p91 Is included with the minutes of the 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.

Edward White <ewhite@lexrich5.org>

Requirement that Ken Loveless Recuse Himself from any Discussions about Contract Construction

1 message

Edward White <ewhite@lexrich5.org>

Mon, Jan 25, 2021 at 9:13 AM

To: Janis Hammond <jhammond@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Cathy Huddle <chuddle@lexrich5.org>, Matt Hogan <mhogan@lexrich5.org>, Rebecca Hines <rhines@lexrich5.org>, Kenneth Loveless <kloveless@lexrich5.org>, Christina Melton <cmelton@lexrich5.org>

Bcc: ed.white@nelsonmullins.com

Mrs. Hammond,

I am writing in reference to Mr. Loveless' request that he assume the role of inspecting and critiquing Piney Woods Elementary School with Nicki Gardner on behalf of the District.

If you recall, Mr. Loveless obtained a contract through his personal company to do work with Contract Construction sometime in the early part of 2020. Mr. Loveless never disclosed this financial relationship to the Board but was questioned about it in the Board's September 14, 2020 meeting at which time Mrs. Hutchinson raised the question of whether that financial relationship created an ethical problem. On September 25, 2020 Mr. Loveless obtained an Ethics Opinion (the "Opinion") from the South Carolina Ethics Commission based on Mr. Loveless bidding on second project with Contract Construction. The Opinion is addressed directly to Mr. Loveless and he put a copy of the letter on the minutes of our September 25, 2020 Board meeting..

While the Opinion concludes there is no outright prohibition for Mr. Loveless' company to enter into a contract with Contract Construction (while it is a vendor to the District), the Opinion is also very clear that Mr. Loveless, as a Board member, is required to recuse himself pursuant to Section 8-13-700(B) of the SC Code of Laws (the "Code") from any matters the District has with Contract Construction.

As cited in the Opinion, Section 8-13-700(B) of the Code clearly states that no public official may make, participate in making, "or in any way attempt to use his office to influence a governmental decision" involving the matter with which he has a financial relationship. Simply stated, Section 8-13-700(B) requires that Mr. Loveless recuse himself from any conversations or communication with the Board or the District involving Contract Construction and the Piney Woods School.

Section 8-13-700(B) of the Code also provides that (i) Mr. Loveless is required to prepare a written statement of his financial relationship with Contract Construction and deliver it to you (as the Board Chair) to put into the minutes of the Board, and (ii) that you, as the Board Chair are required to make sure that Mr. Loveless recuses himself from any discussions or votes pertaining to Contract Construction. I am not aware of any written statement Mr. Loveless submitted to put on the minutes of our Board meeting.

Technically, for Mr. Loveless to have properly complied with his recusal obligation he should have disclosed his financial relationship to the Board at the time his company first entered into the financial relationship with Contract Construction by submitting his written statement to the Board Chair and then he should have recused himself from all discussions or votes concerning the Piney Woods School. This means that if Mr. Loveless' company entered into its contract with Contract Construction prior to March 24, 2020 that Mr. Loveless should have never submitted his letter of March 24, 2020 to the Superintendent making allegations about the quality of the work of Contract Construction at the Piney Woods School site (which is a public document included on the minutes of the June 15, 2020 Board meeting) and he should have never participated in the discussions of the Piney Woods project in our September 14, 2020 Board meeting.

Even if Mr. Loveless was unaware of his ethical obligations at the time his company entered into its financial relationship with Contract Construction, he clearly should have known of his obligations after his receipt of the Opinion on September 25, 2020. This means that after September 25, 2020 Mr. Loveless should have immediately submitted his written statement of his company's financial relationship with Contract Construction to you as the Board Chair to put be into the minutes for public disclosure and he should have ceased any further efforts for him to personally be allowed to inspect and approve the construction of Piney Woods School. In other words, if Mr. Loveless company still has a financial relationship with Contract Construction then he is not in compliance with the Opinion (i) if he failed to submit his written disclosure to you to put into the Board minutes and (ii) because of his recent email requests to Dr. Melton and the Board

ROA-004508

Ed White

Attachment #5, pg. 3 is included with the minutes of the 2-8-2021 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** <kloveless@lexrich5.org>

Date: Fri, Feb 5, 2021 at 10:52 AM

Subject: Re: Ken Loveless Letter dated May 24 , 2020 Alleging Problems PWES

To: Christina Melton <cmelton@lexrich5.org>

Cc: Edward White <EWhite@lexrich5.org>, Janis Hammond <jhammond@lexrich5.org>, Cathy Huddle <chuddle@lexrich5.org>

Dr.Melton, As a part of the requested report of the accumulation of costs that you may attribute to my requests, please note that under board policy BEDGA you had (have since I have never have received a formal reply) the duty to respond in terms of the following passage:" 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 rendered 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 as expeditiously as possible and at no cost to the individuals involved. "

Please note that I was and am in no way responsible for any accumulated costs because I was not informed that there were or are potential costs and because the above policy was not followed in that the matter was not brought to the fully seated board for a vote before any alleged expenditures were made. Respectfully submitted. Ken Loveless
On Fri, Feb 5, 2021, 10:26 AM Christina Melton <cmelton@lexrich5.org> wrote:

Mr. White,

This is to confirm receipt of your email and request. I'll forward this to staff ; however, I cannot offer assurance that we will have this information in time for Monday's meeting if that is your expectation. We will do our best but I do not know how readily available this information may be due to staffing changes.



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

On Fri, Feb 5, 2021 at 8:14 AM Edward White <ewhite@lexrich5.org> wrote:

Dr. Melton,

Can you compile a summary of the additional costs the District incurred to address the allegations that Mr. Loveless made about PWES in the attached letter and the accusations he made about the concrete slips for the project. I would like to see a summary of actual expenditures for consultants and other advisors to review and respond to these allegations and attend the September 14, 2020 meeting to address these allegations.

I would also like to see a estimate of time the District personnel had to respond to these allegations as well.

Thank you,

Ed

ROA 000510

1

SCEC_Subpoena_000199

Ed White

----- Forwarded message -----

From: **Kenneth Loveless** <kloveless@lexrich5.org>

Date: Wed, Jan 20, 2021 at 7:06 PM

Subject: Re: Requesting answers

To: Christina Melton <csmelton@lexrich5.org>, Janis Hammond <jhammond@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>, Rebecca Hines <rhines@lexrich5.org>, Cathy Huddle <chuddle@lexrich5.org>, Edward White <EWhite@lexrich5.org>, Matt Hogan <mhogan@lexrich5.org>

Dr. Melton, are you going to answer me? I have requested access which would involve much more than the facile group visit shown as scheduled for 1/28/21. I certainly plan to attend. However, I have on numerous occasions requested a deeper dive into the subject. Are you going to answer me? Respectfully submitted, Ken Loveless

On Wed, Jan 6, 2021, 2:21 PM Kenneth Loveless <kloveless@lexrich5.org> wrote:

Dr. Melton,

I have asked several times that a meeting between Director of Facilities, Clay Cannon Nikki Gardner and I at PWES be arranged. The purpose is that we be allowed to see and study contract documents with an eye toward compliance. Once a protocol has been established we would like to be able to meet Mr. Cannon as many times as it takes to complete our review. We will need access to all documents indicated in the Contract for Construction.

I once again ask for this to be arranged.

Please let us know as soon as possible when this can be arranged.

Thank you in advance,

Kenneth B. Loveless, Vice Chair

Attachment #5, pg. 4 is included with
the minutes of the 2-8-2021
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.

ROA 000511

1

SCEC_Subpoena_000200

Ed White

From: Edward White <ewhite@lexrich5.org>
Sent: Monday, February 8, 2021 2:24 PM
To: Ed White
Subject: Fwd: Ken Loveless Letter dated May 24 , 2020 Alleging Problems PWES

Follow Up Flag: Follow up
Flag Status: Flagged

«External Email» - From: ewhite@lexrich5.org

Attachment #5/pg.5 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Ed White

pursuant to South Carolina Code
Ann. Section 30-4-90(a)(4)
and Board Policy B:EDG. The Board majority
did not approve, disapprove, or otherwise
act upon the contents of this attachment.

----- Forwarded message -----

From: Kenneth Loveless <kloveless@lexrich5.org>
Date: Fri, Feb 5, 2021 at 12:36 PM
Subject: Re: Ken Loveless Letter dated May 24 , 2020 Alleging Problems PWES
To: Edward White <EWhite@lexrich5.org>
Cc: Christina Melton <csmelton@lexrich5.org>, Janis Hammond <jhammond@lexrich5.org>, Nikki Gardner
<ngardner@lexrich5.org>, Rebecca Hines <rhines@lexrich5.org>, Matt Hogan <mhogan@lexrich5.org>, Cathy Huddle
<chuddle@lexrich5.org>

Dr.Melton, I agree that Mr. White that thus should put this off until another day. I disagree with his premise: is about one board member who is attempting abridge another board member's rights and duties under the law. That is the conversation. He is a tax attorney trying who in the past has acted as the board's legal authority. He does not like it that a new board majority has deposed him.

On Fri, Feb 5, 2021, 11:35 AM Edward White <ewhite@lexrich5.org> wrote:
Dr. Melton,

No need to try to have this for Monday. Sometime in the near future will be fine.

This is 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.

One aspect of that analysis is to understand the economic and non-economic cost and to the District to assess detailed assessments by individual board members.

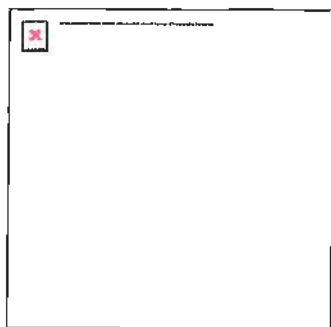
Thank you,

Ed

On Fri, Feb 5, 2021 at 10:26 AM Christina Melton <csmelton@lexrich5.org> wrote:

Mr. White,

This is to confirm receipt of your email and request. I'll forward this to staff ; however, I cannot offer assurance that we will have this information in time for Monday's meeting if that is your expectation. We will do our best but I do not know how readily available this information may be due to staffing changes.



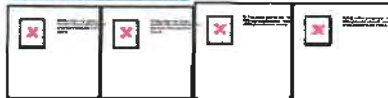
Christina S. Melton, Ed.D.

Superintendent

School District Five of Lexington & Richland Counties

office: 803.476.8169 or 803.476-8116

www.lexrich5.org



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On Fri, Feb 5, 2021 at 8:14 AM Edward White <ewhite@lexrich5.org> wrote:

Dr. Melton,

Can you compile a summary of the additional costs the District incurred to address the allegations that Mr. Loveless made about PWES in the attached letter and the accusations he made about the concrete slips for the project. I would like to see a summary of actual expenditures for consultants and other advisors to review and respond to these allegations and attend the September 14, 2020 meeting to address these allegations.

I would also like to see a estimate of time the District personnel had to respond to these allegations as well.

Thank you,

Ed

#5, pg. 6
Attachment _____ is included with
the minutes of the _____, *2-8-2021*
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.

Ed White

From: Edward White <ewhite@lexrich5.org>
Sent: Monday, February 8, 2021 2:24 PM
To: Ed White
Subject: Fwd: Ken Loveless Letter dated May 24 , 2020 Alleging Problems PWES

Follow Up Flag: Follow up
Flag Status: Flagged

◀External Email▶ - From: ewhite@lexrich5.org

Attachment #5, pg. 7 is included with
the minutes of the 2-8-2021
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** <klloveless@lexrich5.org>
Date: Fri, Feb 5, 2021 at 12:36 PM
Subject: Re: Ken Loveless Letter dated May 24 , 2020 Alleging Problems PWES
To: Edward White <EWhite@lexrich5.org>
Cc: Christina Melton <csmelton@lexrich5.org>, Janis Hammond <jhammond@lexrich5.org>, Nikki Gardner
<ngardner@lexrich5.org>, Rebecca Hines <rhines@lexrich5.org>, Matt Hogan <mhogan@lexrich5.org>, Cathy Huddle
<chuddle@lexrich5.org>

Dr. Melton, I agree that Mr. White that thus should put this off until another day. I disagree with his premise: is about one board member who is attempting abridge another board member's rights and duties under the law. That is the conversation. He is a tax attorney trying who in the past has acted as the board's legal authority. He does not like it that a new board majority has deposed him.

On Fri, Feb 5, 2021, 11:35 AM Edward White <ewhite@lexrich5.org> wrote:
Dr. Melton,

No need to try to have this for Monday. Sometime in the near future will be fine.

This is 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.

One aspect of that analysis is to understand the economic and non-economic cost and to the District to assess detailed assessments by individual board members.

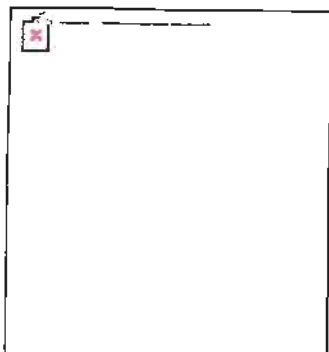
Thank you,

Ed

On Fri, Feb 5, 2021 at 10:26 AM Christina Melton <csmelton@lexrich5.org> wrote:
Mr. White,

This is to confirm receipt of your email and request. I'll forward this to staff ; however, I cannot offer assurance that we will have this information in time for Monday's meeting if that is your expectation. We will do our best but I do not know how readily available this information may be due to staffing changes.

ROA 000514



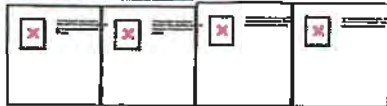
Christina S. Melton, Ed.D.

Superintendent

School District Five of Lexington & Richland Counties

office: 803.476.8169 or 803.476-8116

www.lexrich5.org



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On Fri, Feb 5, 2021 at 8:14 AM Edward White <ewhite@lexrich5.org> wrote:

Dr. Melton,

Can you compile a summary of the additional costs the District incurred to address the allegations that Mr. Loveless made about PWES in the attached letter and the accusations he made about the concrete slips for the project. I would like to see a summary of actual expenditures for consultants and other advisors to review and respond to these allegations and attend the September 14, 2020 meeting to address these allegations.

I would also like to see a estimate of time the District personnel had to respond to these allegations as well.

Thank you,

Ed

Attachment #5, pg 8 is included with
the minutes of the 2-8-2021
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.

ROA 000515

Ed White

From: Edward White <ewhite@lexrich5.org>
Sent: Sunday, February 7, 2021 3:43 PM
To: Ed White
Subject: Fwd: Visit PWES

◀External Email▶ - From: ewhite@lexrich5.org

Attachment #5, pg. 9 is included with the minutes of the 2-8-2021 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 -----

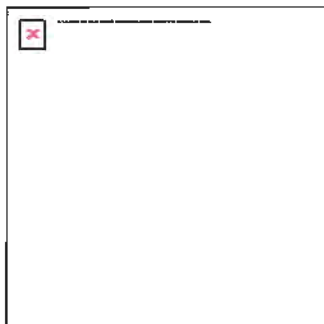
From: Christina Melton <csmelton@lexrich5.org>
Date: Mon, Nov 23, 2020 at 8:39 PM
Subject: Fwd: Visit PWES
To: Erin Strange <estrangle@lexrich5.org>
Cc: Clayton Cannon <cwcannon@lexrich5.org>, Len Richardson <lrichard@lexrich5.org>

Board Members:

In accordance with Board Policy BEDGA, "all board members will be appropriately advised of all requests (by board members) as well as the responses." Therefore, the email response below is being blind copied and shared with all members of the Board of Trustees.

During my visit to Piney Woods Elementary last Friday, I spoke with Ryan and Mrs. Paschal about an upcoming site visit. Mrs. Strange has this item for me to discuss with Board Officers when we meet. We are coordinating the available personnel needed on site for this to be a successful visit while weighing other upcoming events for the Board.

Mr. Richardson and Mr. Cannon, this information is FYI since you were not in attendance for my last site visit.



Christina S. Melton, Ed.D.

Superintendent

School District Five of Lexington & Richland Counties

office: 803.476.8169 or 803.476-8116

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----- Forwarded message -----

From: Clayton Cannon <cwcannon@lexrich5.org>
Date: Mon, Nov 23, 2020 at 1:05 PM
Subject: Fwd: Visit PWES
To: Christina Melton <csmelton@lexrich5.org>
Cc: Len Richardson <lrichard@lexrich5.org>

ROA 000516

1

SCEC_Subpoena_000205

----- Forwarded message -----

From: **Kenneth Loveless** <kloveless@lexrich5.org>

Date: Mon, Nov 23, 2020 at 12:35 PM

Subject: Visit PWES

To: Clayton Cannon <cwcannon@lexrich5.org>, Nikki Gardner <ngardner@lexrich5.org>

Clay, We would like to schedule a visit with you to the site.

Please give us a few dates when that might be arranged.

Thanks

Ken

Attachment #5, pg. 10 is included with
the minutes of the 2-8-2021
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.



Clay Cannon, PE, LEED AP

Director of Facilities Operations

School District Five of Lexington & Richland Counties

1020 Dutch Fork Road, Irmo, SC 29063

office: 803.476.8123

www.lexrich5.org



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Michael Montgomery, Attorney

On 06/17/2013 Board Member White voted to approve a no-bid vendor award for legal services to Michael Montgomery specifically (not the firm) as detailed on Exhibit 1.

From 2016 to 2018, Board member White received free legal services* from attorney Montgomery for his personal lawsuit against a former school board member as detailed on Exhibit 2.

On 8/24/2020 Board member White voted to approve a no-bid vendor award for legal services to Montgomery Willard LLC over objections from fellow board member that he should recuse himself due to his personal relationship with Montgomery as detailed on Exhibit 3.

Per the district's published disbursement registers the district paid Attorney Montgomery \$484,618 up until he resigned in late 2020.

Board Member White voted to 2 times to approve a no-bid contract for an attorney from whom he received a gift of free legal services no doubt worth thousands of dollars. Also SC Ethics filings for 2016, 2017 and 2018 do not include any gifts reported from Montgomery.

* During the 9/28/2020 board meeting (https://www.youtube.com/watch?v=9jlq-lmaCsc&list=PLI9eR_8HyUJDcA-8QP92TUwEoj-eDUk_J&index=6 - the 17:50 mark) Montgomery states that he personally represented two members of the school board pro bono (without charge) in their litigation with a former board member. He was referring to Board Member White and former Board Chair Gantt's personal lawsuit against former Board Member Kim Murphy (case 2016CP4005431 in the Richland County Court of Common Pleas).

Attachment #6, pg. 1 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Nikki Gardner
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.

ROA 000518

SCEC_Subpoena_000207

Exhibit 1

Attachment #6, pg 2 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Nikki Gardner 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.

SCHOOL DISTRICT FIVE
OF
LEXINGTON AND RICHLAND COUNTIES

Meeting of June 17, 2013

	B A U M G A R D N E R	G A N T T	L O V E L E S S		T U R N E R	W A T S O N	W H I T E
new policy IKD "Honor Rolls"; replace current policies IHE "Promotion and Retention" and IDDB "Academic Assistance Programs" with new policy IKE "Promotion and Retention of Students"; replace current policy IKB "Contemporary Issues" with new policy IMB "Teaching About Controversial/Sensitive Issues"; add new policy IMDB "Flag Displays"; and add new policy IMDC "Religious Observances and Displays" (Exhibit F)							
7. M. Watson S. Loveless Give second and final reading of the FY 2013-2014 general fund budget in the amount of \$158,457,021 and that the general fund operating millage be set at 229.27 mills for FY 2013-2014 (Exhibit G) M. Turner S. Baumgardner I move to amend the current motion to read as follows: that we approve the proposed budget that includes the addition of SROs, as well as an expanded 4K program, and that we exclude from the proposed budget any money that was included to increase board members' pay and that we pass this budget without a tax increase M. White S. Watson Amend that we set the annual board stipend at \$9,600 with an automatic CPI adjustment each year Vote on original motion	X	No	No		X	No	No
	No	X	X		No	X	X
	X	X	X		No	X	X
8. M. Watson S. Loveless <u>Approve adding attorneys to the approved attorney list (Exhibit H)</u> M. Baumgardner S. Watson Amend Exhibit H as follows: The Liberty Institute, Legal Counsel be added to the Board approved attorneys list	X	X	X		X	X	<u>X</u>

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

ROA 000519

SCEC_Subpoena_000208

Exhibit 1 cont

**SCHOOL DISTRICT FIVE OF LEXINGTON AND RICHLAND COUNTIES
APPROVED ATTORNEYS' LIST**

Approved August 17, 2006

- Nicholson, Davis, Frawley, Anderson, Ayers, LLC
- Duff, White & Turner, LLC
- Richardson, Plowden, Carpenter, and Robinson
- Moore, Taylor & Thomas, P.A.
- Childs & Hallagan, P.A.
- Haynsworth, Sinkler, Boyd, P.A.
- McNair Law Firm, P.A.

Proposed May 20, 2013

- Michael H. Montgomery, Montgomery Willard, LLC
- Rosen, Rosen & Hagood, LLC
- Orr, Elmore & Ervin, LLC

Attachment #6, pg. 3 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Nikki Gardner
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.

ROA 000520

SCEC_Subpoena_000209

Exhibit 2

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

Robert Gantt and Edward K. White, Respondents,

v.

Samuel J. Selph as Director, and Marjorie Johnson, Adell
Adams, E. Peter Kennedy, Sylvia Holley and Jane
Emerson as the Members of the Board of Voter
Registration and Elections of Richland County, The
Board of Voter Registration and Elections of Richland
County, and Kim Murphy, Defendants,

Of whom Kim Murphy is the Appellant.

Appellate Case No. 2016-002134

Appeal from Richland County
Jean Hoefer Toal, Circuit Court Judge

Opinion No. 27807
Submitted January 16, 2018 – Filed May 30, 2018

AFFIRMED

Brian C. Gambrell, of The Law Offices of Jason E.
Taylor, P.C., of Columbia, for Appellant.

Michael H. Montgomery, of Montgomery Willard, LLC,
of Columbia, for Respondents.

ROA 000521

Attachment #6, pg. 4 is included with
the minutes of the 2-3-2021
meeting, at the request of Board member
Nikki Gardner
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_000210

Exhibit 3

Mr. Len Richardson presented the list of attorneys (Exhibit D) who answered the Request for Qualifications (RFQ 2020-016) and met all qualifications.

Attachment #6 pg 5 is included with the minutes of the meeting, at the request of Board member Nikki Gardner

DISCUSSION AGENDA

The meeting was adjourned at 9:25 p.m.

INFORMATION AGENDA

The following were included in the board packet as "Information Only": Board Policy EF "Food Services"; Temporary Administrative Rule EB-R "Maintaining Healthy Environments"; and, Temporary Administrative Rule EEA-R "Student Transportation".

The next regular scheduled board meeting will be September 14, 2020. Location to be determined.

Record of Voting

 School District Five of Lexington and Richland Counties Meeting of August 24, 2020		Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
1. M. Hutchison	S. Gardner	X	X	X	X	X	X	X
Approve the agenda								
2. M. Hutchison	S. Hammond	X	X	X	X	X	X	X
Enter Executive Session to consider selected employment items, Exhibit A, Action, and Exhibit B, information								
3. M. Hutchison	S. Gardner	X	X	X	X	X	X	X
Approval of the minutes from the August 10, 2020 board meeting								
4. M. Hutchison	S. Hammond	X	X	X	X	X	X	X
Action as necessary on appropriate matters discussed in Executive Session to approve selected employment items as shown in Exhibit A								
5. M. Loveless	S. White	X	X	X	X	X	X	X
Approve item number 12 the naming of Elementary School #13 as shown in Exhibit C								

ROA 000522

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

SCEC_Subpoena_000211

Exhibit 3 cont

Attachment #6, pg. 6 is included with the minutes of the 2-8-2021 meeting, at the request of Board member Nikki Gardner

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.

	Cates	Gantt	Gardner	Hammond	Hutchison	Loveless	White
6. M. Hutchison S. Gardner Approve the administration's recommendation to approve the attorney firms listed in our packet shown on Exhibit D							
M. Loveless S. Hammond Copies of South Carolina Code of Laws 8-13-1342 (2018) as attached, is now being handed to fellow board members. SC Ethics Commission filings indicate that the board members have taken contributions from law firms on the district provided proposed list of attorneys prior to participation tonight. I therefore make the motion to table any action on this agenda item until the SC Ethics Commission and the state attorney general rule after submission by request of attorneys other than on list, upon the lawfulness of any proposed action.	N	N	X	X	N	X	N
M. Gardner S. Hammond Amend motion to strike Montgomery Willard, LLC from Property/Real Estate	-	-	-	-	-	-	-
M. Gardner S. Hammond Revise amended motion to strike Montgomery Willard, LLC from Business/Corporate instead of Property/Real Estate	N	N	X	X	N	X	N
Vote on original motion	X	X	N	N	X	N	X
7. M. Hutchison S. Gardner Adjourn at 9:25 p.m.	X	X	X	X	X	X	X

A = Absent
AB = Abstain
N = No
X = Yes
R = Recuse

ROA 000523

SCEC_Subpoena_000212

Business/Corporate

- Halligan, Mahoney, Williams, Smith, Fawley & Reagle, PA
- Haynesworth, Sinkler, Boyd
- Montgomery Willard, LLC
- Richardson Plowden, Attorneys at Law
- White & Story, LLC

Student Affairs

- Duff, Freeman, Lyon Attorneys and Counselors at Law
- Halligan, Mahoney, Williams, Smith, Fawley & Reagle, PA
- White & Story, LLC

Personnel/Employment

- Halligan, Mahoney, Williams, Smith, Fawley & Reagle, PA
- Haynesworth, Sinkler, Boyd
- Montgomery Willard, LLC
- Richardson Plowden, Attorneys at Law
- White & Story, LLC

Property/Real Estate

- Haynesworth, Sinkler, Boyd
- Montgomery Willard, LLC
- Richardson Plowden, Attorneys at Law

Bond

- Burr Forman McNair

Attachment #6, pg.7 is included with
the minutes of the 2-8-2021
meeting, at the request of Board member
Nikki Gardner
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.



District 5 of Lexington and Richland Counties



(803) 476-8000



lexrich5.org

Photos

[See all photos](#)



District 5 of Lexington and Richland Counties

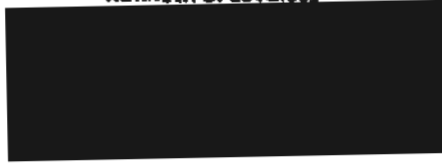
January 28, 2021 · 🌐

Today, the [#LexRich5Schools](#) Board of Trustees visited the construction site of [Piney Woods Elementary School](#), along with principal Cassy Paschal and Superintendent Dr. Melton. We are excited to see the final results and be able to welcome students, teachers and staff next school year! [#PrideIn5](#) [#ChapinSC](#)



Questions Raised about Construction on Amicks Ferry Road

Kenneth B. Loveless



March 24, 2020

Dr. Christina Melton

Superintendent Lexington-Richland School District 5

1020 Dutch Fork Road

Irmo, SC 29063

Attachment #1, pg. 1 is included with
the minutes of the 6/19/2020
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.

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

ROA 000526

SCEC_Subpoena_000215

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 6/15/2020 meeting at the request of Board member Ed White.

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 10/15/2020 meeting, at the request of Board member [signature]. Pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEOG, The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

- 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 230.59 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

Attachment #1 pg. 4 is included with the minutes of the meeting, at the request of board member [signature] pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BE06. 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.

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 June 18, 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

Attachment #1, pg. 5 is included with the minutes of the 10/15/2020 meeting, at the request of board member [signature] pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEDEG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

ROA 000530

SCEC_Subpoena_000219

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 12-6-19 is included with the minutes of the meeting, at the request of Board member [signature] pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BLEDG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

ROA 000531

SCEC_Subpoena_000220

- 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.

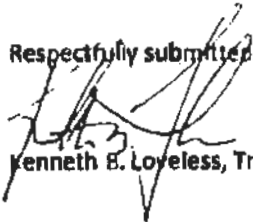
Attachment #1, pg. 7 is included with the minutes of the 11/16/2020 meeting, at the request of Board member Ed Wozniak, pursuant to South Carolina Code Ann. Section 30-4-90(a)(4) and Board Policy BEOG. The Board majority did not approve, disapprove, or otherwise act upon the contents of this attachment.

ROA 000532

SCEC_Subpoena_000221

Please act accordingly.

Respectfully submitted,


Kenneth E. Loveless, Trustee

Attachment #1, pg. 9 is included with
the minutes of the 11/9/2020
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.

ROA 000533

SCEC_Subpoena_000222

Business Entities Online

File, Search, and Retrieve Documents Electronically

LOVELESS COMMERCIAL CONTRACTING, INC.

Corporate Information

Entity Type: Corporation

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 04/22/1986

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: KENNETH B LOVELESS

Address: 1821 STATE ST CAYCE SC
South Carolina

Official Documents On File

Filing Type	Filing Date
Amendment	06/29/1990
Change of Agent or Office	05/22/1986
Incorporation	04/22/1986

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF INCORPORATION

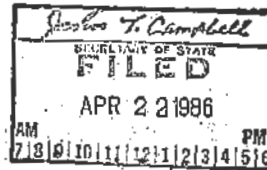
OF

Loveless Commercial Contracting, Inc.

(File This Form In
Duplicate Originals)

(Sect. 33-7-30 of 1976 Code)

(INSTRUCTIONS ON PAGE 4)



For Use By
The Secretary of State

File No.
Fee Paid \$
R. N.
Date

This Space For Use By
The Secretary of State

BS 01/02 4973
86-004040/86-004040 16:24:00 002
04-22-86 PMT:\$45.00
SECT OF STATE OF SOUTH CAROLINA

- The name of the proposed corporation is Loveless Commercial Contracting, Inc.
- The initial registered office of the corporation is 1803 State Street Street and Number
located in the city of Cayce county of Lexington and
the State of South Carolina and the name of its initial registered agent at such address is
Kenneth B. Loveless
- The period of duration of the corporation shall be perpetual (N/A years).
- The corporation is authorized to issue shares of stock as follows:

Class of shares	Authorized No. of each class	Par Value
Common	100,000	\$ 1.00

If shares are divided into two or more classes or if any class of shares is divided into series within a class, the relative rights, preferences, and limitations of the shares of each class, and of each series within a class, are as follows:

- Total authorized capital stock One Hundred Thousand (\$100,000.00) Dollars
Please see instructions on Page 4.
- The existence of the corporation shall begin as of the filing date with the Secretary of State or to be effective
- The number of directors constituting the initial board of Directors of the corporation is one (1)
and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify are:

<u>Kenneth B. Loveless</u>	<u>1803 State Street, Cayce, S.C. 29033</u>
Name	Address

ROA 000535

The R. L. Bryan Company

SCEC Subpoena 000224

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Name

Address

Name

Address

8. The general nature of the business for which the corporation is organized is (it is not necessary to set forth in the purposes powers enumerated Section (33-3-10 of 1976 Code).

To engage in the business of general contracting and to undertake in exchange for compensation the construction, improvement and reimpovement of buildings and other structures as allowed by law;

To engage in such other businesses and kinds of businesses as the directors may from time to time deem advisable; to do all things necessary or incidental to the purposes set forth herein; and to buy, sell, or own real or personal property.

9. Provisions which the incorporators elect to include in the articles of incorporation are as follows:

Not Applicable.

10. The name and address of each incorporator is:

Name	Street & Box No.	City	County	State
Kenneth B. Loveless	1803 State Street	Cayce	Lexington	S.C.

Kenneth B. Loveless
(Signature of Incorporator)

Date April 22, 1986

Kenneth B. Loveless

(Type or Print Name)

(Signature of Incorporator)

(Type or Print Name)

(Signature of Incorporator)

(Type or Print Name)

ROA 000536

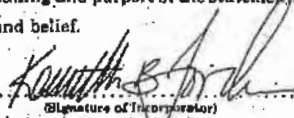
SCEC Subpoena 000225

STATE OF South Carolina

COUNTY OF Richland

The undersigned Kenneth B. Loveless

does hereby certify that he is the incorporator of Loveless Commercial Contracting, Inc. and is authorized to execute this verification; that each of the undersigned for himself does hereby further certify that he has read the foregoing document, understands the meaning and purport of the statements therein contained and the same are true to the best of his information and belief.

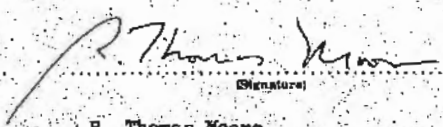

 (Signature of Incorporator)
 Kenneth B. Loveless

(Signature of Incorporator)

 (Signature of Incorporator)
 (Each Incorporator Must Sign)

11. I, R. Thomas Moore, an attorney licensed to practice in the State of South Carolina, certify that the corporation, to whose articles of incorporation this certificate is attached, has complied with the requirements of chapter 7 of Title 33 of the South Carolina Code of 1976, relating to the organization of corporations, and that in my opinion, the corporation is organized for a lawful purpose.

Date April 22, 1986


 (Signature)

R. Thomas Moore

(Type or Print Name)

Address 5 Calendar Court, Suite 102

Columbia, South Carolina 29206

SCHEDULE OF FEES

(Payable at time of filing Articles of With Secretary of State)

Fee for filing Articles	\$ 5.00
In addition to the above, \$40 for each \$1,000.00 of the aggregate value of shares which the Corporation is authorized to issue, but in not case less than nor more than	40.00 1,000.00

NOTE: THIS FORM MUST BE COMPLETED IN ITS ENTIRETY BEFORE IT WILL BE ACCEPTED FOR FILING. THIS FORM MUST BE ACCOMPANIED BY THE FIRST REPORT OF CORPORATIONS AND A CHECK IN THE AMOUNT OF \$10 PAYABLE TO THE SOUTH CAROLINA TAX COMMISSION.

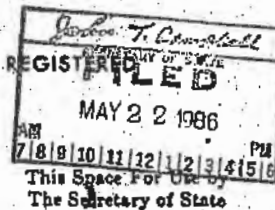
Please see instructions on the reverse side.

ROA 000537

SCEC Subpoena 000226

NOTICE OF CHANGE OF REGISTERED OFFICE OR REGISTERED
AGENT OR BOTH

For Use by The Secretary of State
File No. <u>26-6040</u>
Fee Paid _____
C. B. _____
Date _____

STATE OF SOUTH CAROLINA
SECRETARY OF STATE(File This Form in Duplicate)
Filing Fee \$5.00BAS 01/02 4973
84-007738/84-007738 15:53:00 012
95-22-86 FMT \$5.00
SECT OF STATE OF SOUTH CAROLINA

Pursuant to Section 33-5-40 of the 1976 Code, the undersigned Corporation which is,

(A) A domestic corporation incorporated in South Carolina on April 22, 1986 or

(B) A foreign corporation incorporated in _____ on _____

and authorized to do business in South Carolina on _____

whose registered or principal office in the jurisdiction of its incorporation is 1803State Street in the City of Cayce and the State ofSouth Carolina 29033

now gives notice of the change of its registered office or its registered agent or both, and submits the following statement:

- (1) The name of the Corporation is Loveless Commercial Contracting, Inc.
- (2) The address of the present registered office is 1803 State Street, Cayce,
South Carolina 29033
- (3) The address to which its registered office is to be changed is 1821 State Street,
Cayce, South Carolina 29033
- (4) The name of the present registered agent is Kenneth B. Loveless
- (5) The name of the successor registered agent is no change
- (6) The address of the registered office and the address of the business office of the registered agent,
as changed, will be identical.
- (7) State whether such change was authorized by action of the Board of Directors
by resolution dated May 19, 1986,
a copy of which is attached hereto.

Loveless Commercial Contracting, Inc.
(Name of Corporation)By Kenneth B. Loveless

Its: Secretary

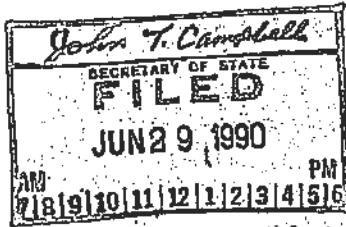
By _____

May 19, 1986

ROA 000538

SCEC Subpoena 000227

86 6040



STATE OF SOUTH CAROLINA
SECRETARY OF STATE

ARTICLES OF AMENDMENT

HMJ 01/02 497
90-009758/90-009758 16:00:00
07-02-90 FMT \$110.00
SECT OF STATE OF SOUTH CAROLINA

Pursuant to South Carolina Code Section 33-10-106 the Corporation hereby adopts the following Articles of Amendment to its Articles of Incorporation:

1. The name of the Corporation is Loveless Commercial Contracting, Inc.
2. On June 27, 1990, the Corporation adopted a resolution to become a Statutory Close Corporation, and to amend and restate its Articles of Incorporation as set forth in the attached Exhibit A.
3. The amendment was adopted by shareholder action. On the date of the adoption there were One Hundred Thousand (100,000) shares of outstanding common voting stock of the Corporation. All One Hundred Thousand (100,000) shares were voted in favor of the amendment.
4. These Articles of Amendment shall be effective upon acceptance for filing by the Secretary of State.

Loveless Commercial Contracting, Inc.

By

Its President

ROA 000539

SCEC Subpoena 000228

ELECTRONICALLY FILED 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

Exhibit A

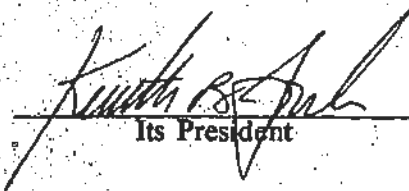
STATE OF SOUTH CAROLINA
SECRETARY OF STATE

RESTATED ARTICLES OF INCORPORATION

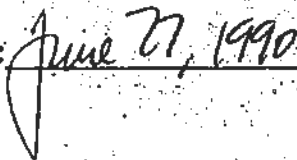
1. The name of the Corporation is Loveless Commercial Contracting, Inc.
2. The Corporation was initially incorporated on April 22, 1986.
3. The Registered Office of the Corporation is 1821 State Street, Cayce, South Carolina (Lexington County) and the Registered Agent at such address is Kenneth B. Loveless.
4. The Corporation is authorized to issue One Hundred Thousand (100,000) shares of Common Voting Stock, which shares have one vote per share and are entitled to receive the net assets of the Corporation upon dissolution.
5. This Corporation hereby elects to be a Statutory Close Corporation, pursuant to Chapter 18, Title 33 of the 1976 South Carolina Code, as amended.
6. The transfer of the shares of stock of the Corporation shall not be subject to the restrictions set forth in Sections 33-18-110 through 33-18-130 of the 1976 South Carolina Code, as amended (or any succeeding statute of like tenor and effect).
7. Pursuant to the authority contained in South Carolina Code Section 33-18-220, (or any succeeding statute of like tenor and effect), this Corporation elects not to have bylaws, and the provisions required by law to be contained in the bylaws shall be contained in either these articles of incorporation or in a shareholders agreement authorized by Section 33-18-200.
8. This Corporation elects not to have a board of directors pursuant to the provisions of South Carolina Code Section 33-18-210 (or any succeeding statute of like tenor and effect).

Loveless Commercial Contracting, Inc.

By


Its President

Date:


June 27, 1990

ROA 000540

SCEC Subpoena 000229

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

BEFORE THE STATE ETHICS COMMISSION

IN THE MATTER OF:)

Complaint C2021-016)

Kenneth Loveless)
Respondent.)

NOTICE OF HEARING

Kim Benson)
Complainant.)

The State Ethics Commission has determined that there is probable cause pursuant to Section 8-13-320(10)(i), Code of Laws, South Carolina, 1976, as amended, to support the allegations made in the above-captioned complaint. The State Ethics Commission will, therefore, convene a formal hearing into the matters, in accordance with Section 8-13-320(10)(i) & (j), Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.) on Thursday, February 16, 2023 at 9:30 a.m. at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will be heard:

COUNT ONE

**FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A
BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED**

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, write a letter dated March 24, 2020 inquiring about construction work of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

ROA 000541

SCEC_Subpoena_000230

COUNT TWO
**FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A
BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED**

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on June 15, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT THREE
**FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A
BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED**

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, on September 14, 2020, participate in discussion about construction of a district facility by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

COUNT FOUR
**FAILURE TO RECUSE FROM A GOVERNMENTAL DECISION IN WHICH A
BUSINESS WITH WHICH ASSOCIATED HAD AN ECONOMIC INTEREST
SECTION 8-13-700(B), S.C. CODE ANN., 1976, AS AMENDED**

That Kenneth Loveless, Lexington-Richland School District Five Board Member, did in Richland County, in June of 2020, participate in a site visit of a district facility being constructed by Contract Construction, Inc., a business with which he was associated, in violation of Section 8-13-700(B).

You have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. This hearing will be open to the public as required by Section 8-13-320(10)(j), Code of Laws, South Carolina,

1976, as amended. The procedures to be followed are set forth in the Administrative Procedures Act, Section 1-23-10, et seq., Code of Laws, South Carolina, 1976 as amended the State Ethics Act, Section 8-13-100, et seq., Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.).

A pre-hearing conference may be scheduled prior to the hearing to allow exchange of witness lists and evidence, marking of exhibits, and disposition of motions or pleadings. In the event you fail to appear, judgment by default will be rendered against you. If there are any questions concerning the above notice or hearing times, please contact the State Ethics Commission.


Meghan L. Walker, Executive Director
State Ethics Commission

Dated this 11th day,
of July, 2022.

Certificate of Service by Certified Mail

I hereby certify that a copy of this **NOTICE OF HEARING** was duly served on Karl S. Bowers, Jr., Esquire, PO Box 50549, Columbia, SC 29250 by depositing said **NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 11th day of July 2022, by **CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED**, appropriate postage affixed, and a return address clearly indicated on said envelope.



Rachael O'Bryan, Administrative Assistant
State Ethics Commission (803) 253-4192

Columbia, South Carolina

ROA 000544

SCEC_Subpoena_000233

State of South Carolina

State Ethics Commission

SCOTT E. FRICK
AJ HOLLOWAY
BRANDOLYN THOMAS PINKSTON
F. XAVIER STARKES



MARY HUNTER B. TOMLINSON
NEAL D. TRUSLOW
MATTHEW N. TYLER

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

July 11, 2022

Mr. Karl S. Bowers, Jr., Esquire
PO Box 50549
Columbia, SC 29250

RE: COMPLAINT C2021-018

In the Matter of Kenneth Loveless

Dear Mr. Bowers:

The State Ethics Commission has considered the above captioned complaint and has determined that probable cause exists to support the alleged violation. As a result of the Commission's determination, you are hereby provided with the Notice of Hearing. In accordance with 8-13-320 (10)(g), South Carolina Code of Laws, 1976, as amended, all complaint matters are now public upon the issuance of the Notice of Hearing.

Please be aware that under recent General Assembly amendments to the Ethics Reform Act in 2016 Act. No. 282, effective April 1, 2017, this and all other Ethics Commission hearings are now open to the public. The Ethics Commission will provide timely notice of Commission hearings to the public pursuant to the requirement of the South Carolina Freedom of Information Act.

In accordance with S.C. Code Ann. Section 1-23-320(F), in lieu of a hearing, the Commission may be agreeable to resolve this matter through an informal disposition by Consent Order. Please contact Courtney M. Laster, Esq., General Counsel, at 803-253-4192 or claster@ethics.sc.gov as soon as possible to:

- Confirm receipt of this Notice of Hearing and notify the Commission whether you will or will not attend the scheduled hearing at 9:30am, Thursday, February 16, 2022 at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150 Columbia, SC 29210.
- Discuss the option of a Consent Order

If you do not attend the hearing, a judgment by default will be rendered.

Sincerely,

A handwritten signature in black ink that reads "Meghan L. Walker".

Meghan L. Walker
Executive Director

MLW:ro
Enclosure: Notice of Hearing

State of South Carolina
State Ethics Commission

SCOTT E. FRICK
AJ HOLLOWAY
BRANDOLYN THOMAS PINKSTON
F. XAVIER STARKES



MARY HUNTER B. TOMLINSON
NEAL D. TRUSLOW
MATTHEW N. TYLER

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

July 11, 2022

Ms. Kim Benson

RE: COMPLAINT C2021-016

In the Matter of Kenneth Loveless

Dear Ms. Benson:

The hearing on the above matter before the State Ethics Commission has been scheduled for February 16, 2023.

Enclosed for your information is a copy of the Notice of Hearing. If you desire to attend or appear virtually, please notify the Commission.

Sincerely,

A handwritten signature in blue ink that reads "Meghan Walker".

Meghan L. Walker
Executive Director

MLW:ro
Enclosure: Notice of Hearing

Complaint C2021-016 In the Matter of Kenneth Loveless

ALLEGATION:

On February 17, 2021, the State Ethics Commission received a complaint filed by Kim Benson, citizen, against Kenneth Loveless, Lexington-Richland 5 School District Board Member. The complaint alleged that Loveless participated in board discussions regarding a business with which he was associated. Specifically, the complaint alleges Contract Construction was awarded the contract to build Elementary School #13 (now named Piney Woods Elementary School) in 2018, and that Respondent's company, Loveless Commercial Construction, became a subcontractor for Contract Construction on the SLED Forensic Lab project which began in February 2020. The complaint alleges that Loveless participated in numerous discussions regarding Contract Construction's progress on the Piney Woods Elementary School project.

RELATED CODE SECTIONS:**SECTION 8-13-100. Definitions.**

(4) "Business with which he is associated" means 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 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.

SECTION 8-13-700. Use of official position or office for financial gain; disclosure of potential conflict of interest.

(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 family member, 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 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

ROA 000547

Investigator: Caldwell**SCEC_Subpoena_000236**

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;

EXECUTIVE DIRECTOR:

On February 17, 2021, Executive Director Meghan L. Walker reviewed the complaint, determined it contained facts sufficient, and ordered an investigation.

INVESTIGATION:

The investigation consisted of a review of relevant documents and video, to include Lex-Rich 5 meeting minutes and recordings of meetings. Respondent submitted a written response via his attorney, Butch Bowers. The following is a summary:

1. Investigator Caldwell confirmed Respondent was a member of the Lexington-Richland 5 (Lex-Rich 5) Board of Trustees via the district's website, which states Respondent's term ends in 2022. Per scvotes.org, Respondent was elected to the Lex-Rich 5 Board in 2018.
2. A review of Lex-Rich 5 records revealed on September 18, 2018, Contract Construction was awarded the Construction Manager at Risk contract to build Elementary School 13 (ES 13) via a public bid process. ES 13, later named Piney Woods Elementary School, opened to students for the 2021-2022 school year, and the Construction Closeout Final Report was presented on March 28, 2022 by Mead & Hunt, a third-party inspection company.
3. A review of SC Secretary of State records revealed Respondent is the incorporator, president, and registered agent of Loveless Commercial Contracting, Inc (Loveless Contracting). According to its website, Loveless Contracting was founded in 1986 and specializes in "design build, commercial, industrial and institutional construction as well as large scale concrete."
4. On February 11, 2020, Loveless Commercial Contracting entered into a contract with Contract Construction, Inc. The contract named Loveless Contracting as a subcontractor for Contract Construction on the SLED Forensic Services Laboratory project. A signed copy was date-stamped as received by Loveless Contracting on March 12, 2020.
5. Investigator Caldwell reviewed minutes and video recordings of Lex-Rich 5 board meetings from February 2020 through February 2021, which revealed the Respondent participated in discussions regarding the progress of work performed on ES 13 (Piney Woods Elementary) by Contract Construction. Respondent's participation in discussions at board meetings occurred as follows:

ROA 000548

Investigator: <u>Caldwell</u>

SCEC_Subpoena_000237

Date	Description
6/15/2020 Lex-Rich 5 Board meeting	Superintendent's Report agenda item – Greg Hughes, President of Contract Construction, gave an update on construction progress at ES 13. Dan Neal, consultant for Lex-Rich 5 on this project, also participated. At the end of the presentation, Respondent asked questions about owner's and contractor's contingencies which was answered by Dan Neal. Board Member White then has the floor and asks about two points in the 3/24/2020 letter Respondent submitted to Dr. Melton (illumination during night work and proper trench depth), to which Hughes responds that illumination and trench depth were both proper and up to code. Board Member Hammond then asks Neal to reiterate road safety/traffic light issues, which he did. Board Member White then asks about item #3 in Respondent's 3/24/2020 letter regarding the strength and testing of curb and gutter concrete which Hughes addressed briefly. Dr. Melton interrupts and says staff did not anticipate such detailed questions and Hughes and Neal were not given materials in their packets, but instead were relying on memory to answer questions. Discussion regarding Respondent was recognized and he discussed the project deficiencies he identified in the letter to Superintendent Melton dated 3/24/2020. Respondent said he felt the deficiencies should be discussed, and had tried to sit down to discuss them, but not in a forum like the board meeting. Respondent expressed his displeasure that he did not receive responses to certain issues raised in his letter.
7/13/2020 Lex-Rich 5 Board meeting	Approval of Minutes & Public Participation agenda item – During the motion to approve minutes from the 6/15/2020 board meeting, Respondent asked that his entire letter dated 3/24/2020 to Dr. Melton with 32 attachments regarding construction at ES 13 be added to the meeting minutes. The 3/24/2020 letter was originally added by Board Member Ed White. Chairman Cates rules this out of order and says Respondent cannot amend what another board member has added to meeting minutes. Respondent subsequently voted against approval of the 6/15/2020 meeting minutes.
9/14/2020 Lex-Rich 5 Board meeting	Discussion Agenda & Adjournment agenda item – Update on ES 13/Piney Woods Elementary School provided by Dan Neal, consultant, and Greg Hughes, President of Contract Construction. During the discussion which lasted one hour and forty-five minutes, Respondent questioned Hughes directly several times about issues at ES 13, to include testing of concrete curbing, concrete in a duct bank, and masonry issues all identified by Respondent.

ROA 000549

Investigator: Caldwell**SCEC_Subpoena_000238**

	Several times during the discussion, the contractual relationship between Respondent and Contract Construction was mentioned. Board Member Hutchinson expressed concern about this relationship in possible violation of the Ethics Act. Respondent asked Hughes if Respondent ever used his official position or influence to obtain a contract with Contract Construction, and Hughes said no. Respondent said the subcontract between Loveless Contracting and Contract Construction was negotiated by Trey McDaniel, which Hughes confirmed. Respondent said the bid was made by McDaniel and Respondent did not have any knowledge of the job nor had he even been to the job site. In response to Board Member White's question if Respondent asked in his official capacity for more work with Contract Construction, Hughes said at the end of the tour of ES 13, Respondent said he would like to work with Contract Construction again, but Hughes did not feel like it was in Respondent's official capacity. Respondent asked Hughes if Loveless Contracting did anything to be awarded the bid other than be the low bidder on the SLED project, to which Hughes responded no.

6. A review of Lex-Rich 5 Board Meeting Minutes revealed that on March 24, 2020, Respondent submitted a letter to Superintendent Melton regarding ES 13. This letter was attached to the June 15, 2020 meeting minutes by Board Member Ed White. In the letter, Respondent states he is reporting items that "have bearing upon contractor safety and quality of construction." Respondent identifies concerns brought to the board's attention about work performed on ES 13 at night and presented questions on project safety, concrete testing requirements, and soils testing. Respondent requested a response within two weeks. The June 15, 2020 meeting minutes also included as attachments letters from consultant Dan Neal, Contract Construction, and ADC Engineering addressing all questions Respondent raised in his March 24, 2020 letter. A copy of the March 24, 2020 letter from Respondent to Dr. Melton is attached.
7. Investigator Caldwell interviewed Michael Cates, former chairman of Lex-Rich 5 School Board, regarding the site visit by Lex-Rich 5 board members to ES 13/Pincy Woods Elementary School in June 2020. Cates said he scheduled the site visit after receiving some pressure and requests from Loveless to do so. Cates said he extended the invitation to all board members, but he made clear to the public that this was not an official board meeting and no business would be discussed. Cates said not all board members attended the site visit; however, to the best of his recollection the Respondent, Jan Hammond, and one or two other board members attended in addition to Cates. Cates said Superintendent Christina Melton also attended. Cates also said Greg Hughes, president of Contract Construction, conducted the visit and other members of the design and construction team were present to include the architect and construction site supervisor/superintendent. Cates said the site was an active site under construction and work was taking place during the visit. When asked if the purpose of the visit was a progress update or an opportunity for

ROA 000550

Investigator: Caldwell

SCEC_Subpoena_000239

review and critique of work, Cates said both. Cates said the Respondent remained close to Mr. Hughes for the majority of the visit discussing progress on the project.

8. On September 21, 2020, the Respondent requested an informal advisory opinion from the Commission's general counsel. Respondent specifically asked what actions he should take on matters involving a general contractor working with Lex-Rich 5 if Respondent's business also subcontracts with the same general contractor on other projects. On September 25, 2020, General Counsel Courtney Laster issued an informal opinion to Respondent advising that §8-13-700(A) prohibited Respondent from taking any action in which the general contractor had an economic interest because the general contractor was a business with which Respondent was associated as a subcontractor. Respondent was also advised of the recusal requirements per §8-13-700(B). A copy of this informal opinion is attached to this summary.
9. A review of the video recording of the February 8, 2021 Lex-Rich 5 Board Meeting revealed the Respondent submitted a letter of recusal from matters involving Contract Construction which was read into the record by Board Chair Jan Hammond. Respondent also read a statement into the record. Copies of Respondent's letter to Chair Hammond and the statement he read into the record are attached to this summary.
10. On February 18, 2021, the Respondent requested a second informal advisory opinion requesting further clarification of recusal requirements. On February 22, 2021, General Counsel Courtney Laster issued an opinion again advising Respondent that he should refrain from participation in any action regarding a business with which he was associated, to include site visits to Piney Woods Elementary school and/or review of invoices or other documents related to the project. A copy of this informal opinion is attached.
11. A review of the Commission's advisory opinions revealed several opinions advising public officials/members/employees to refrain from participating in any matters involving businesses with which they are associated and to follow the recusal requirements of §8-13-700(B). In AO2000-004, the Commission addressed potential violations of §8-13-700(A) and (B) "by public members who participate in, and vote on matters before their board or commission involving the economic interest of a business with which the public member has an ongoing client relationship." The Commission defined compensated agent and opined that a "public member should disqualify himself from all matters in which a business with which he has an ongoing client relationship has an economic interest." In this opinion, the Commission noted that "[a]gents also have a duty not to adversely affect the interest of their principal" and board members with ongoing relationships with a client appearing before that board are "caught between a duty not to act adversely with regard to the principal and a duty to the public to act in its best interest." In AO92-237, the Commission advised that a Commissioner on the Mount Pleasant Waterworks and Sewer Commission who was also a part-time, hourly employee of an engineering firm must recuse himself from any matter involving the firm's economic interests. Copies of these opinions are attached to this summary.

12. Respondent provided a written response through his attorney, Karl S. "Butch" Bowers, Jr. A copy of this written response and the advisory opinions referenced therein are attached to this summary.

STAFF COMMENTS:

The investigation revealed Respondent was a public official via his position as a member of the Lex-Rich 5 Board of Trustees as of 2018. The investigation revealed Respondent is also the president and employee of Loveless Commercial Contracting. Loveless Contracting was awarded a subcontract with Contract Construction on February 11, 2020 for work on the SLED Forensic Lab construction project, making Contract Construction a business with which Respondent was associated.

Contract Construction was awarded the Construction Manager at Risk contract to build ES 13/Piney Woods Elementary School on September 18, 2018 after a public bid process. A review of video-recorded board meetings revealed after February 11, 2020, Respondent failed to recuse himself and participated in discussions at two board meetings, specifically June 15, 2020 and September 14, 2020, at which Contract Construction made presentations regarding the progress of ES 13.

The investigation revealed Respondent submitted a letter to Dr. Melton on March 24, 2020 requesting information on multiple aspects of work either performed by or overseen by Contract Construction. The investigation also revealed that Respondent participated in a site visit to ES 13/Piney Woods Elementary School in June 2020 during construction. The investigation further revealed Respondent requested an informal opinion from the Ethics Commission on September 21, 2020, at which time Commission staff advised Respondent that he should recuse himself from any discussions involving Contract Construction as a business with which he was associated.

Respondent subsequently provided a written letter of recusal regarding any matters involving Contract Construction to Board Chair Jan Hammond at the February 8, 2021 meeting and it was included with the meeting minutes. The Respondent requested a second informal opinion on February 18, 2021, and Commission staff again advised Respondent to refrain from participating in any action involving a business with which he was associated, to include site visits and/or review of invoices or other documents.

STAFF RECOMMENDATION:

Staff recommends the Commission find probable cause is present and charge Respondent with the following:

Four (4) counts of violating §8-13-700(B) for participating in discussions and/or site visits involving a business with which Respondent is associated (Contract Construction) specifically at the 6/15/2020 and 9/14/2020 board meetings

ROA 000552

Investigator: Caldwell

SCEC_Subpoena_000241

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

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

ROA 000553

(803) 253-4192

<http://ethics.sc.gov/>

FAX (803) 253-7539

SCEC_Subpoena_000242

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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.

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

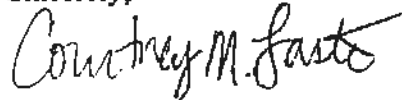
ROA 000554

SCEC_Subpoena_000243

Kenneth B. Loveless, p. 3
September 25, 2020

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,

A handwritten signature in black ink, appearing to read "Courtney M. Laster". The signature is fluid and cursive, with the first name "Courtney" being more prominent.

Courtney M. Laster
General Counsel

ROA 000555

SCEC_Subpoena_000244

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 100
COLUMBIA, S.C. 29210

MEGHAN L. WALKER
EXECUTIVE DIRECTOR

February 22, 2021

VIA ELECTRONIC MAIL ONLY

Kenneth B. Loveless

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 February 18, 2021, you presented the following:

As you know, I serve on the board of trustees for the School District 5 of Lexington-Richland Counties and had previously requested that the SC Ethics Commission issue guidance on recusal from certain matters. I sought guidance after other board members accused me during open session September 14, 2020.

Some members took issue with me not recusing myself from discussions pertaining to the Piney Woods Elementary School Construction Project. However, the agenda for the September 14, 2020 meeting was set by others. The presenter was a vendor, the construction manager at risk, Contract Construction, Inc. (general contractor).

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The presentation went without much discussion. I asked one question about the number of change orders received as of that date.

Next under the Discussion Agenda was an item entitled "District Construction." It was there that I was basically subjected to public trial for not having recused myself from the previous Discussion Agenda item, Piney Woods. I was dismayed at the accusations and decided to ask guidance of the Commission.

The guidance I received was provided by you as General Counsel in a letter dated September 25, 2020. Your letter provided guidance requested in response to my letter dated September 21, 2020. The letter was couched in terms of possible future events as might occur in the normal course of business for my occupation: employee and stockholder of a general contracting corporation.

No other updates or discussions of the Piney Woods school project have occurred since the September 14, 2020 meeting. I did attend a walk-through for all board members hosted by the school superintendent last month. It was and is my intention to recuse myself when any contract discussion of Contract Construction, Inc. is on the agenda. No discussion of Contract Construction, Inc. or its contract with the District has been on the agenda since December 8, 2019.

At the last school board meeting February 8, 2021[1], I decided to formally recuse myself via a letter to the Board Chair Janis Hammond as follows:

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 with which I am employed and a stockholder, Loveless Commercial Contracting, Inc. operates as a contractor 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 related 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.

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Yours Truly,

Kenneth B. Loveless
Vice Chairman of the Board of Trustees

In light of the above and the information provided, I ask you to formally provide rulings upon:

- (1) I believe recusal is a matter of personal perspective. It is not for other members of the board to question or have a right to demand recusal. Am I correct in that statement?
- (2) Provided that there are no additional projects or business ties, I believe that I have a right to end recusal when the contract relationship at the SC Law Enforcement Division Forensic Lab Project between Contract Construction, Inc. and Loveless Commercial Contracting Inc. has been completed. Am I correct in that belief?
- (3) I believe that I should be allowed in the normal course of duties and responsibilities of a school board trustee to visit Piney Woods Elementary School or any other district construction site and to receive and review those projects and corresponding records as they pertain to the nature of the physical construction product which the district has or is to receive. In reference to ethics under SC Code 8-13-700. Am I correct in that belief?

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;

ROA 000558

SCEC_Subpoena_000247

- (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 in your September 2020 request for an informal opinion, Contract Construction is a "business with which [you are] associated" for purposes of the Ethics Act. As I stated in my September 25, 2020 response, this means that whenever you are faced with a scenario in which Contract Construction has an economic interest, you must recuse yourself following the instructions in Section 8-13-700(B). Keeping that in mind, I have answered your questions below in turn:

1. I believe recusal is a matter of personal perspective. It is not for other members of the board to question or have a right to demand recusal. Am I correct in that statement?

Recusal is mandated by law in certain circumstances, such as when you, your family members, or any individuals or businesses with which you are associated have an economic interest. It is outside the scope of the Ethics Act as to what public officials have a right to question, but you are correct that the ultimate decision to recuse belongs to the public official. If a public servant fails to properly recuse himself from circumstances that require recusal, that public servant subjects himself to a possible enforcement action by the Commission.

2. Provided that there are no additional projects or business ties, I believe that I have a right to end recusal when the contract relationship at the SC Law Enforcement Division Forensic Lab Project between Contract Construction, Inc. and Loveless Commercial Contracting Inc. has been completed. Am I correct in that belief?

Correct. Once the conflict no longer exists, recusal is no longer required.

3. I believe that I should be allowed in the normal course of duties and responsibilities of a school board trustee to visit Piney Woods Elementary School or any other district

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construction site and to receive and review those projects and corresponding records as they pertain to the nature of the physical construction product -which the district has or is to receive. In reference to ethics under SC Code 8-13-700. Am I correct in that belief?

When disqualification is required, you should not discuss the matter or take any action on it that could be perceived as an attempt to influence the governmental decision. Section 8-13-700 does not simply prohibit voting or taking other official action, but prohibits the public official from making, participating in making, or in any way attempting to use his public office to influence the governmental decision. In fact, the Commission has held that a mere discussion in executive session by a public servant about a matter in which his wife had an economic interest violated Section 8-13-700. See Complaints 97-035 and 97-036. Therefore, you should not make site visits to the Piney Woods Elementary School construction site, nor should you review invoices or any other documents related to this project. Similar activities at other District construction sites are not prohibited as long as you are not recused from those projects.

I hope this is responsive to your request. Keep in mind that this opinion only relates to future conduct and is not intended to apply to events that may have already occurred. 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
General Counsel

ROA 000560

SCEC_Subpoena_000249

ELECTRONICALLY FILED - 2022 Nov 23 3:46 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

SEC AO2000-004

July 21, 1999

SUBJECT: COMMUNITY APPEARANCE BOARD MEMBER PARTICIPATING IN
MATTER INVOLVING ECONOMIC INTERESTS OF A CLIENT.

SUMMARY: A public member should disqualify himself from all matters in which a business with which he has an ongoing client relationship has an economic interest.

QUESTION: This opinion is issued in response to the ongoing concern the State Ethics Commission has regarding violations of Section 8-13-700(A) and (B) of the Ethics Reform Act of 1991, by public members who participate in, and vote on matters before their board or commission involving the economic interest of a business with which the public member has an ongoing client relationship.

DISCUSSION:

The State Ethics Commission's jurisdiction is limited to the applicability of the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Act Number 248 of 1991; Section 2-17-5 et. seq. and Section 8-13-100 et. seq.). This opinion does not supersede any other statutory or regulatory restriction or procedure which may apply to this situation.

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 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:

ROA 000561

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(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;

* * *

(5) if he is a public member, he shall furnish a copy to the presiding officer 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 shall 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 such disqualification and the reasons for it to be noted in the minutes.

Section 8-13-100(3) defines business as:

(3) 'Business' means a corporation, partnership, proprietorship, firm, an enterprise, a franchise, an association, organization, or a self-employed individual.

Section 8-13-100(4) defines business with which he is associated as:

(4) 'Business with which he is associated' means 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 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. [Emphasis Added]

Also, the Ethics Reform Act, in its Preamble states:

Whereas, the trust of the public is essential for government to function effectively. Public policy developed by elected officials affects every citizen of the State, and it must be based on honest and fair deliberations and decisions. This process must be free from all threats, favoritism, undue influence, and all forms of impropriety so that the confidence of the public is not eroded; and

* * *

Whereas, one of the most important functions of any law aimed at making public servants more accountable is that of complete and effective disclosure. Since many public officials serve on a part-time basis, it is inevitable that conflicts of interest and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this State must be certain that it is the interests of the people, and not their own, that are being served. Officials should be prepared to remove

themselves immediately from a decision, vote, or process that even appears to be a conflict of interest;...

Many local boards and commissions are created by statute and require that a certain number of their members be professionals in the field of the area of review. These public members/professionals often must avail themselves of the recusal procedures of Section 8-13-700(B) when a project or plan that they contributed to in some way appears before their board. What the Commission finds troublesome is when there is an ongoing relationship between the public member and a party before the board. The question becomes how can the public member be associated with a business on some projects before the public member's board but not with other projects of the business that come before the public member's board. Additionally, an agent is under a duty to report information he/she receives pertaining to matters the principal needs to be aware of. This runs head long into Section 8-13-725 which prohibits the disclosure of confidential information.

Agents also have a duty not to adversely affect the interest of their principal. If there is an ongoing relationship, the public member must not vote on the matter affecting the principal. He should recuse herself. He is caught between a duty not to act adversely with regard to the principal and a duty to the public to act in its best interest. Even should he be able to clear himself of any actual bias, the appearance of the relationship would serve to taint his vote and cause his actions to be held in question. This would obviously handicap his effectiveness as a member of the public body.

In complaint advisory opinion C89-017, with regard to a procurement matter, the Commission opined that "potential vendors by state policy and regulation are to remain at arms-length in transactions with public agencies. This policy is amply illustrated in open bid procedures and limitations on ex parte communications with procurement officials. Any provision of service or goods to either individual agency officials or employees or to groups of such officials or employees does not obliterate the need to maintain this arms-length arrangement".

The reverse, as in this matter, should also be true. A public member who maintains an ongoing business relationship should maintain an arms-length arrangement with any client. The Preamble to the Ethics Reform Act provides that "it is inevitable that conflicts of interests and appearances of impropriety will occur. Often these conflicts are unintentional and slight, but at every turn those who represent the people of this state must be certain that it is the interest of the people, and not their own, that are being served".

The awarding of contracts, as in the procurement process, charges public officials and public members to objectively and impartially consider and determine contractual matters. The prohibitions contained in Section 8-13-700(A) and (B) serve the public interest in objective, impartial, and effective government by preventing the creation of situations which would tend to impair the objectivity and impartiality, and therefore, the effectiveness of a public member.

CONCLUSION: The Ethics Commission is mindful that the Ethics Act does not define the

ROA 000563

SCEC_Subpoena_000252

term "compensated agent", nor has the Commission specifically defined the term in its prior opinions or decisions. Accordingly, the State Ethics Commission hereby defines "compensated agent" as "any ongoing client relationship in which the public official, public member, or public employee, receives compensation for services rendered".

Further, it is the opinion of the State Ethics Commission that a public official's, public member's, or public employee's participation in a matter involving a business with which the public official, public member or public employee is a "compensated agent", gives rise to a rebuttable presumption that to take an action or make a decision which affects the economic interest of the business with which associated would therefore be a violation of Section 8-13-700(A) and (B), South Carolina Code of Laws, 1976, as amended.

KEYWORDS: Compensated Agent, Economic Interest

ANNOTATIONS: 8-13-100 (3) and (4), 8-13-700 (A) and (B), Preamble

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, et al.

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, et al.

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

ROA 000565

SCEC_Subpoena_000254

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.

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

SEC AO92-237

November 18, 1992

SUBJECT: COMMISSIONER ASSOCIATED WITH FIRM CONDUCTING BUSINESS WITH COMMISSION

SUMMARY:

A Waterworks and Sewer Commissioner who is employed part-time by an engineering firm may participate in matters affecting engineering contracts; however, the Commissioner must comply with the provisions of Section 8-13-700(B) on matters affecting the firm's economic interests. The engineering firm is not prohibited by Section 8-13-775 from contracting with the Commission either as a contractor or subcontractor on any contracts which require official action by the Commissioner, since the Commissioner has no economic interests in these contracts.

QUESTION:

A publicly elected Commissioner on the Mount Pleasant Waterworks and Sewer Commission is employed part-time by an engineering firm to help find and establish new clients. The Commissioner is paid by the hour for his part-time work, and he receives no additional compensation for business he brings in to the firm. The Commissioner receives \$100.00 per month plus expenses for his service on the Waterworks and Sewer Commission. The engineering firm may, in the future, desire to provide engineering services to the Commission. Generally, such engineering services would result from a request for proposals from the Commission with final selection made by the Commission. Contract preparation and other specifications would be made by the Commission staff subject to Commission approval. He also advises that the firm may wish to subcontract work from another firm that has been awarded an engineering contract by the Commission. He questions whether the Ethics Reform Act would prohibit his firm from seeking or obtaining work as either a contractor or subcontractor. He further questions whether this firm could seek or obtain work from the Commission as a subcontractor if he abstained from any participation in the award of the work.

DISCUSSION:

This opinion is rendered in response to a letter dated May 21, 1992 requesting an opinion from the 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

ROA 000568

SCEC_Subpoena_000257

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 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.

Thus, the Commissioner must comply with the requirements of Section 8-13-700(B) on matters affecting his employer's economic interests.

Section 8-13-100(11) provides as follows:

(11)(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.

Accordingly, the Commissioner's participation in matters affecting a contract on which the firm with which he is associated may be a bidder would not be prohibited by this section, since all engineering firms would be equally affected by such contract.

The State Ethics Commission, however, notes that Section 8-13-775 provides:

A public official, public member, or public employee may not have an economic interest in a contract with the State or its political subdivisions if the public official, public member, or public employee is authorized to perform an official function relating to the contract. Official function means writing or preparing the contract specifications, acceptance of bids, award of the contract, or other action on the preparation or award of such contract. This section is not intended to infringe on or prohibit public employment contracts with this State or a political subdivision of this State.

According to the facts submitted, the Commissioner is a part-time, hourly employee of the firm, whose duties do not go beyond efforts to locate new clients. The Commissioner does not perform design or engineering work for new clients. Moreover, the Commissioner's compensation is not based upon the amount new business brought in to the firm. Therefore, the Commissioner's firm is not prohibited from contracting with the Waterworks and Sewer Commission, since the Commissioner would have no economic interest in such a contract.

O'Bryan, Rachael

From: Butch Bowers <Butch@ButchBowers.com>
Sent: Tuesday, March 1, 2022 9:31 AM
To: Caldwell, Ryanne
Subject: RE: [External] RE: C2021-016 Loveless

Hey good morning. That sounds good, thank you very much. I look forward to hearing back from you. Take care,

Butch

From: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Sent: Tuesday, March 1, 2022 9:30 AM
To: Butch Bowers <Butch@ButchBowers.com>
Subject: RE: [External] RE: C2021-016 Loveless

Good morning, Butch,

Thank you for sending your client's written response. It will be included with the materials presented to the Commission for a probable cause determination. I will call with any questions.

Best,
Ryanne

From: Butch Bowers <Butch@ButchBowers.com>
Sent: Monday, February 28, 2022 7:19 PM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: RE: [External] RE: C2021-016 Loveless

Good evening Ryanne – please see attached my client's response in this matter. Please call if you have any questions. Best personal regards,

Butch

From: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Sent: Friday, February 18, 2022 8:37 AM
To: Butch Bowers <Butch@ButchBowers.com>
Subject: RE: [External] RE: C2021-016 Loveless

Thanks, Butch. I appreciate it, and look forward to receiving your client's response. Have a good weekend.

Ryanne

From: Butch Bowers <Butch@ButchBowers.com>
Sent: Thursday, February 17, 2022 2:33 PM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: [External] RE: C2021-016 Loveless

ROA 000571

Hi Ryanne, I hope all is well. Thank you for the follow up, I appreciate it. I can confirm that I received your prior email below, and I can also confirm that we are still working on my client's written response. We should be ready to provide you with our written response in the next week or so. Please let me know if you need anything from me in the interim. Thanks very much,

Butch

From: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>

Sent: Thursday, February 17, 2022 8:47 AM

To: Butch Bowers <Butch@ButchBowers.com>

Subject: FW: C2021-016 Loveless

Good morning, Butch,

Following up with you to confirm that you received my email below. Once Mr. Loveless has completed his written response, you may email and/or snail mail it to me and I will include it in the materials presented for probable cause. If you have any questions, please don't hesitate to reach out. Thanks.

Additionally, for informational purposes, this communication and any information derived there from is confidential as it relates to the Ethics Commission, and per §8-13-320 must not be disclosed.

Thanks,

Ryanne Caldwell

Chief Investigator

SC State Ethics Commission

201 Executive Center Drive, Suite 150

Columbia, SC 29210

(803) 253-4192



From: Caldwell, Ryanne

Sent: Tuesday, January 25, 2022 2:11 PM

To: Butch Bowers <Butch@ButchBowers.com>

Subject: C2021-016 Loveless

Butch,

ROA 000572

Per our discussion, it is my understanding that your client, Ken Loveless, would like to provide a written response to the complaint filed against him. To that end, if your client would please consider and address how his participation in discussions regarding Contract Construction from February 2020 through September 2020 did not violate Section 8-13-700(B). On February 11, 2020, Contract Construction became a business with which Mr. Loveless was associated by virtue of Loveless Construction's subcontract with Contract Construction on the SLED project. After that point, Mr. Loveless continued to participate in discussions regarding Contract Construction's performance with regard to ES #13/Piney Woods Elementary School via emails and board meetings. Mr. Loveless also participated in a site visit to ES #13 on or about June 18, 2020.

If you have any questions, feel free to call me at (803) 929-2502 or (803) 240-2588. Thanks.

Additionally, for informational purposes, this communication and any information derived there from is confidential as it relates to the Ethics Commission, and per §8-13-320 must not be disclosed.

Thanks,

Ryanne Caldwell
Chief Investigator
SC State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210
Office: (803) 253-4192
Fax:(803) 253-7539



ROA 000573

O'Bryan, Rachael

From: Caldwell, Ryanne
Sent: Tuesday, March 1, 2022 1:38 PM
To: Laster, Courtney
Subject: FW: [External] RE: C2021-016 Loveless
Attachments: scan0020.pdf

FYI – response from Butch re: Ken Loveless, C2021-016. I'm trying to get it ready for March PC.

From: Butch Bowers <Butch@ButchBowers.com>
Sent: Monday, February 28, 2022 7:19 PM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: RE: [External] RE: C2021-016 Loveless

Good evening Ryanne – please see attached my client's response in this matter. Please call if you have any questions. Best personal regards,

Butch

From: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Sent: Friday, February 18, 2022 8:37 AM
To: Butch Bowers <Butch@ButchBowers.com>
Subject: RE: [External] RE: C2021-016 Loveless

Thanks, Butch. I appreciate it, and look forward to receiving your client's response. Have a good weekend.

Ryanne

From: Butch Bowers <Butch@ButchBowers.com>
Sent: Thursday, February 17, 2022 2:33 PM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: [External] RE: C2021-016 Loveless

Hi Ryanne, I hope all is well. Thank you for the follow up, I appreciate it. I can confirm that I received your prior email below, and I can also confirm that we are still working on my client's written response. We should be ready to provide you with our written response in the next week or so. Please let me know if you need anything from me in the interim. Thanks very much,

Butch

From: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Sent: Thursday, February 17, 2022 8:47 AM
To: Butch Bowers <Butch@ButchBowers.com>
Subject: FW: C2021-016 Loveless

Good morning, Butch,

ROA 000574

Following up with you to confirm that you received my email below. Once Mr. Loveless has completed his written response, you may email and/or snail mail it to me and I will include it in the materials presented for probable cause. If you have any questions, please don't hesitate to reach out. Thanks.

Additionally, for informational purposes, this communication and any information derived there from is confidential as it relates to the Ethics Commission, and per §8-13-320 must not be disclosed.

Thanks,

Ryanne Caldwell
Chief Investigator
SC State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210
(803) 253-4192



From: Caldwell, Ryanne
Sent: Tuesday, January 25, 2022 2:11 PM
To: Butch Bowers <Butch@ButchBowers.com>
Subject: C2021-016 Loveless

Butch,

Per our discussion, it is my understanding that your client, Ken Loveless, would like to provide a written response to the complaint filed against him. To that end, if your client would please consider and address how his participation in discussions regarding Contract Construction from February 2020 through September 2020 did not violate Section 8-13-700(B). On February 11, 2020, Contract Construction became a business with which Mr. Loveless was associated by virtue of Loveless Construction's subcontract with Contract Construction on the SLED project. After that point, Mr. Loveless continued to participate in discussions regarding Contract Construction's performance with regard to ES #13/Piney Woods Elementary School via emails and board meetings. Mr. Loveless also participated in a site visit to ES #13 on or about June 18, 2020.

If you have any questions, feel free to call me at (803) 929-2502 or (803) 240-2588. Thanks.

Additionally, for informational purposes, this communication and any information derived there from is confidential as it relates to the Ethics Commission, and per §8-13-320 must not be disclosed.

ROA 000575

Thanks,

Ryanne Caldwell
Chief Investigator
SC State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210
Office: (803) 253-4192
Fax:(803) 253-7539



O'Bryan, Rachael

From: Kim Benson <kim@resolveorganizing.com>
Sent: Friday, March 26, 2021 8:41 PM
To: Caldwell, RYanne
Subject: [External] Additional documents for Complaints Against Ken Loveless and Jan Hammond
Attachments: Loveless FB post Mar 24.docx; Loveless Hammond Illegal Meeting.docx
Importance: High
Follow Up Flag: Follow up
Flag Status: Completed

Hello Ms. Caldwell,

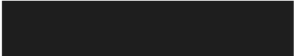
I have not heard from you regarding the complaint that I filed against Kenneth Loveless, a Lexington Richland School District 5 Board Trustee. I received a certified letter that the complaint was received, but nothing since. I am attaching two additional documents to add to that complaint.

I also filed a complaint against D5's Board Choir, Jan Loveless. I dropped that off February 26. I have NOT yet received a certified letter confirming receipt of that complaint. One of the attached documents pertains to Ms. Hammond as well as Mr. Loveless. I would like to add that document to her complaint as well. Please let me know if I need to send that to a different investigator.

I would like to know the status of both of these complaints – I'm not familiar with the process and have no idea what should be happening or when. Thanks for your assistance.

Warm regards,

Kim Benson



ROA 000577

Post on Ken Loveless' Facebook page

Ken Loveless
March 24, 2021

I have been silent until now about a former school board member's social media attacks. My wife's, other board members' and my characters have been assailed by her and other individuals. The former board member has had her time on the board (at least three terms) and now wants to run things in obsentia. There was a new board elected and the page on her day in office has been turned.

One of the things I must do is to listen others, garner their ideas, sift through the good or bad, and field complaints. I have had to sit and listen patiently to this former board member for hours even though I might not have preferred to do that. I consider her insults inane chatter. And, the subliminal message that this social media group wants to instill by repeating innuendo is that somehow the board members have motives other than to serve the public's interests through student achievement. This is absolute garbage and should be recognized as sour grapes. Further, it is well known that if a board member asks questions, then this group will make him or her their mortal enemy. It has been that way for years.

Make no mistake about it, I will ask questions and try to obtain answers. Fiscal responsibility is paramount to me and others on this board. How else do you get money back into the classroom where it belongs without improving fiscal responsibility?

I am proud of the fact that we have many of our students back Face to Face. We have provided a \$1000. Christmas bonus to employees. We passed the COVID aid to include families of employees when the federal mandate ran out 12/31/20. We provided funding for the district's portion of state Step Increases. We provided for this fiscal year \$2.8 million dollars in additional Capital Funds for school maintenance from Excess Fund Balance. Federal ESSER fund usage is being planned for the maximum long term impact. And, at the last meeting we voted to lower Capital Improvement millages by a modest 3.26 mils. That is a start and it marks the first time since Jondy and I have been associated with the district in 2008 that the millage has been lowered.

My belief is that the public should also be proud of the leadership this group is providing. Jondy and I would like your thoughts?

Thank you

ROA 000578

SCEC_Subpoena_000267

Add to complaints against Kenneth Loveless and Jan Hammond, Lexington Richland School District 5 Board Trustees: This is a copy of a Facebook post, written by a former Lexington Richland School District 5 Board Trustee. The post was written on March 23, 2020. It has been edited (photo captions and formatting) by Kim Benson.

So, the District Five School Board Majority: Jan Hammond, Chair; Ken Loveless, Vice Chair; Nikki Gardner, secretary; Cathy Huddle; and the wife of Ken Loveless, a former school board member, met on Monday, March 22, 2021 with Kim Murphy at the local Waffle House immediately following the D5 School Board meeting. This is known as 'the meeting after a meeting' where a group dissects what took place at the previous meeting and often plans their next steps. See the proof in the **photos** and video posted on this page and on OneD5.

*There are several problems with this second meeting because four board members were present, making it a quorum, which makes this an illegal meeting of the board.

*What I find especially disturbing is that this Board Majority is confiding and consulting with Kim Murphy, a citizen who has cost taxpayers millions of dollars with her frivolous lawsuits against District Five for years. This is not the first time this group has met with Kim Murphy immediately after a school board meeting at this same restaurant.

As a reminder, Kim Murphy cost taxpayers in D5 between \$11.5 million to \$16.5 million due to the project delays for the construction of Chapin High School. See Oct. 14, 2019 Board meeting information, pages 43-49. <https://www.lexrich5.org/cms/lib/SC01916806/Centricity/domain/428/2020-2021%20board%20meeting%20information/board%20packets/Board%20Packet%2010.12.2020.pdf>

This Board Majority knows the damage and chaos Murphy has created for District Five:

- Jan Hammond was on the school board during the delays at Chapin High School caused by Kim Murphy and she heard the monthly updates of the cost of Murphy's actions to delay the CHS construction. Mrs. Hammond was also on the board when Ms. Murphy cost D5 taxpayers more money for legal appeals claiming she was illegally removed from the Board for not living in the county in which she was elected. Ultimately the Supreme Court found "clear and convincing evidence" that Mrs. Murphy was a resident of Lexington County and "does not meet the requirement and lacks the legal capacity to hold the office of Board trustee..." See the minutes and attachments to the Nov. 10, 2014 Board meeting. <https://www.lexrich5.org/cms/lib/SC01916806/Centricity/domain/428/2014-2015%20board%20meeting%20information/minutes/November%2010%202014%20Minutes.pdf>
- Back when D5 first started the permitting for construction at Chapin High School, Ken and Jondy Loveless joined other D5 community members to file an injunction against Murphy to temporarily stop her actions to delay the start of construction at Chapin High School - - yet, now they seek her help and advice based on her experience fighting our school district?? Somehow in the years since then, the Ken and Jondy Loveless and Kim Murphy have developed a friendly relationship. Some may not see this relationship as harmful to the School District. However, the tactics and baseless claims that Ken Loveless and his followers have made over the years are from the same playbook I witnessed from Kim Murphy during all of those years I served on the school board and observed her damaging actions in real time.
- Not long after Nikki Gardner was elected, she told me and at least one other school board member that Kim Murphy bragged to her about derailing the construction of the elementary school on Derricks Pond Road.
- As for Cathy Huddle, the newest member in this group, it is doubtful that she is unaware of the huge waste of taxpayer dollars that Kim Murphy has cost the district. It was well documented in media,

ROA 000579

SCEC_Subpoena_000268

school board meetings and more. People across the Midlands will still ask me if "that crazy lady is still creating problems" for the School District.

So, yes, we should all be concerned that four members of the Board, which is a quorum, are holding an illegal (according to FOIA) meeting right after a school board meeting. And, yes, we should be concerned that those four board members are including Kim Murphy in their discussions of school board business and planning.

We should be very concerned about this Board Majority's negative actions since Nov 2020. The remedy can be made at the election booth in November 2022!! Jan Hammond, Ken Loveless and Nikki Gardner are all up for re-election. It is time to start telling your friends, co-workers, neighbors, and other voters that these three board members need to be defeated. Invite them to join Deep Dive Facebook, which posts information with concrete references for people to check out for themselves. The current Board Majority is destructive to the morale of the school district, wasting taxpayer money on wild goose chases, and is more concerned about grabbing power for themselves than educating our children. Elections matter.



From Left: Cathy Huddle, Jan Hammond, Jondy Loveless, Ken Loveless, Nikki Gardner, Kim Murphy



From Left: Nikki Gardner, Kim Murphy, Jan Hammond, Cathy Huddle, Ken Loveless

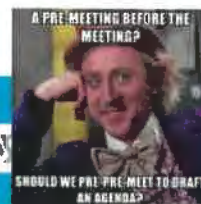


Kim Murphy's "famous" notebook full of District 5 "information". It is rumored that she has this notebook with her at all times.

This is a slide from FOIA training provided by the SC School Board Association. All Board Trustees have attended this training.

COMMON FOIA VIOLATIONS

- Having a board dinner before or after the meeting and talking business at that time
- Calling a meeting a "work session" without complying with FOIA
- Discussing general personnel matters in executive session
- Improper Agendas



ROA 000580

O'Bryan, Rachael

From: Kim Benson <kim@resolveorganizing.com>
Sent: Monday, March 29, 2021 9:48 AM
To: Caldwell, Ryanne
Subject: RE: [External] Additional documents for Complaints Against Ken Loveless and Jan Hammond

Ms. Caldwell,
My deepest sympathies to you and yours. I can't even imagine...
Take care,
- Kim

From: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Sent: Monday, March 29, 2021 9:23 AM
To: Kim Benson <kim@resolveorganizing.com>
Subject: RE: [External] Additional documents for Complaints Against Ken Loveless and Jan Hammond

Good morning, Ms. Benson,

I apologize for the delay in communication. My father passed away very unexpectedly and I have been out of the office.

Thank you for the additional documents on the complaint you filed against Ken Loveless. I will add them to the file. I am researching your complaint against Jan Hammond and will be in touch with you shortly regarding that matter and our general process.

Additionally, for informational purposes, this communication and any information derived there from is confidential as it relates to the Ethics Commission, and per §8-13-320 must not be disclosed.

Thanks,

Ryanne Caldwell
Chief Investigator
SC State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210
Office: (803) 253-4192
Fax: (803) 253-7539

ROA 000581



From: Kim Benson <kim@resolveorganizing.com>
Sent: Friday, March 26, 2021 8:41 PM
To: Caldwell, RYANNE <rcaldwell@ethics.sc.gov>
Subject: [External] Additional documents for Complaints Against Ken Loveless and Jan Hammond
Importance: High

Hello Ms. Caldwell,

I have not heard from you regarding the complaint that I filed against Kenneth Loveless, a Lexington Richland School District 5 Board Trustee. I received a certified letter that the complaint was received, but nothing since. I am attaching two additional documents to add to that complaint.

I also filed a complaint against D5's Board Chair, Jan Loveless. I dropped that off February 26. I have NOT yet received a certified letter confirming receipt of that complaint. One of the attached documents pertains to Ms. Hammond as well as Mr. Loveless. I would like to add that document to her complaint as well. Please let me know if I need to send that to a different investigator.

I would like to know the status of both of these complaints – I'm not familiar with the process and have no idea what should be happening or when. Thanks for your assistance.

Warm regards,

Kim Benson

ROA 000582

O'Bryan, Rachael

From: Caldwell, Ryanne
Sent: Thursday, February 17, 2022 8:45 AM
To: Kim Benson
Subject: RE: [External] Additions to Complaint re: Ken Loveless

Good morning Kim,

I'm glad Ms. Laster was able to answer your questions. Once the Commission finds probable cause that a violation (or violations) of the Ethics Act occurred, the case is transferred to her for adjudication via a Consent Order or hearing.

The complaint filed against Mr. Loveless remains in the investigative phase. Once it is presented for determination of probable cause, you will receive written notification of the Commission's findings (as you did in the Hammond matter). At that point the matter will either be dismissed if no probable cause for a violation was found, or the matter will be scheduled for a hearing if probable cause for a violation was found.

Additionally, for informational purposes, this communication and any information derived there from is confidential as it relates to the Ethics Commission, and per §8-13-320 must not be disclosed.

Thanks,

Ryanne Caldwell
 Chief Investigator
 SC State Ethics Commission
 201 Executive Center Drive, Suite 150
 Columbia, SC 29210
 (803) 253-4192



From: Kim Benson <kim@resolveorganizing.com>
Sent: Wednesday, February 16, 2022 1:24 PM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: Re: [External] Additions to Complaint re: Ken Loveless

ROA 000583

Hey Ryanne,

I just spoke to your general counsel who answered my questions about the hearing for Jan Hammond. Thank you.

Now I'm wondering, what is the status of my complaint against Ken Loveless?

Thanks,
~ Kim Benson
[REDACTED]

Get [Outlook for iOS](#)

From: Kim Benson
Sent: Wednesday, August 18, 2021 1:30:36 PM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: FW: [External] Additions to Complaint re: Ken Loveless

Hello Ryonne,
Another month and a half has passed and I'm hoping the complaint against Ken Loveless is further along in the process. Please update on the status because the District 5 School Board is continuing to conduct its much of its business with little concern for ethics, standards, the FOIA, or the wellbeing of its students and staff. Again, one can't help but wonder what harm could have been prevented if this complaint process had moved at a more reasonable pace. If there's anything I can do to move it forward, please let me know.
Many thanks,
- Kim Benson
[REDACTED]

From: Kim Benson
Sent: Wednesday, June 30, 2021 4:45 PM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: RE: [External] Additions to Complaint re: Ken Loveless

Ryanne,
I understand that the process is slow, especially with the case load you each have...but I filed this complaint on February 17 and provided very detailed information in order to aid in the investigation. Now, four months later, we're still in the investigative stage?? Ken Loveless and Jan Hammond (the other trustee for whom I filed a complaint) have gone on to do some pretty terrible things in these four months and I can't help but think that if they had been reprimanded/held accountable for the issues I reported in February that maybe some of these things – all which have brought great harm to our school district – would not have happened. I'm advocating for students and teachers with these complaints and unfortunately we're letting them down.

With respect,
Kim Benson

From: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Sent: Wednesday, June 30, 2021 4:31 PM
To: Kim Benson <kim@resolveorganizing.com>
Subject: RE: [External] Additions to Complaint re: Ken Loveless

ROA 000584

Kim,

Thank you for this additional information. I have added it to the file. Your complaint remains in the investigative stage.

Additionally, for informational purposes, this communication and any information derived there from is confidential as it relates to the Ethics Commission, and per §8-13-320 must not be disclosed.

Thanks,

Ryanne Caldwell
Chief Investigator
SC State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210
Office: (803) 253-4192
Fax:(803) 253-7539



From: Kim Benson <kim@resolveorganizing.com>
Sent: Monday, June 28, 2021 10:34 PM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: [External] Additions to Complaint re: Ken Loveless
Importance: High

Hi Ryanne,
I've attached some new information on Ken Loveless' shenanigans...the longer this process goes on, the richer the evidence gets.
I'd love an update on where this matter is in the commission's process. While we wait, our school board – with Ken Loveless working the puppet strings – is spiraling out of control.

Thanks,

Kim Benson
[REDACTED]

ROA 000585

TIMELINE of LOVELESS's INTERACTIONS RE: PINEY WOODS ELEM. / ELEM. SCHOOL #13

9/18/2018	Contract Construction awarded CM@R contract for ES #13
12/9/2019	According to Δ, this is last date he voted on anything regarding Contract Construction & ES #13
2/11/2020	Loveless Construction received subcontract for work on SLED project from Contract Construction → business with which Δ is associated
2/13/2020	Email from Δ to board (referenced by Ed White at 9/14/2020 meeting)
3/13/2020	Loveless Construction received executed/signed subcontract for work on SLED project back from Contract Construction
3/24/2020	Δ submits letter via email to Superintendent Melton regarding concerns about the construction on ES #13. Asks Dr. Melton to answer questions about work @ ES #13.
4/17/2020	Δ requested copies of concrete delivery tickets for concrete supplied by Knight's Redi Mix to Coogler Concrete be mailed to him (per 9/14/2020 letter from Pete Knight)
6/15/2020	LR5 Bd Meeting – Superintendent's Report • approx. 8:00 mark update on ES #13 from Greg Hughes & Dan Neal • approx. 13:20 mark Δ asks questions about owner's/contractor's contingencies answered by Dan Neal • approx. 15:00 mark Ed White asks questions about Δ's 3/24/2020 letter (discussion lasts approx. min.) • approx. 28:00 mark Δ discusses deficiencies noted in his 3/24/2020 letter, the fact that he received a response from the contractor, he felt the issues needed to be discussed but not in a forum like this, and he was unhappy that he did not receive responses to several issues raised in the letter, ending at 29:41
6/18/2020	Δ visits ES #13 with Board Chair Cates and Jan Hammond
7/10-12/2020	Δ emails Board Chair Cates several times regarding his 3/24/2020 letter to Dr. Melton
7/13/2020	LR5 Bd Meeting – Approval of Minutes & Public Participation • approx. 00:28 mark Δ asks that his entire 3/24/2020 letter to Superintendent Melton plus 32 attachments regarding construction at ES #13 be added to the minutes, Chair Cates rules this out of order and says Δ cannot amend what another board member added to the minutes
7/16/2020	Δ emails all LR5 board members and Dr. Melton regarding Terracon Report #37 and other construction at ES #13

ROA 000586

SCEC_Subpoena_000275

9/14/2020	LR5 Bd Meeting – Discussion Agenda & Adjournment • Neal begins presentation of update on ES #13 immediately • Present are Greg Hughes/Contract Construction, Doug Quackenbush/Architect, Mike Montgomery, Bobby McCloud/Terracon, Bruce Dodd/Structural Engineer, Chris Patrick/Electrical Engineer, Knight's Redi Mix • at approx. 7:52 mark Board member White asks Greg Hughes/Contract Construction about work relationship with Δ/Loveless Construction • at approx. 15:00 mark Δ begins questioning Terracon Rep Bobby McCloud – also speaks with Greg Hughes – Δ says he's been excluded from going onsite for some reason he doesn't understand – ends at approx. 27:05 mark by Board Chair Cates • at approx. 27:45 Board member Hutchison asks questions about concrete delivery tickets and references Δ's 7/16/2020 email to board members about the tickets that he received "anonymously in the mail" • at approx. 28:47 Hutchison asks Δ directly and he responds – says he received the tickets and sent them to the board with his concerns, he did what he was supposed to do and did not do anything he was not supposed to do • at approx. 31:33 Δ interrupts Greg Hughes talking about unnecessary additional testing of concrete curbing and said he had a question • at approx. 38:40 mark Greg Hughes motions toward Δ, Δ responds, Board Chair Cates asks Δ to stop talking/questioning Hughes because Δ does not have the floor • at approx. 40:55 mark Board Chair Cates asks Greg Hughes how the concrete tickets were delivered to Δ – Hughes responds that Δ called Pete Knight and asked Knight to mail the tickets to Δ • at approx. 41:50 mark Brian Scheffler/VP Technical Sales at Knight's Redi Mix addresses board about concerns regarding concrete delivery tickets (time on site, retarding mixture, stabilizing mixture, etc.) • at approx. 43:45 Board member White asks about Δ's stmt that he received tickets anonymously – Scheffler responds that on/about 4/17/2020 Δ requested copies of concrete delivery tickets that were mailed to him upon his request • at approx. 48:37 Board member Gantt asks Greg Hughes how Δ got the concrete delivery tickets – Hughes reiterates that Δ called Pete Knight and asked for the tickets – Gantt says he is concerned about the claim that the tickets were sent anonymously which then resulted in additional tests/work performed at the district's expense • at approx. 53:03 Δ again questions Greg Hughes & others about the concrete in the duct bank – complains that "this group of people" (gesturing to the other board members) won't allow him to question things or make him the scapegoat – Δ says he did not ask Hughes/Contract to go out and run up a \$35,000 bill for additional testing but he's being chastised for it – Δ also says he pointed out three things to the mason when Δ visited the ES #13 job site • at approx. 1:06:08 Board member Hutchison raises concerns about Δ having a contract with Contract Construction in potential violation of the Ethics Act, references advisory opinions – Δ responds at approx. 1:09:00 by asking Hughes

ROA 000587

SCEC_Subpoena_000276

	if Δ ever used his position or asked Hughes for a contract and that Trey McDaniel is the one who negotiated the job with Hughes/Contract Construction and Δ didn't even know anything about the job – Δ then continues to ask Hughes & Scheffler about concrete issues relative to ES #13 – Δ asks McCloud to come back up for a question - ends at approx. 1:16:30 • at approx. 1:31:15 Δ is recognized again and asks questions about unclassified excavation – ends at 1:35:45 • at approx. 1:36:50 White asks Hughes about Δ's interxn on the site tour & if Δ asked for more work in his official capacity – Hughes responded that he didn't feel like it was in Δ's official capacity but Δ did say he would like to work with Hughes in the future just as/right after tour ended • at 1:39:30 Δ asks Hughes if his company was the low bidder on the SLED job, Hughes says yes, Δ asks if his company do anything other than be the low bidder to be awarded the contract, Hughes says no
9/21/2020	Δ requests informal opinion from SEC
9/25/2020	Δ receives informal opinion from SCEC re: 700(b) & recusal
9/28/2020	LR5 Bd Meeting – Discussion Agenda & Adjournment • Dan Neal submits his letter of resignation – states when he served on a school board he did not attempt to insert his professional contracting expertise as was being done on this board • Confrontation between Ed White and Δ • Nothing regarding PWES/ES #13
2/8/2021	Chair Hammond presents Δ's letter of recusal on "all matters relating to Contract Construction

ROA 000588

SCEC_Subpoena_000277

STATE ETHICS COMMISSION

MEMORANDUM OF INTERVIEW

NAME: MICHAEL CATES**REPORT BY: RYANNE CALDWELL****CASE NO: C2021-016****ADDRESS:** [REDACTED]**PHONE:** [REDACTED]**DATE OF INTERVIEW: 5/12/2022****IN ATTENDANCE: N/A**

On May 12, 2022, Investigator Caldwell interviewed Michael Cates, former chairman of the Lexington-Richland School District 5 Board of Trustees (Lex-Rich 5), via telephone regarding the complaint filed against Ken Loveless, Lex-Rich 5 School Board member, with the State Ethics Commission.

During the interview, Mr. Cates provided the following information:

- Investigator Caldwell explained she was calling with questions about the site visit to Piney Woods Elementary School in June 2020 in which Lex-Rich 5 board members participated.
- Cates said he scheduled the site visit after receiving some pressure and requests from Loveless to do so. Cates said he extended the invitation to all board members, but he made clear to the public that this was not an official board meeting and no business would be discussed.
- Cates said not all board members attended the site visit; however, to the best of his recollection the Respondent, Jan Hammond, and one or two other board members attended in addition to Cates. Cates said Superintendent Christina Melton also attended.
- Cates also said Greg Hughes, president of Contract Construction, conducted the visit and other members of the design and construction team were present to include the architect and construction site supervisor/superintendent. Cates said the site was an active site under construction and work was taking place during the visit.
- When asked if the purpose of the visit was a progress update or an opportunity for review and critique of work, Cates said both. Cates said the Respondent remained close to Mr. Hughes for the majority of the visit discussing progress on the project.

COMPLAINT C2021-016**In the Matter of Kenneth Loveless**

Dates of Investigation: From _____ To _____

COMPLAINT NOTES:

12/10/21 ~~Spri~~ Attempted to contact Respondent @ # on
complaint - spoke w/ Respondent's wife & left
my contact #s - Respondent called my cell
phone - in advising Resp. of complaint process
Respondent stated he had hired Butch Bowers
to represent him - ~~also~~ advised Resp I would
reach out to Bowers

C117(FORM.1)

ROA 000590

SCEC_Subpoena_000279

Laster, Courtney

From: Laster, Courtney
Sent: Tuesday, March 16, 2021 4:28 PM
To: Butch Bowers
Cc: Ken Loveless
Subject: RE: [External] Notice of Appearance - Complaint C2021-016

Received. Thanks, Butch.

Courtney M. Laster
General Counsel
South Carolina State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210
Phone: 803.253.4192
Fax: 803.253.7539

From: Butch Bowers <Butch@ButchBowers.com>
Sent: Tuesday, March 16, 2021 4:25 PM
To: Laster, Courtney <claster@ethics.sc.gov>
Cc: Ken Loveless <ken@lovelesscontracting.com>
Subject: [External] Notice of Appearance - Complaint C2021-016

Courtney – I hope this finds you well. I have been retained by Mr. Kenneth Loveless to represent him in the above-referenced Complaint, and I am hereby making a notice of appearance on his behalf. Please let me know if you need anything else from me at this point.

As always, I look forward to working with you and the rest of the Commission staff on this matter. Best personal regards,

Butch

Bowers Law Office LLC
1419 Pendleton St.
Columbia, SC 29201
www.butchbowers.com

ROA 000591

O'Bryan, Rachael

From: Caldwell, Ryanne
Sent: Tuesday, February 23, 2021 1:56 PM
To: kim@resolveorganizing.com
Cc: Laster, Courtney
Subject: FW: [External] Additional documents?

Ms. Benson,

Thank you for your email. I am the investigator assigned to this complaint. Please forward the additional documents you have to me – email is fine, as long as the material is legible. I will contact you later this week to discuss, if you will please advise of a convenient time for you.

Additionally, for informational purposes, this communication and any information derived there from is confidential as it relates to the Ethics Commission, and per §8-13-320 must not be disclosed.

Thanks,

Ryanne Caldwell
 Chief Investigator
 SC State Ethics Commission
 201 Executive Center Drive, Suite 150
 Columbia, SC 29210
 Office: (803) 253-4192
 Fax: (803) 253-7539



From: Laster, Courtney <claster@ethics.sc.gov>
Sent: Tuesday, February 23, 2021 1:05 PM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: FW: [External] Additional documents?

From: Kim Benson <kim@resolveorganizing.com>
Sent: Tuesday, February 23, 2021 12:58 PM

ROA 000592

To: Laster, Courtney <claster@ethics.sc.gov>

Subject: [External] Additional documents?

Hello Ms. Laster,

I have additional email communications that I would like to add to the complaint I submitted last week. Can I send that to you electronically or does it also need to be delivered in hardcopy?

Warm regards,

Kim Benson

ROA 000593

STATE ETHICS COMMISSION

MEMORANDUM OF INTERVIEW

NAME: GREG HUGHES**REPORT BY: RYANNE CALDWELL****CASE NO: C2021-016****ADDRESS: CONTRACT CONSTRUCTION****PHONE:** [REDACTED]**DATE OF INTERVIEW: 5/13/2022****IN ATTENDANCE: N/A**

On May 13, 2022, Investigator Caldwell interviewed Greg Hughes, president of Contract Construction, via telephone regarding the complaint filed against Ken Loveless, Lex-Rich 5 School Board member, with the State Ethics Commission.

During the interview, Mr. Hughes provided the following information:

- Investigator Caldwell explained she was calling with questions about the site visit to Piney Woods Elementary School in June 2020 in which Lex-Rich 5 board members participated.
- Hughes said he escorted Lex-Rich 5 board members, including Respondent, during a tour of Piney Woods Elementary while it was undergoing construction. Hughes said Respondent participated in the tour, asked questions, and was complimentary of the progress made and cleanliness of the site.
- Investigator Caldwell explained the “business with which associated” relationship defined in the Ethics Act and the contractual relationship between Contract Construction and Loveless Contracting with regard to the SLED Forensic Lab project. Hughes said he and Loveless exchanged compliments and each expressed willingness to work with each other in the future but did not feel there was any attempt to influence him.
- Hughes said the SLED Forensic Lab project was still ongoing, but nearing completion as they were in the punch list phase, so the job would be completed in the near future.

O'Bryan, Rachael

From: Caldwell, Ryanne
Sent: Tuesday, March 1, 2022 10:59 AM
To: Doug Renew
Subject: RE: [External] RE: Request for information - Loveless Commercial Contracting

Thanks, Doug. As always, appreciate the quick response.

Best,
 Ryanne

From: Doug Renew <drenew@sos.sc.gov>
Sent: Tuesday, March 1, 2022 10:42 AM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: [External] RE: Request for information - Loveless Commercial Contracting

Ryanne:

The docs you requested are attached.

Thanks,

Doug Renew
 Chief Investigator
 Office of the Secretary of State
 1205 Pendleton Street, Suite 525
 Columbia, SC 29201
 Phone: (803) 734-1728
 Fax: (803) 734-1661
 Email: drenew@sos.sc.gov
<https://sos.sc.gov>

CONFIDENTIALITY NOTICE: This email, including any attachments, contains information from the South Carolina Secretary of State's Office that may be confidential or privileged. The information is intended to be for the use of the individual or entity named above. If you are not the intended recipient, you are not authorized to read, copy, retain or distribute this message. If you have received this email in error, please notify the sender immediately by "reply to sender only" email and destroy all electronic and hard copies of the communication, including attachments.

From: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Sent: Tuesday, March 1, 2022 9:42 AM
To: Doug Renew <drenew@sos.sc.gov>
Subject: Request for information - Loveless Commercial Contracting

Good morning, Doug,

ROA 000595

I hope this message find you well. Would you please provide any information your office has for Loveless Commercial Contracting, Inc.? Feel free to call me with any questions – (803) 929-2502. Thanks!

Additionally, for informational purposes, this communication and any information derived there from is confidential as it relates to the Ethics Commission, and per §8-13-320 must not be disclosed.

Thanks,

Ryanne Caldwell
Chief Investigator
SC State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210
(803) 253-4192



ROA 000596

O'Bryan, Rachael

From: Caldwell, Ryanne
Sent: Tuesday, November 23, 2021 10:20 AM
To: Caldwell, Ryanne
Subject: FW: [External] Progress?

11/18/2021 Called Ms. Benson to advise Loveless matter not presented in November. No answer, left voicemail. Nothing further.

From: Kim Benson <kim@resolveorganizing.com>
Sent: Wednesday, November 17, 2021 10:46 AM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: [External] Progress?

Hello Ryanne,
The last time we emailed, you predicted that the Kenneth Loveless complaint would go before the ethics commission in November. I'd love an update.

Warm regards,

Kim Benson

ROA 000597

O'Bryan, Rachael

From: Caldwell, Ryanne
Sent: Tuesday, March 22, 2022 2:39 PM
To: Caldwell, Ryanne
Subject: FW: [External] Please call

Called and spoke with Kim Benson. She wanted to advise that the LR5 Board removed an attorney from their list of attorneys because Mrs. Hammond had hired that attorney to represent her. Confirmed for Ms. Benson that Mrs. Hammond has hired an attorney to represent her in the ethics matter, but that I did not have any information as to whether the attorney was on LRS's list of approved attorneys. Ms. Benson asked if this was common; advised that a respondent can hire an attorney to represent them at any point during an ethics matter, and that after a finding of PC the matter transfers from the Investigative Department to the Legal Department. Confirmed that Ms. Benson did receive the NOH for April, and Ms. Benson stated there would be numerous attendees to the hearing. Advised Ms. Benson that the matter could potentially be resolved via Consent Order, and she would receive notice and a copy of the order if/when that occurred.

Ms. Benson also advised that Ken Loveless had filed two lawsuits against parents in the district for comments made on Facebook. Ms. Benson also referenced the screenshot she sent of a text message from Mr. Loveless regarding his written response. Advised Ms. Benson that Mr. Loveless had waived confidentiality and submitted a written response. Ms. Benson requested a copy of the written response, and she was asked to submit her request to mediaquestions@ethics.sc.gov. Benson said she would submit the request. Further advised MS. Benson of AO2022-001 regarding confidentiality, and that a copy was posted to our website. Ms. Benson appreciated the information.

From: Kim Benson <resolveorganizing@gmail.com>
Sent: Tuesday, March 22, 2022 1:23 PM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: [External] Please call

Hello Ryanne,
Please call me about your earliest convenience regarding the email I sent you last week.
Thanks,
~ Kim Benson


ROA 000598

O'Bryan, Rachael

From: Caldwell, Ryanne
Sent: Friday, March 18, 2022 2:54 PM
To: Caldwell, Ryanne
Subject: FW: [External] D5 School Board complaints

Called Ms. Benson per her request. No answer, left voicemail. Advised and forwarded to Courtney. Asked Rachael to send letter re confidentiality waiver.

From: Kim Benson <kim@resolveorganizing.com>
Sent: Friday, March 18, 2022 1:35 PM
To: Caldwell, Ryanne <rcaldwell@ethics.sc.gov>
Subject: [External] D5 School Board complaints

Hello Ryanne,
I need to share some new info with you about both Jan Hammond and Ken Loveless. And I have some questions. I'm attaching some screen shots and two news articles. Please call me when you can.

Jan Hammond:

FYI - Jan mentioned in meeting that a attorney D5 work would be removed if they were representing personal matter. I would like to know what is the Ethics Hearing.

The above was sent to this morning —

At the Board meeting Monday night they vote take a law firm/attorney the D5 list of approved attorneys bc Jan Hamn has hired the person/fir rep her in her personal case.



Ken Loveless
Jennifer Ann
not know of
members th
ruled upon o
investigation
Commission
Benson filed
on me that is
investigation
filed that I b
knowledge.
America. Fo
innocent unt
guilty.

ROA 000602

https://www.thestate.com/article259425984.htmlfbclid=IwAR2cp_NEYR3cHIYX6TBmRjA7hJESkpPsi6y6O_YpxEAwsGubwRMsDiZ2_KU

<https://www.thestate.com/news/local/education/article259492494.html>

Thanks,
Kim Benson



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ROA 000603

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless,	)	Civil Action No.: 2022-CP-40-001364
	)	
Plaintiff	)	
vs.	)	
	)	
Lesley Ann Stiles a/k/a	)	MOTION TO RECONSIDER
Leslie Lou Stiles,	)	
	)	
Defendant	)	

Pursuant to Rule 59(e), SCRCP, Plaintiff Kenneth B. Loveless (hereafter “Loveless”) seeks reconsideration of this Court’s Order granting Defendant’s Motion for Judgment on the Pleadings which was filed December 22, 2022, in the above-captioned matter. In support thereof, Loveless will show:

1. The Court erred in finding that Defendant is immune from suit under 47 U.S.C. § 230 of the Communications Decency Act (hereafter “CDA”).
2. The Court erred in finding that Loveless’ state law defamation action is barred by 47 U.S.C. § 230 of the CDA, as Loveless’ defamation action is markedly different from those barred by the CDA.
3. The Court erred in finding that Defendant’s role as a page administrator who undertook the responsibility for monitoring the Facebook page at issue is not a legally meaningful distinction under the CDA.
4. The Court erred in holding that Loveless’ claim is a negligence claim as opposed to libel *per se*.
5. The Court erred in considering facts and making statements in her order that went beyond the facts as alleged in the complaint in this matter, because this was a motion for judgment on the pleadings, and analysis was limited to the facts as pleaded.

6. The Court erred in finding as a matter of law that no reasonable person could read Defendants statement on the Facebook page that “All information posted is a result of much research and analysis” and conclude Defendant undertook to ensure every posting made on the Facebook page, including the postings of others, were factual, verified, and endorsed by Defendant.
7. The Court erred in finding that Loveless’ Complaint is irreparably flawed as a matter of law.
8. The Court erred in determining that Loveless is a public official for purposes of analyzing this defamation claim.
9. Notwithstanding of the Court’s erroneous finding that Loveless is a public official, the Court erred in holding that Loveless failed to plead and prove by clear and convincing evidence that Defendant’s publication was made with actual malice.
10. The Court erred in finding that Plaintiff’s statements are privileged under the First Amendment to the U.S. Constitution.
11. The Court erred in determining that Loveless failed to allege that the Defendant in fact knew the statements were false or that she “entertained serious doubt” as to the truth but disregarded the concern of that falsity.
12. The Court erred in finding that the Complaint failed to state a cause of action and that it was “so defective that no cause of action is stated” when the legal standard applied was inaccurate and judgment on the pleadings is not appropriate on the complaint.
13. The Court erred in considering Defendant’s Ominibus memorandum over Plaintiff’s objections, since the only exhibits contained therein were newspaper articles, and the

factual recitation set forth in the memorandum could not be considered at this stage of the proceedings.

14. The Court erred in rejecting Plaintiff's argument that Defendant voluntarily undertook a duty to provide factual and accurate information on her Facebook page when she expressly stated that everything on the page was the result of "much research and analysis" and then failed to exercise any control over her own statements and those of others on the page she warranted as accurate.
15. The Court's analysis of *Zeran* and *Nemet* is legally erroneous because the statements upon which Defendant's liability is based are her own statements as well as those she republished and allowed others to republish without exercising due care to ensure the statements had been subject to her "research and analysis."
16. The Court erred in finding that Defendant is immune from suit under the CDA when "protection under § 230(c)(1) extends only to bar certain claims imposing liability for specific information that *another party* provided." *Henderson v. The Source for Pub. Data, L.P.*, 21-1678, 1, 3 (4th Cir. 2022) (emphasis added) (finding that Defendants were not immune under § 230(c)(1) where information published by Defendants did not come solely from another information content provider). In this case, Defendant's liability is not solely based on statements by other parties that she republished, and specifically includes her own defamatory statements about Loveless that she published to the Facebook page, therefore the Court's finding that Defendant is immune from suit under the CDA is incorrect.
17. The Court erred in concluding that "no reasonable person would assume Defendant's statement about research and analysis constituted an undertaking to validate the accuracy

of every other's user's statement" because that is precisely what Defendant Stiles warranted to the public about the statements on the page on which she posted and allowed others to post.

18. The Court erred in finding that existing law "protects Defendant from suit by a public official alleging she was responsible for the veracity of statements by others" made by a page she was responsible for monitoring and censoring when appropriate under the rules to which she agreed when she became the administrator of a Facebook page.
19. The Court erred in concluding that "Plaintiff's undertaking theory can never, as a matter of law, constitute actual malice." That is a factual determination that could not be made at the stage at which the order was issued.

For the reasons set forth above, Mr. Loveless respectfully seeks reconsideration of the Court's order.

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

January 3, 2023

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**

Defendant Leslie Stiles respectfully requests the Court issue an order requiring Plaintiff Kenneth B. Loveless to personally appear and show cause as to why he should not be held in contempt of court for failing to comply with the oral order issued December 2, 2022, which was memorialized in a written order filed December 21, 2022 (collectively, the “Discovery Order”). The Discovery Order required Loveless to fully disclosure in response to 30 interrogatories and 25 document requests within 10 days of the December 2 hearing. *That has not happened.* No documents have been produced and no supplemental document responses have been served. Moreover, when Loveless served “supplemental” responses to interrogatories, his responses to Nos. 5, 6, 7, 9, 10, 11, 12, 15, 16, 20, 23, 28, and 29 continued to interpose unsupported objections, failed to provide substantive responses, and in some instances simply ignore the Discovery Order. The Court should issue a rule and require Loveless to personally appear and show cause as to why he should not be held in contempt. The grounds for granting this motion are as follows.

FACTUAL AND PROCEDURAL BACKGROUND

On December 2, 2022, the Court held a hearing on Stiles’ motion to compel, deem matters admitted, and for sanctions. After the motion was argued, the Court granted Stiles’ motion in part

and ordered (1) Loveless's objections to discovery were overruled, (2) Stiles' 18 requests to admit were deemed admitted, and (3) Loveless had 10 days to resubmit substantive responses to interrogatories and document requests. The Court instructed Stiles' counsel to prepare a proposed order memorializing the Discovery Order. Loveless failed to serve supplemental responses or disclose any documents by the December 12, 2022, deadline.

On December 16, 2022, Stiles' counsel emailed a draft of the discovery order to Loveless's counsel for comment and copied the Court (as directed). In a separate email (**Exhibit A**), Stiles' counsel requested an update concerning the status of Loveless's discovery responses and indicated the Court ordered new responses and document disclosure within 10 days—i.e., on or before December 12. In response, Loveless's lawyer claimed, "We just got the [proposed] order. Ten days is now running." Ex. A. Stiles' counsel disagreed. Id.

On December 19, 2022, at 9:17 a.m., Loveless's counsel responded again (in response to the original message), this time claiming: "Correction. The order we got on 12.14.2022 was Scully only. WE have no order on Stiles yet." Ex. A. However, just two hours later that same day, Loveless's counsel responded to the email about the draft discovery order on the email thread that included the Court (**Exhibit B**), stating in relevant part (emphasis added): "I have *no objection* to the discovery order insofar as it accurately states Judge Toal's order (although it somewhat expands on it)." That proposal, to which Loveless had "no objection," was the same as the Court's oral Order: "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."

On December 21, 2022, the Court filed the written Discovery Order that "memorializes the Court's oral Order on December 2, 2022," and "ordered Plaintiff to respond to the interrogatories and document requests within 10 days. . ." Order, 1. Stiles' counsel wrote again stating the filed

Order indicates Loveless's responses were due on or before December 12 and were thus nine (9) days overdue, "in violation of the Court's oral and now written Order." Ex. A. Stiles' counsel requested Loveless's position as to the status of the discovery and why he should not be required to appear and show cause at a contempt proceeding. Id. Loveless's counsel responded:

I will supplement *by the end of the week*. The order was not filed until yesterday and has no effect until then.

And the best reason not to file RTSC [rule to show cause] is to stop being a jerk.

Id. (emphasis added).

On December 22, 2022, Loveless's counsel emailed (**Exhibit C**) un-verified interrogatory responses (**Exhibit D**) purporting to supplement 21 of 30 interrogatories (more on that below). Counsel's email claimed, "I will update RFPs *as time permits*. I am 2 days into my 10 days." Ex. C (emphasis added). As of this filing, no supplemental responses to document requests have been served and no documents have been disclosed.

Instead, on December 22, 2022, Loveless's counsel issued a subpoena and "NOTICE OF LITIGATION HOLD & PRESERVATION DIRECTIVE" to Verizon Wireless LLC (**Exhibit E**) for records relating to *his own cell phone number* and another, the owner of which is not identified. The transmittal attached the filed Discovery Order and claims the phone company should preserve documents "potentially relevant to the issues raised in the above-referenced pending litigation, *which includes allegations of the misappropriation of electronically stored information and civil conspiracy*." Id. (emphasis added). There is no such claim joined here.

LEGAL STANDARD

"Contempt results from the willful disobedience of a court order." Wilson v. Walker, 340 S.C. 531, 538, 532 S.E.2d 19, 22 (Ct. App. 2000). "Before a party may be found in contempt, the record must clearly and specifically show the contemptuous conduct." Id. "A determination of

contempt is within the sound discretion of the trial judge but will be reversed when the finding is without evidentiary support or there is an abuse of discretion.” Id.; see also Metts v. Mims, 384 S.C. 491, 499–500, 682 S.E.2d 813, 818 (2009).

ARGUMENT

The Court should issue an order requiring Loveless to personally appear and show cause as to why he did not, and has not, complied with the Discovery Order. If a party fails to obey an order to provide or permit discovery, the court can “make such orders in regard to the failure as are just,” including refusing to allow the disobedient party to support or oppose claims, striking a pleading, holding the disobedient party in contempt, and awarding fees and costs. Rule 37(b)(2), SCRPC. A contempt hearing and further relief is warranted here for two reasons.

I. Loveless has failed to produce documents.

First, by any standard, Loveless has failed to comply with the Discovery Order because he has still failed to produce a single responsive document or serve supplemental responses to Stiles’ document requests.

The Court was exceedingly clear during the December 2 hearing: Loveless had 10 days to comply. In response to efforts by Stiles to press Loveless to meet this deadline, he has offered shifting explanations purporting to justify his delay. Initially he claimed 10 days ran from receipt of the proposed order. Then he claimed there was no order—an assertion that is not credible because that same day he represented to the Court he had no objection to the proposal because it “it accurately states” the Court’s ruling at the hearing. When Stiles drew his attention to this fact, he promised discovery by the “end of the week.” That commitment was not kept. On December 22, he claimed he would update his responses to document requests “as time permits” and that he was only two days into the 10-day deadline. See Ex. C.

Under any theory Loveless has failed to comply with the Court’s deadline. Loveless has failed to serve supplemental document responses or produce a single document. He has vacillated about his position on when his deadline would run, but has failed to meet each and every one of those deadlines:

- 10 days from the date of the oral Discovery Order—i.e., December 12;
- 10 days from submission of Defendant’s proposed order—i.e., December 26;
- By the “end of the week” per Loveless’s counsel—i.e., December 28;
- 10 days from entry of the Discovery Order—i.e., December 31; and
- 10 days from filing of Discovery Order plus weekends & holidays—i.e., January 3.

This litigant has not complied with the Discovery Order and has made no good-faith effort toward compliance. A rule to show cause should issue and a contempt proceeding should be held.

II. Loveless’s supplemental interrogatory responses do not comply with discovery rules or the Discovery Order.

Second, while Loveless has served supplemental interrogatory responses, those so-called responses fail to cure the deficiencies cited in the Discovery Order. The Discovery Order chastised Loveless for disputing the “very broad scope” of what courts deem relevant under Rule 26, for refusing to answer interrogatories involving an opinion or contention that relates to fact or the application of law to fact, and for interposing non-specific, boilerplate objections that violate the discovery rules. See Order MTC, 4–6. Loveless’s “supplemental” responses still fail this test.

As an initial matter, Loveless purports to “renew[]” and “expressly reserve[]” all of the non-specific, boilerplate objections that the Court just overruled so he can “seek appellate review ... at the appropriate time[.]”. See Ex. D. at n.1. However, discovery orders are interlocutory and are not appealable unless the disobedient party is held in contempt and appeals the contempt order. Grosshuesch v. Cramer, 377 S.C. 12, 20–21 & 30 n.7, 659 S.E.2d 112, 116 & 122 n.7 (2008) (Toal,

C.J.); Ex parte Whetstone, 289 S.C. 580, 580, 347 S.E.2d 881, 881–82 (1986). Accordingly, Loveless’s effort to renew and reserve overruled objections is folly: “He may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply.” Whetstone, supra.

Loveless has also failed to supplement his response to items that required supplement by offering complete, unobjected to responses. Specifically, Interrogatory Nos. 5, 6, 7, 9, 10, 11, 12, 15, 16, 20, 23, 28, and 29 remain defective. See Ex. D. Consider some examples.

Some so-called responses purport to offer supplemental information but, in fact, fail to advance anything other than argument. For example, Interrogatory No. 7 asks the name, date, and statement of the “private Facebook groups” referred to in Paragraph 7 of the Complaint; however, instead of offering a substantive response, Loveless’s supplement is a rambling, argumentative mess that offer no specific response—i.e., the information referred to in Paragraph 7 of the Complaint. Cf. Ex. D (“... Plaintiff and his counsel do not believe this to be an exhaustive list, but will supplement if additional information is located for this ridiculous abuse of process lawsuit.”). Similarly, in response to Interrogatory No. 9 requesting the account name, speaker, date, time, and quotation of statements referenced in Paragraphs 9, 12, 13, and 15 of the Complaint, Loveless’s supplement provides none of the requested facts but instead argues “Stiles is legally responsible...” for posts on the Deep Dive page and then offers a list of *non-defamatory* statements purportedly attributable to her (some of which were made *after* the Complaint was filed). See Ex. D; see also id. at Resp. No. 15 (“Defendant has far more ability to know what she has done to publish, ratify, and/or endorse the statements posted on Deep Dive.”).

Other so-called supplemental responses are willfully defiant as they refuse to provide the very information the Court ordered to be furnished. For example, in response to Interrogatory No.

6, seeking legal authority supporting the allegation in Paragraph 6 of the Complaint, Loveless simply doubled down on the objection the Discovery Order overruled:

Neither Plaintiff nor his counsel will disclose work produce or legal strategy. Plaintiff intends to seek and obtain reversal of the order granting judgement on the pleadings, and disclosing work product and legal strategy at this point would be damaging to Plaintiff's position.

Ex. D at Supp. Resp. No. 6. This is a frivolous assertion; as the Court has already explained, 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." Order MTC, 5 (citing Rule 33(a), (d), SCRCP). Answering this interrogatory does not compel Loveless to disclose any work product or legal strategy beyond what the rules already require. Likewise with Interrogatory No. 23, where Loveless has unilaterally decided he will not itemize the cases, case numbers, jurisdiction, claim, and resolution of civil and criminal matters for a company that he discloses as having an economic interest was a plaintiff or defendant in a lawsuit because he "continues his objection[.]" See Ex. D at Supp. Resp. No. 23. Loveless's refusal to provide these answers is contemptuous.

Some "supplemental" responses simply fail to answer the question. In response to Interrogatory No. 12, requesting legal authority supporting the claim that a violation of Facebook terms gives rise to civil liability, Loveless failed to even offer a supplemental response, leaving the same boilerplate objection in place and ironically claiming he would "supplement legal authority as required by court rules." Ex. D at Resp. No. 12. Likewise, Interrogatory No. 28 seeks an itemization of remuneration paid to administer, publish, or promote content on social media and the date and amount of those payments; however, while Loveless tacitly acknowledges paying such remuneration, he demurs in providing a specific response, claiming: "the amount of payment [is] not immediately known" and that he "again objects to providing any information regarding Loveless Commercial Contracting LLC." Ex. D; see also id. at Supp. Resp. 29.

In response to Interrogatory No. 30, seeking the date, times, and method and substance of communication between Loveless's counsel and "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[.]" Loveless's supplemental response simply ignores the substance by referencing a non-responsive request to admit response. See Ex. D. Likewise, Interrogatory Nos. 10, 11, 16, and 20, seeking a statement of the "terms of Facebook" referenced in the Complaint; the Facebook terms Loveless alleges Stiles violated; the speaker, date, time, and quotation of every statement Loveless contends Stiles republished, ratified, or endorsed that was defamatory or libelous; and the year, make, and model of all smart phones, tablets, and laptops Loveless owns have also gone ignored. See Ex. D.

These so-called responses fail to comply with the discovery rules or the Discovery Order that rejected Loveless's objections. Notably, none of these "supplemental" interrogatory responses are verified by Loveless as required by Rule 33, a fact that underscores the need for him to personally appear to answer for these defects.

CONCLUSION

Here, Stiles is still unable to get basic, straightforward questions to her interrogatories or obtain any documents in response to document requests. When determining an appropriate sanction, a court should consider the nature of the discovery, the posture of the case, the willfulness of the disobedient party, and the degree of prejudice. Griffin Grading & Clearing, Inc., 334 S.C. 193, 199, 511 S.E.2d, 716, 719 (S.C. Ct. App. 1999). By all appearances, this is willful, disobedient conduct that requires severe sanctions. However, the Court should require Loveless to appear and show cause why he should not be held in contempt. This appearance should include an examination under oath of precisely what, in fact, Loveless has done to comply with the Discovery Order. Then

the Court should sanction Loveless for his continued refusal to participate in discovery by (1) awarding Stiles' fees and costs associated with this discovery dispute, (2) fining Loveless \$25,000 per week until he fully complies with the Discovery Order, and (3) ordering any further relief the Court deems just and proper.

Respectfully submitted,

s/Christopher P. Kenney
Christopher P. Kenney (SC Bar No. 100147)
CHRIS KENNEY LAW
Post Office Box 1377
808 Lady Street, Suite D7 (29201)
Columbia, SC 29202
(803) 546-3695
cpk@chriskenny.law

ATTORNEY FOR
DEFENDANT LESLIE STILES

January 5, 2023
Columbia, South Carolina.

Exhibit A

(Email thread Dec. 16–21, 2022)

Subject: Re: Loveless v. Stiles, 2022-CP-40-001364: Loveless production
Date: Wednesday, December 21, 2022 at 2:17:56 PM Eastern Standard Time
From: Desa Ballard
To: Chris Kenney
CC: Beth Cogan

I will supplement by the end of the week. The order was not filed until yesterday and has no effect until then.

And the best reason not to file RTSC is to stop being a jerk.

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone
Get [Outlook for Android](#)

From: Chris Kenney <cpk@harpootlianlaw.com>
Sent: Wednesday, December 21, 2022 1:06:20 PM
To: Desa Ballard <desab@desaballard.com>
Cc: Beth Cogan <Beth@desaballard.com>
Subject: Re: Loveless v. Stiles, 2022-CP-40-001364: Loveless production

The Order filed this morning indicates, as I did below, that your client's supplemental responses were due 10 days from the date of the hearing—i.e., on or before December 12. Your client's responses are 9 days overdue, in violation of the Court's oral and now written Order.

Please advise by this time tomorrow concerning (1) the status of the discovery your client was ordered to provide and (2) and your client's view as to why a rule to show cause should not issue to require him to appear for a contempt proceeding.

Thank you.

From: Desa Ballard <desab@desaballard.com>
Date: Monday, December 19, 2022 at 9:17 AM
To: Chris Kenney <cpk@harpootlianlaw.com>
Cc: Beth Cogan <Beth@desaballard.com>
Subject: RE: Loveless v. Stiles, 2022-CP-40-001364: Loveless production

Correction. The order we got on 12.14.2022 was Scully only. WE have no order on Stiles yet.

From: Chris Kenney <cpk@harpootlianlaw.com>
Sent: Friday, December 16, 2022 8:27 PM
To: Desa Ballard <desab@desaballard.com>
Subject: Re: Loveless v. Stiles, 2022-CP-40-001364: Loveless production

I disagree.

On Dec 16, 2022, at 7:49 PM, Desa Ballard <desab@desaballard.com> wrote:

ROA 000618

We just got the order. Ten days is now running.

Sent via the Samsung Galaxy S21 5G, an AT&T 5G smartphone

Get [Outlook for Android](#)

From: Chris Kenney <cpk@harpootlianlaw.com>
Sent: Friday, December 16, 2022 6:01:34 PM
To: Desa Ballard <desab@desaballard.com>
Subject: Loveless v. Stiles, 2022-CP-40-001364: Loveless production

Please advise concerning the status of your clients' discovery responses. According to my notes, the Court ordered new responses and document disclosure within 10 days—i.e., on or before December 12. Thank you.

Christopher P. Kenney
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street
Post Office Box 1090
Columbia, South Carolina 29202
(803) 252-4848
(803) 252-4810 (facsimile)

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Exhibit B

(Ballard email (Dec. 19, 2022))

Subject: RE: Loveless v. Stiles, 2022-CP-40-001364: draft orders
Date: Monday, December 19, 2022 at 11:14:59 AM Eastern Standard Time
From: Desa Ballard
To: Chris Kenney, Beth Cogan
CC: Toal, Jean, Poswal, Chukwuzitelu, Heather Hardy

I have no objection to the discovery order insofar as it accurately states Judge Toal's order (although it somewhat expands on it). I will review the other one today.

From: Chris Kenney <cpk@harpootlianlaw.com>
Sent: Friday, December 16, 2022 5:57 PM
To: Desa Ballard <desab@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Cc: Toal, Jean <JToal@sccourts.org>; Poswal, Chukwuzitelu <cposwal@sccourts.org>; Heather Hardy <heather@harpootlianlaw.com>
Subject: Loveless v. Stiles, 2022-CP-40-001364: draft orders

Ms. Ballard,
Pursuant to Chief Justice Toal's instruction, attached please find draft orders granting Defendant's motion to compel and motion for judgment on the pleadings. Please let me know if you have any questions.
Thank you,
Chris Kenney

Christopher P. Kenney
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street
Post Office Box 1090
Columbia, South Carolina 29202
(803) 252-4848
(803) 252-4810 (facsimile)

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ROA 000621

Exhibit C

(Ballard email (Dec. 22, 2022))

Subject: Supplemental Response to ROGS
Date: Thursday, December 22, 2022 at 6:31:21 PM Eastern Standard Time
From: Desa Ballard
To: Chris Kenney
CC: Beth Cogan
Attachments: Response to ROGS v2 Supp 1.pdf

When you file whatever you file, please redact the personal information contained in Response No. 18 before doing so.

I will update RFPs as time permits. I am 2 days into my 10 days.

db

Desa Ballard
Ballard & Watson
226 State Street
West Columbia, SC 29169
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com
Web: desaballard.com

Exhibit D

(Loveless First Supplemental
Responses and Objections to Interrogatories)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless,	)	Civil Action No.: 2022-CP-40-01364
	)	
Plaintiff	)	
vs.	)	
	)	SUPPLEMENT NO. 1¹
Lesley Ann Stiles a/k/a	)	PLAINTIFF'S RESPONSE TO FIRST
Leslie Lou Stiles,	)	SET OF INTERROGATORIES
	)	
Defendant	)	

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

¹ These supplemental responses are provided over objections previously asserted, those renewed in the supplemental responses, and Plaintiff expressly reserves the right to seek appellate review of the order dated December 21, 2022, at the appropriate time and in the appropriate forum.

facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

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 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 witnesses 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.

SUPPLEMENTAL RESPONSE NO. 1 Objection. Neither Plaintiff nor his counsel will disclose work product or legal strategy. Plaintiff intends to seek and obtain reversal of the order

granting judgment on the pleadings, and disclosing work product and legal strategy at this point would be damaging to Plaintiff's position.

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 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.

SUPPLEMENTAL RESPONSE NO. 1: Several of the Facebook pages on which the defamatory statements appeared have had their names or titles changed (some multiple times) since this lawsuit was brought, and the administrators or others who control the content of the pages have made it impossible for Plaintiff and/or his counsel to personally obtain current information without the assistance of materials that have been subpoenaed from Facebook but not yet obtained. Plaintiff improperly refused to provide in her discovery responses the full contents of the group of which she was administrator, which was originally called Deep Dive into D5. Kevin Scully originated a page called OneD5 what was private and inaccessible to Plaintiff and his counsel but we do not know the current status of that page since Mr. Scully became a candidate for public office. Also existing at one time (current status unknown) are Explore Lexington Richland District 5 BOT, Learn About Lex/Rich D5, Citizens of The Town of Irmo and Surrounding Friends, Primary Stakeholders of LexRich5 and the D5 Dumpster Fire. Many persons who previously posted to various Facebook pages under their own names later posted with pseudonyms. Plaintiff and his counsel do not believe this to be an exhaustive list, but will supplement if additional information is located for this ridiculous abuse of process

lawsuit.

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.

SUPPLEMENTAL RESPONSE NO. 1: The date on which Plaintiff was granted access to “Learn About” is not known to him nor is it within the knowledge or records of Plaintiff’s counsel.

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.

SUPPLEMENTAL RESPONSE NO. 1: Stiles is legally responsible for all posts made on any Facebook page for which she serves as administrator, notwithstanding any order issued in this proceeding. Stiles personally has posted the following, the dates of all of her posts are not within the knowledge or control of Plaintiff or his counsel, and Plaintiff herself has refused to produce her own postings.

- “Dr. Ross is only working part time for full price.”

- Leslie Anne shared a link: “ LR5 school board member sues constituent for criticizing him on Facebook.” On or about 3.17.2022
- “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.” On or about April 13, 2022.
- “This lawsuit is a bully tactic designed to shut me up and scare other parents from participating in our school district.” On or about April 13, 2022.
- “I believe the hypocrisy with the censure also must be mentioned. Mr. Loveless had an AG opinion requiring his recusal from certain matters and he refused for a length of time. . . Trustee Gardner has broken many of the same board policies with her actions . . . “ On or about March 2, 2022
- “I didn’t know he was a reader. . . There was an Ethics Commission opinion that he should recuse himself from certain discussion and voting.” On or about March 2, 2022
- “Chair Hammond, Ms Hines and Mr. Hogan were present, participated in discussions and voted to dismiss Dr. Melton. Please do not be fooled into thinking that they were in any way passive bystanders to this event. That is untrue. They now realize how this is impacting the district and are trying to walk back this PR disaster (from their point of view) – they were fully invested in this decision. ” On or about June 16, 22021
- “. . . it is a tax advantage to Akil and this is all about money. You cannot seriously say this saves D5 money. We are paying a contract buyout

(226k) for an unbelievably talented Dr Melton and then to top it off we are now paying a foundation 175k plus monthly stipend of 1200\$/month. This does not in any way shape or form save D5 money. This ridiculous board has cost this district money. And Dr Ross is an astute business man and took advantage of this situation offered by a Board who is blinded by the opportunity to control school operations. . . It's clear who will be in charge and it isn't Dr Ross." Date not currently known information in possession of defendant, who violated discovery by refusing to disclose. . Grammatical and punctuation errors in original.

- "Will LR5 sue their critics in ongoing staffing drama. The school board will let them." On or about August 24, 2021.
- "Interesting that the Board again acts without transparency. . . Ross was given a 3 year contract, through 2025. Also, although inexperienced at the district office level – it appears (bc the specifics were not given) Ross may be paid more than Dr Melton." January 10, 2022. Punctuation errors in original.
- "Trustee Loveless owns a company that is a subcontractor for the vendor that has been hired by D5 to build PWES. This represents an economic interest with the vendor, which is a potential conflict of interest. Because Mr. Loveless is a public official he has an ethical duty to recuse himself from any attempt to influence decisions of the D5 Board of Trustees or D5 Admin related to that vendor." February 25, 2021
- "Unfortunately, it is true that Trustee Loveless did not comply with this

opinion from the SC Ethics Commission. . . . The SC Ethics Opinion also clearly states that Mr. Loveless must be recuse himself . . . “ Date not presently known information in possession of defendant, who violated discovery by refusing to disclose. . . .

- “Mr. Loveless violated his ethical duties by trying to influence D5 Board and Dr. Melton numerous times from his March 24, 2020 letter to Dr. Melton, to his statements in the September 14, 2020 Board meeting, and the numerous emails he has sent to Dr. Melton and D5 Admin about the PWES project. . . the fact is as a public official Mr. Loveless has an ethical duty to recuse himself. And that duty began March 2020.” Date not presently known, information in possession of defendant, who violated discovery by refusing to disclose.
- “The SC Ethics Opinion also clearly states that Mr. Loveless must be recuse himself from any votes, deliberations, and other actions on the matter. It 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. In fact, Mr. Loveless has continued to knowingly violate the opinion and has made little attempt to even appear to comply with the direction publicly (finally submitting a written recusal in Feb 2021). However, in every public board meeting since the opinion was issued Mr. Loveless has continued to deliberate, discuss, attempt to influence, and make accusations regarding the construction of PWES. . . .” Date not presently known, information in

possession of defendant, who violated discovery by refusing to disclose.

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 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.

SUPPLEMENTAL RESPONSE NO. 1: Tyler Tucker. See his letter to Defendant dated July 21, 2021.

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.

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.

SUPPLEMENTAL RESPONSE NO. 1 – Every post which has ever appeared on Deep Dive, the contents of which Defendant wrongfully refuses to produce in discovery.

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

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1: <https://www.lexrich5.org>

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

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1: Office 803. [REDACTED]. Cell 803 [REDACTED]

Email: [REDACTED]@lovelesscontracting.com

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.

SUPPLEMENTAL RESPONSE NO. 1: All computers and cell phones used by Plaintiff is owned by Loveless Commercial Contracting LLC. The LLC uses cloud backup. Plaintiff has not done anything specific to provide additional protection from loss of data on electronic devices.

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.

SUPPLEMENTAL RESPONSE NO. 1: Personal meeting July 15, 2021

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.

SUPPLEMENTAL RESPONSE NO. 1: No.

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.

SUPPLEMENTAL RESPONSE NO. 1:

Plaintiff continues his objection to disclosing information regarding litigation in which

Loveless Commercial Contracting LLC has been a party. Plaintiff individually has been a party to five (5) other lawsuits.

1. Kenneth B. Loveless v. Thomas Paine Askey, Case No. 93-CP-40-03819. Personal injury. Settled.
 2. Kenneth B. Loveless v. Fred J. Frank and Macco Contracting, Case No. 86-CP-40-5280. Contract dispute. Settled.
 3. Kenneth B. Loveless v. Kevin Scully, Case No. 2022-CP-40-01307, pending.
 4. Kenneth B. Loveless v. William T. Butler and Sprint Inc., Case No. 2013-CP-32-00241. Claim for false imprisonment, malicious prosecution, negligence, slander and abuse of process. After Defendant's motion for summary judgment was denied, case settled.
 5. Domestic action, divorced, awarded custody of two minor children. Plaintiff declines to provide specifics as an unreasonable invasion of privacy.
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.

SUPPLEMENTAL RESPONSE NO. 1: No.

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.

ROA 000636

Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1: No.

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.

SUPPLEMENTAL RESPONSE NO. 1: No.

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.

SUPPLEMENTAL RESPONSE NO. 1: No.

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.

SUPPLEMENTAL RESPONSE NO. 1: Plaintiff's campaigns have paid fees for Facebook pages, the amount of payments not immediately known. Plaintiff again objects to

providing any information regarding Loveless Commercial Contracting LLC.

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.

SUPPLEMENTAL RESPONSE NO. 1: See answer to No. 28.

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.

SUPPLEMENTAL RESPONSE NO. 1. This has already been answered in the original response, to which Plaintiff objected, but then answered.

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.

BALLARD & WATSON
226 State Street
West Columbia, South Carolina 29169
Telephone 803.796.9299

ROA 000638

desab@desaballard.com
harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

December 22, 2022

Exhibit E

(Verizon subpoena)



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

Desa Ballard
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

December 22, 2022

Via Facsimile (1-888-667-0028)
Verizon Wireless LLC
Attn: VSAT
180 Washington Valley Road
Bedminster, New Jersey 07921

Re: *Kenneth B. Loveless v. Lesley Stiles*
Case No: 2022-CP-40-01364

NOTICE OF LITIGATION HOLD & PRESERVATION DIRECTIVE

To Whom It May Concern:

As attorney for Kenneth Loveless in the above-referenced matter, we have a responsibility to place your company on notice to preserve all documents, tangible evidence, and electronically stored information that are potentially relevant to the issues raised in the above-referenced pending litigation, which include allegations of the misappropriation of electronically stored information and civil conspiracy. Accordingly, please direct your company to preserve and retain any and all potentially relevant evidence related to the facts and circumstances of these matters, including, but not limited to, any and all documents, tangible evidence, and electronically stored information regarding the following telephone numbers and/or account holders;

(1) Kenneth Loveless (803) [REDACTED];

The requirement that you preserve any such potentially relevant evidence is reasonable and necessary so as not to deprive any party's right to secure evidence or the Court of its right to adjudicate the issues in these matters.

PRESERVATION REQUIRES IMMEDIATE INTERVENTION

Your company must act immediately to preserve potentially relevant evidence in anyway relating to these telephone numbers and/or account holders. Adequate preservation requires more than simply refraining from efforts to destroy or dispose of such evidence. Your company must also intervene to prevent loss due to routine operations and employ proper techniques and protocols suited to protection.

ROA 000642

ELECTRONICALLY FILED - 2023 Jan 05 4:09 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

We ask that your company immediately suspend your routine practices for filing, modifying, deleting, or recycling any of the documents relevant to this matter. This directive includes a notice to suspend any routine document retention/destruction policies and to implement a legal hold on all evidence that may be relevant to the pending litigation.

As required by the applicable rules, your company must preserve and retain all documents, communications, records, and data relating in any way to the subject of the potential claims whether by written or hard copy format or by electronic format, including but not limited to correspondence, memoranda, notes, faxes, e-mails, spreadsheets, databases, phone records, text messages, data records, data, written phone messages, voicemail, calendar entries, summaries, or meeting minutes or agendas, active or stored files. These documents include: contracts, communications, telephone records, text messages, data, files, forms, letters, notes, work orders, invoices, spreadsheets, photographs and any other documents pertaining to these telephone numbers and/or account holders.

Electronically stored information ("ESI") should be afforded the broadest possible definition and includes all potentially relevant information electronically, magnetically, or optically stored. This includes, but is not limited to, information stored on laptops, PCs, telephones, handheld devices such as cell phones, smartphones, home computers, and other hardware or removable storage devices, such as disks, USB "pen" drives or removable hard drives, and home email addresses. It also includes digital communications (i.e., e-mail, including inbox, sent items folder, deleted items folder, or deleted cache; voicemail; and instant messaging or texting); word processing documents, including all drafts and final versions (i.e., Word or WordPerfect files or any other document and drafts); contact and relationship management data (i.e., Outlook files); PDF documents; spreadsheets and accounting program files; photographs or videos; calendars; and any backup or archival files.

ESI resides not only in areas of electronic, magnetic and optical storage media reasonably accessible to your company, but also in areas your company may deem not reasonably accessible, but your company is obligated to preserve potentially relevant evidence from both these sources of ESI, even if your company does not anticipate producing such ESI. Please be aware that even ESI that your company deems reasonably inaccessible must be preserved in the interim so as not to deprive a party's right to secure evidence or the Court of its right to adjudicate the issue.

Verizon Wireless

In re: Notice of Litigation Hold & Preservation Directive
December 22, 2022

Page 3 of 3

Hard copy documents should be retained within the same files and folders and in the same location as you traditionally keep them. Electronically stored information items should be preserved similarly in their current and unaltered state and protected from any future alteration or deletion.

CONFIRMATION OF COMPLIANCE

Please confirm in writing that your company has taken the steps outlined in this form to preserve the ESI and tangible documents potentially relevant to these matters.

This Litigation Hold Notice will remain in effect until specifically rescinded by me. If you wish to discuss the foregoing, please do not hesitate to contact me directly.

Sincerely yours,

A handwritten signature in blue ink that reads "Desa Ballard" followed by a stylized flourish.

Desa Ballard
desab@desaballard.com

cc: Via email
Christopher Kenney, Esquire
Ken Loveless

ROA 000644

ELECTRONICALLY FILED - 2023 Jan 05 4:09 PM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

STATE OF SOUTH CAROLINA

ISSUED BY THE Common Pleas COURT IN THE COUNTY OF RichlandKenneth B. Loveless, Plaintiff

v.

SUBPOENA IN A CIVIL CASE

Lesley Ann Stiles a/k/a Leslie Lou Stiles, DefendantCase Number: 2022-CP-40-01364Pending in Richland CountyTO: Verizon Wireless Fax No.: 1-888-667-0028☐ 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:

Any and all text message content and text message detail information from 12/22/2021 to present for phone numbers 803- [REDACTED] and 803- [REDACTED]

PLACE Ballard & Watson226 State Street, West Columbia, SC 29169DATE AND TIME January 6, 2023, 5:00 pm☐ 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.

Attorney/Issuing Officer's Signature

12/22/2022

Haley Hubbard

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 :

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PROOF OF SERVICE

SERVED	DATE 12/22/2022	FEES AND MILEAGE TO BE TENDERED TO WITNESS UPON DAILY ARRIVAL ☐ YES ☐ NO AMOUNT \$
	PLACE Fax No. 888-667-0028	
SERVED ON	Verizon Wireless	MANNER OF SERVICE Facsimile
SERVED BY	Beth Cogan	TITLE Paralegal

DECLARATION OF SERVER

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

Executed on 12/22/2022

Beth K Cogan
SIGNATURE OF SERVER

226 State Street, West Columbia, SC 29169
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

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(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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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Kenneth B. Loveless,

C/A No.: 2022-CP-40-01364

Plaintiff,

v.

**ORDER GRANTING DEFENDANT'S
MOTION TO COMPEL, DEEM
MATTERS ADMITTED
AND FOR SANCTIONS**

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

Defendant.

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.

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.

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

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

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.

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), SCRCF (“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.

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]



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

Electronically signed on 2022-12-21 09:55:10 page 9 of 9

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

KENNETH B. LOVELESS,

Plaintiff,

v.

LESLEY ANN STILES A/K/A
LESLIE LOU STILES,

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

C/A No.: 2022-CP-40-01364

NOTICE OF HEARING

A hearing has been set in the above-captioned action for January 27, 2023 at 9:30 am, in the Richland County Judicial Center. The following motions are scheduled to be heard:

1. Motion for Rule to Show Cause (filed 1/5/2023)
2. Any other motions the parties contend are still pending in this matter in light of the Court's previous rulings

If any of the parties wish to submit a memorandum on the status of this matter, please submit them simultaneously to the Court by the close of business on Monday, January 23, 2023.



Richland Common Pleas

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

Case Number: 2022CP4001364

Type: Notice/Notice of Hearing

So Ordered

Jean H. Toal

Electronically signed on 2023-01-12 08:46:33 page 2 of 2

ROA 000658

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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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

Memorandum of Law in Support of Defendant's Motion for Rule to Show Cause

Plaintiff Kenneth B. Loveless was ordered to submit full, unobjected-to responses to 30 interrogatories and 25 document requests and produce responsive documents within 10 days. Loveless did not do that.¹ On December 22, 2022, Loveless (through counsel) emailed un-verified interrogatory responses (**Exhibit A**) purporting to supplement 21 of 30 interrogatories. On January 5, 2023, Defendant Leslie Stiles filed this motion. The next day, Loveless sent approximately 8,000 pages of materials and responses purporting to supplement his written response to Stiles' document requests (**Exhibit**). The Court's oral and written Discovery Order were clear: Loveless's objections were overruled, and he could not resist discovery in a lawsuit *he chose* to bring. For reasons set forth in her motion and below, contempt sanctions are warranted.

1. Loveless continues to stand on objections the Court overruled.

In his supplemental interrogatory and document request responses, Loveless purports to "renew[]" and "expressly reserve[]" objections the Discovery Order overruled so he can "seek

¹ A full procedural history is set forth in Stiles' motion for a rule to show cause and will not be repeated here unless necessary.

appellate review ... at the appropriate time[.]”. Ex. A at 1 n.1. Loveless’s s document request responses go further, adding the further caveat: “Additionally, since Plaintiff’s claim has been dismissed by order dated December 22, 2022, these responses are furnished only as the responses relate to Defendant’s counterclaim against Plaintiff.” Ex. B at 1 n.1. In other words, Loveless has embedded a *new* reason for withholding discovery into a footnote of his supplemental responses. This purports to serve as some basis to withhold an unidentified number of documents on the theory they no longer need to be produced because the Court granted Stiles’ motion for judgment on the pleadings as to his defamation claim. A review of the interrogatories and document request responses indicates objections persist throughout. This is wrong for two reasons.

First, discovery orders are interlocutory and are not appealable unless the disobedient party is held in contempt and appeals the contempt order. Grosshuesch v. Cramer, 377 S.C. 12, 20–21 & 30 n.7, 659 S.E.2d 112, 116 & 122 n.7 (2008) (Toal, C.J.); Ex parte Whetstone, 289 S.C. 580, 580, 347 S.E.2d 881, 881–82 (1986). Accordingly, any effort by Loveless to renew and reserve overruled objections is folly: “He may either comply with the discovery order and waive any right to challenge it on appeal, or refuse to comply with the order and appeal after he is held in contempt for his failure to comply.” Whetstone, *supra*. The Discovery Order overruled Loveless’s objections. His attempt to stand on them now or to add new ones is disobedient.

Second, Loveless’s new theory for withholding documents (Ex. B at footnote 1) is nonsense. The only remaining claim in this lawsuit is Stiles’ counterclaim for abuse of legal process, which proceeds under the theory that Loveless’s defamation claim is a frivolous abuse of legal process brought to chill public critics. Under the broad scope of discovery allowed by Rule 26, SCRCp, there is no category of document that would be probative of the now-dismissed defamation claim but irrelevant and thus exclusive of the abuse of process claim. Moreover,

dropping this assertion into a footnote—that the responses “are furnished only as the responses relate to Defendant’s counterclaim”—without actually stating what is being withheld, is the same sort of boilerplate objection that prompted the Discovery Order in the first instance.

Any objection Loveless may have, whether new or old, has been overruled and cannot serve as the basis for withholding discovery.

2. Document Request Nos. 1–2, 4–7 & 9–25 have not been supplemented consistent with the Discovery Order.

A closer look at Loveless’s document responses and documents themselves reveal additional problems that evidence noncompliance with the Discovery Order.

a. Loveless has not collected or produced any documents.

While Loveless’s lawyers produced 8,000 pages of documents, based on Stiles’ review, few if any documents have been collected from Loveless himself.

Loveless’s personal email address appears only 11 times in the documents he produced. The email portion of the production appears to consist of documents the school district produced. What is conspicuously absent from the production is anything suggesting any collection of documents was done from Loveless’s email account or telephone messaging applications. Loveless’s personal email only appears as part of an email thread that could have been collected from some other source. Also absent from Loveless’s production are the text messages and emails his colleagues on the school board were ordered to collect and produce in response to subpoena and court order. The only conclusion Stiles can reach is he has made no effort to collect those documents. Cf. Ex. B at Doc. Req. Nos. 6 & 7.

Instead, it appears the only collection Loveless did was the one he could force taxpayers to pay for by making a FOIA demand to District 5 personnel as a member of the school board:

KLOVELESS_SUPPRFP005928

From: [Desa Ballard](#)
 To: [Akil Ross](#)
 Cc: [Beth Cogan](#)
 Bcc: [Ken Loveless](#) ([@lovelesscontracting.com](#))
 Subject: FOIA request from Mr. Loveless
 Date: Thursday, November 10, 2022 9:59:00 AM

Board member Ken Loveless has asked that I submit his FOIA request to you for all emails in the District 5 System electronic storage which contain any of the following as sender, recipient, cc, bcc or in any other capacity, including within the text of the email.

[\[REDACTED\]@sc.rr.com](#)
[\[REDACTED\]@sc.edu](#)
[\[REDACTED\]@mailbox.sc.edu](#)
[\[REDACTED\]@gmail.com](#)
[\[REDACTED\]@gmail.com](#)
[\[REDACTED\]@gmail.com](#)
[\[REDACTED\]@sc.rr.com](#)

I understand there will be no charge for the production of these materials because of Mr. Loveless' status as a board member.

Please let me know if you have any questions or if I can assist in any way to obtain this information.

Thank you.

db

Note this request was made on November 10, 2022—two days *after* Loveless lost his bid for reelection—and seeks email communications concerning Loveless's perceived enemies, not documents fully responsive to Stiles' discovery requests.

Finally, as Stiles noted in her motion, on December 22, 2022, Loveless issued a subpoena and litigation hold notice to Verizon for his own cell phone records. See Mot. Rule at Ex. E. That is a curious procedure to employ since Loveless could have simply given his counsel access to his phone to collect responsive records. Instead, his counsel has subpoenaed her own client's records. To the undersigned, this suggests that the client (Loveless) is not cooperating with his counsel to provide access to discoverable information, prompting counsel to issue the Verizon subpoena.

The best way to determine whether Loveless has done anything to collect documents is to require him to appear and testify under oath about precisely what, if anything, he has done to comply with the Discovery Order. Based on the information furnished to date, it appears he has done little to nothing to comply.

b. Loveless's document dump is not organized, labeled, or produced in a reasonably usable form.

Loveless's production is a disorganized document "dump" that is not in a reasonably usable form and is not organized or labeled to correspond to specific written requests. Instead, hundreds of pages of the production appear to be electronic documents (like Facebook pages) that have been altered by being "printed" into 8.5 by 11-inches PDF form that renders them difficult or impossible to use. Loveless's written responses are also of no utility as these supplemental responses simply identify a bulk bates range of to the 7,800 pages of documents (KLOVELESS_SUPPRFP000001 – KLOVELESS_SUPPRFP007851) in response to Document Request No. 2 and then repeatedly refer to these 7,800 pages in response to every specific request. This falls far short of what Rule 34 requires.

When responding to document requests, a party can either "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 request.*" Rule 34(b), SCRCP (emphasis added). When documents are not made available in their ordinary course of business (e.g., reading room-style productions), but instead are collected, reviewed, and produced by counsel, Rule 34 requires they be organized and labeled in response to the categories of documents demanded. E.g., Davenport v. Stoller, No. 8:20-CV-03827-TMC, 2021 WL 5904326, at *2 (D.S.C. Dec. 14, 2021) (ordering a litigant to organize and label responsive documents to correspond to categories sought). "The term 'document dump' is often used to refer to the production of voluminous and mostly unresponsive documents without identification of

specific pages or portions of documents which are responsive to the discovery requests.” Wonderland Switzerland AG v. Britax Child Safety, Inc., No. 0:19-CV-02475-JMC, 2020 WL 6365382, at *5 n.1 (D.S.C. Oct. 29, 2020). “Courts in the Fourth Circuit and across the country have found document dumps of thousands of documents without a guiding index to be insufficiently specific for the purposes of Rule 33(d).” Id. at *5; Johnson Controls, Inc. v. Great Am. Ins. Co., No. 2:20-CV-3029-RMG, 2021 WL 5918620, at *6 (D.S.C. Mar. 29, 2021) (same, where the production was only 2,500 pages). Similarly with electronic documents: absent some agreement, it must be produced “in a form or forms in which it is *ordinarily maintained* or in a form or forms that are *reasonably usable*[.]” .” Rule 34(b)(1), SCRCP (emphasis added). The rule offers ample flexibility to ensure a cost-effective procedure for providing electronic discovery; but it never condones a dump of records that are not reasonably usable to the requesting party.

Loveless’s responses are the sort of document dump courts routinely reject as a violation of Rule 34. The way Loveless has produced Facebook records makes it difficult if not impossible to review or use as evidence in this case. Photos and messages are cut-off or incomplete. Many of the pages are simply blank grey or blank white space with no content whatsoever. It is difficult or impossible to determine the date or time of the information. Indeed, Stiles cannot even determine the period over which these records apply. The same is true for what appear to be text messages—they are incomplete and difficult to discern dates and times sent and to whom because they have been produced as a series of screenshots with no apparent organization.

Notably, in one instance (Doc. Req. No. 8) Loveless did specifically identify the responsive documents—13 pages of emails between his counsel and a reporter for The State Newspaper, which are identified by Bates number in the written response. Thus, the Court should conclude

that Loveless is not ignorant of the discovery rules or his obligations (indeed, he has very experienced counsel), he simply chooses not to follow them.

3. Interrogatory Nos. 6–7, 9–12, 15–16, 20, 23 & 28–30 have not been supplemented consistent with the Discovery Order.

Loveless has failed to supplement his interrogatories in one of three ways. As to many items, he persists in objecting to providing information the Court ordered him to provide. As to other items, he purports to offer a supplemental response, but the response is argumentative, not substantive, and tantamount to making no response at all. Finally, some items were simply ignored, and no supplemental information is offered.

a. Supplemental responses remain defiant (Interrog. Nos. 6, 23 & 28–29)

Loveless refuses to answer many of the items he was required to and has “supplemented” his responses with old and new objections. Consider a few examples.

He has interposed new objections in response to Interrogatory Nos. 28 and 29. His responses strongly suggest what the interrogatories seek to discovery—whether and how much he was paying individuals to promote content on social media: “Plaintiff’s campaigns have paid fees for Facebook pages, the amount of payments not immediately known. *Plaintiff again objects to providing any information regarding Loveless Commercial Contracting LLC.*” Ex. A at Supp. Interrog. Resp. No. 28 (emphasis added). This information is probative because Stiles believes that at the same time Loveless was pressing this claim to silence her, he was paying for favorable social media activity to bolster his reputation in the community.

In response to Interrogatory No. 6, seeking legal authority for the allegation in Paragraph 6 of the Complaint, Loveless doubled down on the very objection the Discovery Order overruled:

Neither Plaintiff nor his counsel will disclose work produce or legal strategy. Plaintiff intends to seek and obtain reversal of the order granting judgement on the

pleadings, and disclosing work product and legal strategy at this point would be damaging to Plaintiff's position.

Ex. D at Supp. Resp. No. 6. This is a frivolous assertion for the reason the Court already explained. See Discovery Order, 5 (citing Rule 33(a), (d), SCRCP). Likewise with Interrogatory No. 23, where Loveless has unilaterally decided he will not itemize civil and criminal matters for a company that he discloses as having an economic interest (i.e., Loveless Commercial Contracting LLC) because he "continues his objection[.]" See Ex. D at Supp. Resp. No. 23.

b. Supplemental information is argumentative, not substantive (Interrog. Nos. 7 & 9).

Some responses purport to offer supplemental information but, in fact, advance only argument. See Ex. A at Supp. Resp. Nos. 7 ("... Plaintiff and his counsel do not believe this to be an exhaustive list, but will supplement if additional information is located for this ridiculous abuse of process lawsuit.") & 9 ("Stiles is legally responsible...").

c. Supplemental responses ignore the Order to supplement (Interrog. Nos. 10, 11, 12, 15, 16, 20 & 30)

In some cases, Loveless simply fails to offer a supplemental response. In response to Interrogatory Nos. 10, 11, and 12, asking which terms of Facebook Stiles purportedly violated and for legal authority that supports the notion that one user is civilly liable to another user for violating those Facebook terms, Loveless fails to offer any supplemental response. Likewise with Interrogatory No. 15, asking him to state specific conduct described in the Complaint. When he first answered this interrogatory, Loveless failed to offer a specific response, claiming: "On information and belief," Stiles failed to comply with the obligations of a Facebook administrator. But those are the same obligations he refuses to identify in response to Interrogatory Nos. 10, 11, and 12. If there are no clear obligations or no specific conduct, Loveless must state as much. Stiles is entitled to discovery the basis for the factual claims in the Complaint—in part because that

factual predicate (or lack thereof) goes to the core of Stiles' abuse of process claim. Loveless cannot simply ignore these questions because he has no good answer.

The same for Interrogatory No. 16 (seeking specifics as to the purportedly defamatory statements and who made them) and 20 (seeking the identification of all phones, tables, and laptops owned by Loveless). Loveless was ordered to answer these items and has failed to do so. Indeed, considering the significant gap in his document production, the answer to Interrogatory No. 20 is highly probative to the task of locating responsive discovery.

Concerning Interrogatory No. 30; that item seeks dates, times, and communications between Loveless's counsel and Stiles, Paul Osmundson (who later brought a FOIA lawsuit against District 5) and lawyers now representing Osmundson (among others). Loveless's counsel met with these individuals and exchanged emails with them about her possible representation of Osmundson in the FOIA lawsuit before precipitously declining the engagement. The supplemental response claims the information has already been furnished in response to a request to admit (RTA), but that is not correct. That response reads:

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.

The RTA response fails to provide any of the information requested by Interrogatory No. 30. Notably, it does maintain that Loveless's counsel took meetings with "prospective clients, proposed witnesses, and other legal counsel" but claims those communications were privileged

and confidential. If Loveless's counsel intends to stand on that claim, she must (and Interrogatory No. 30 requires her to) detail the dates, times, communicants, and nature of these purportedly privileged communications so Stiles can evaluate its merit.²

4. None of the interrogatories are verified by Loveless.

Loveless still has not furnished a verification of his interrogatory responses as required by Rule 33(a), SCRCP ("Each interrogatory shall be answered separately and fully in writing under oath, ..."). Verification is an important accountability mechanism required by the rule. Particularly so in a case such as this, where a recalcitrant litigant persists in resisting a discovery order.

CONCLUSION

If a party fails to obey a discovery order, the court can "make such orders in regard to the failure as are just," including refusing to allow the disobedient party to support or oppose claims, striking a pleading, holding the disobedient party in contempt, and awarding fees and costs. Rule 37(b)(2), SCRCP. When determining an appropriate sanction, a court should consider the nature of the discovery, posture of the case, willfulness of the disobedient party, and the degree of the prejudice. Griffin Grading & Clearing, Inc., 334 S.C. 193, 199, 511 S.E.2d, 716, 719 (Ct. App. 1999). Contempt is the willful disobedience of a court order, which can be punished in the discretion of the court provided there is a clear evidentiary record to support the contempt citation. Wilson v. Walker, 340 S.C. 531, 538, 532 S.E.2d 19, 22 (Ct. App. 2000).

Stiles believes contempt or some other remedial sanction is warranted. The scope and nature of the initial violations (prompting the Discovery Order), the duration of this discovery dispute, and Loveless's continued intransigence in complying all mitigate in favor of sanctions.

² Stiles does not contend that the Discovery Order overruled third-party claims of privilege if, in fact, such claims exist.

Only when faced with a motion for a rule to show cause, did Loveless portend to comply by dumping 8,000 pages of documents. As explained, he has not made any true effort to collect responsive documents, and his written responses continue to obfuscate in the same manner that prompted the Discovery Order. This is willful, disobedient conduct.

In her motion, Stiles suggested the Court require Loveless to appear and show cause with testimony given under penalty of perjury, that she be awarded fees and costs associated with this dispute, and that Loveless be fined \$25,000 per week until he complies with the Discovery Order. She submits that these remedies remain appropriate among the many others Rule 37 might allow.

Respectfully submitted,

s/Christopher P. Kenney
Christopher P. Kenney (SC Bar No. 100147)
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808 Lady Street, Suite D7 (29201)
Columbia, SC 29202
(803) 546-3695
cpk@chriskennedy.law

ATTORNEY FOR
DEFENDANT LESLIE STILES

January 23, 2023
Columbia, South Carolina.

Exhibit A

(Plaintiff's First Supplemental
Responses to Interrogatories)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless,	)	Civil Action No.: 2022-CP-40-01364
	)	
Plaintiff	)	
vs.	)	
	)	SUPPLEMENT NO. 1¹
Lesley Ann Stiles a/k/a	)	PLAINTIFF'S RESPONSE TO FIRST
Leslie Lou Stiles,	)	SET OF INTERROGATORIES
	)	
Defendant	)	

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

¹ These supplemental responses are provided over objections previously asserted, those renewed in the supplemental responses, and Plaintiff expressly reserves the right to seek appellate review of the order dated December 21, 2022, at the appropriate time and in the appropriate forum.

facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

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 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 witnesses 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.

SUPPLEMENTAL RESPONSE NO. 1 Objection. Neither Plaintiff nor his counsel will disclose work product or legal strategy. Plaintiff intends to seek and obtain reversal of the order

granting judgment on the pleadings, and disclosing work product and legal strategy at this point would be damaging to Plaintiff's position.

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 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.

SUPPLEMENTAL RESPONSE NO. 1: Several of the Facebook pages on which the defamatory statements appeared have had their names or titles changed (some multiple times) since this lawsuit was brought, and the administrators or others who control the content of the pages have made it impossible for Plaintiff and/or his counsel to personally obtain current information without the assistance of materials that have been subpoenaed from Facebook but not yet obtained. Plaintiff improperly refused to provide in her discovery responses the full contents of the group of which she was administrator, which was originally called Deep Dive into D5. Kevin Scully originated a page called OneD5 what was private and inaccessible to Plaintiff and his counsel but we do not know the current status of that page since Mr. Scully became a candidate for public office. Also existing at one time (current status unknown) are Explore Lexington Richland District 5 BOT, Learn About Lex/Rich D5, Citizens of The Town of Irmo and Surrounding Friends, Primary Stakeholders of LexRich5 and the D5 Dumpster Fire. Many persons who previously posted to various Facebook pages under their own names later posted with pseudonyms. Plaintiff and his counsel do not believe this to be an exhaustive list, but will supplement if additional information is located for this ridiculous abuse of process

lawsuit.

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.

SUPPLEMENTAL RESPONSE NO. 1: The date on which Plaintiff was granted access to “Learn About” is not known to him nor is it within the knowledge or records of Plaintiff’s counsel.

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.

SUPPLEMENTAL RESPONSE NO. 1: Stiles is legally responsible for all posts made on any Facebook page for which she serves as administrator, notwithstanding any order issued in this proceeding. Stiles personally has posted the following, the dates of all of her posts are not within the knowledge or control of Plaintiff or his counsel, and Plaintiff herself has refused to produce her own postings.

- “Dr. Ross is only working part time for full price.”

- Leslie Anne shared a link: “ LR5 school board member sues constituent for criticizing him on Facebook.” On or about 3.17.2022
- “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.” On or about April 13, 2022.
- “This lawsuit is a bully tactic designed to shut me up and scare other parents from participating in our school district.” On or about April 13, 2022.
- “I believe the hypocrisy with the censure also must be mentioned. Mr. Loveless had an AG opinion requiring his recusal from certain matters and he refused for a length of time. . . Trustee Gardner has broken many of the same board policies with her actions . . . “ On or about March 2, 2022
- “I didn’t know he was a reader. . . There was an Ethics Commission opinion that he should recuse himself from certain discussion and voting.” On or about March 2, 2022
- “Chair Hammond, Ms Hines and Mr. Hogan were present, participated in discussions and voted to dismiss Dr. Melton. Please do not be fooled into thinking that they were in any way passive bystanders to this event. That is untrue. They now realize how this is impacting the district and are trying to walk back this PR disaster (from their point of view) – they were fully invested in this decision. ” On or about June 16, 22021
- “. . . it is a tax advantage to Akil and this is all about money. You cannot seriously say this saves D5 money. We are paying a contract buyout

(226k) for an unbelievably talented Dr Melton and then to top it off we are now paying a foundation 175k plus monthly stipend of 1200\$/month. This does not in any way shape or form save D5 money. This ridiculous board has cost this district money. And Dr Ross is an astute business man and took advantage of this situation offered by a Board who is blinded by the opportunity to control school operations. . . It's clear who will be in charge and it isn't Dr Ross." Date not currently known information in possession of defendant, who violated discovery by refusing to disclose. . Grammatical and punctuation errors in original.

- "Will LR5 sue their critics in ongoing staffing drama. The school board will let them." On or about August 24, 2021.
- "Interesting that the Board again acts without transparency. . . Ross was given a 3 year contract, through 2025. Also, although inexperienced at the district office level – it appears (bc the specifics were not given) Ross may be paid more than Dr Melton." January 10, 2022. Punctuation errors in original.
- "Trustee Loveless owns a company that is a subcontractor for the vendor that has been hired by D5 to build PWES. This represents an economic interest with the vendor, which is a potential conflict of interest. Because Mr. Loveless is a public official he has an ethical duty to recuse himself from any attempt to influence decisions of the D5 Board of Trustees or D5 Admin related to that vendor." February 25, 2021
- "Unfortunately, it is true that Trustee Loveless did not comply with this

opinion from the SC Ethics Commission. . . . The SC Ethics Opinion also clearly states that Mr. Loveless must be recuse himself . . . “ Date not presently known information in possession of defendant, who violated discovery by refusing to disclose. . . .

- “Mr. Loveless violated his ethical duties by trying to influence D5 Board and Dr. Melton numerous times from his March 24, 2020 letter to Dr. Melton, to his statements in the September 14, 2020 Board meeting, and the numerous emails he has sent to Dr. Melton and D5 Admin about the PWES project. . . the fact is as a public official Mr. Loveless has an ethical duty to recuse himself. And that duty began March 2020.” Date not presently known, information in possession of defendant, who violated discovery by refusing to disclose.
- “The SC Ethics Opinion also clearly states that Mr. Loveless must be recuse himself from any votes, deliberations, and other actions on the matter. It 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. In fact, Mr. Loveless has continued to knowingly violate the opinion and has made little attempt to even appear to comply with the direction publicly (finally submitting a written recusal in Feb 2021). However, in every public board meeting since the opinion was issued Mr. Loveless has continued to deliberate, discuss, attempt to influence, and make accusations regarding the construction of PWES. . . .” Date not presently known, information in

possession of defendant, who violated discovery by refusing to disclose.

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 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.

SUPPLEMENTAL RESPONSE NO. 1: Tyler Tucker. See his letter to Defendant dated July 21, 2021.

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.

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.

SUPPLEMENTAL RESPONSE NO. 1 – Every post which has ever appeared on Deep Dive, the contents of which Defendant wrongfully refuses to produce in discovery.

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

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1: <https://www.lexrich5.org>

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

RESPONSE: Objection. Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1: Office 803. [REDACTED]. Cell 803 [REDACTED]

Email: [REDACTED]@lovelesscontracting.com

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.

SUPPLEMENTAL RESPONSE NO. 1: All computers and cell phones used by Plaintiff is owned by Loveless Commercial Contracting LLC. The LLC uses cloud backup. Plaintiff has not done anything specific to provide additional protection from loss of data on electronic devices.

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.

SUPPLEMENTAL RESPONSE NO. 1: Personal meeting July 15, 2021

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.

SUPPLEMENTAL RESPONSE NO. 1: No.

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.

SUPPLEMENTAL RESPONSE NO. 1:

Plaintiff continues his objection to disclosing information regarding litigation in which

Loveless Commercial Contracting LLC has been a party. Plaintiff individually has been a party to five (5) other lawsuits.

1. Kenneth B. Loveless v. Thomas Paine Askey, Case No. 93-CP-40-03819. Personal injury. Settled.
 2. Kenneth B. Loveless v. Fred J. Frank and Macco Contracting, Case No. 86-CP-40-5280. Contract dispute. Settled.
 3. Kenneth B. Loveless v. Kevin Scully, Case No. 2022-CP-40-01307, pending.
 4. Kenneth B. Loveless v. William T. Butler and Sprint Inc., Case No. 2013-CP-32-00241. Claim for false imprisonment, malicious prosecution, negligence, slander and abuse of process. After Defendant's motion for summary judgment was denied, case settled.
 5. Domestic action, divorced, awarded custody of two minor children. Plaintiff declines to provide specifics as an unreasonable invasion of privacy.
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.

SUPPLEMENTAL RESPONSE NO. 1: No.

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.

ROA 000682

Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1: No.

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.

SUPPLEMENTAL RESPONSE NO. 1: No.

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.

SUPPLEMENTAL RESPONSE NO. 1: No.

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.

SUPPLEMENTAL RESPONSE NO. 1: Plaintiff's campaigns have paid fees for Facebook pages, the amount of payments not immediately known. Plaintiff again objects to

providing any information regarding Loveless Commercial Contracting LLC.

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.

SUPPLEMENTAL RESPONSE NO. 1: See answer to No. 28.

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.

SUPPLEMENTAL RESPONSE NO. 1. This has already been answered in the original response, to which Plaintiff objected, but then answered.

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

December 22, 2022

Exhibit B

(Plaintiff's First Supplemental
Responses to Document Requests)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless,	)	Civil Action No.: 2022-CP-40-01364
	)	
Plaintiff	)	
vs.	)	
	)	SUPPLEMENTAL NO. 1¹
Lesley Ann Stiles a/k/a	)	PLAINTIFF'S RESPONSE TO
Leslie Lou Stiles,	)	REQUEST FOR PRODUCTION
	)	
Defendant	)	

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.

SUPPLEMENTAL RESPONSE NO. 1: 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.

SUPPLEMENTAL RESPONSE NO. 1: Objection, calls for release of trial strategy.

Preserving his objection, plaintiff produces all relevant documents in his possession, other than those that are protected by attorney-client privilege, please see documents produced as KLOVLESS_SUPPRFP000001 – KLOVLESS_SUPPRFP007851. Plaintiff continues his review of documents in his and his counsel's possession and will produce other documents that become known to him or his counsel while this counterclaim remains pending at the trial court.

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

RESPONSE: None.

¹ These supplemental responses are provided over objections previously asserted, those renewed in the supplemental responses, and Plaintiff expressly reserves the right to seek appellate review of the order dated December 21, 2022 at the appropriate time and in the appropriate forum. Additionally, since Plaintiff's claim has been dismissed by order dated December 22, 2022, these responses are furnished only as the responses relate to Defendant's counterclaim against Plaintiff.

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.

SUPPLEMENTAL RESPONSE NO. 1: See Plaintiff's Supplemental Response No. 2 to Interrogatory #2 above, which include all documents that may have been referenced in Plaintiff's First Supplemental Responses #1 to Interrogatories and which will be supplemented as stated.

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.

SUPPLEMENTAL RESPONSE NO. 1: Preserving his prior objections, Defendant is unable to separate those documents he provided to his counsel versus those documents his counsel obtained from third-party sources prior to filing suit and/or prior to filing of the counterclaim. Preserving his objection, please see documents identified in Supplemental Response No. 1 to Interrogatory No. 2, above, which includes all nonprivileged documents in his or his counsel's possession that may be responsive to this request and which will be supplemented as stated.

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.

SUPPLEMENTAL RESPONSE NO. 1: Preserving his prior objections, and with no ability to access any documents exclusively maintained by Lexington-Richland School District Five

since he is no longer privy to documents available to the District, please see documents identified in Supplemental Response No. 1 to Request No. 2 above, which includes which contain any and all documents within Plaintiff's custody and control including all materials received by him during his service as a member of the Board of Trustees that remain in his possession and which will be supplemented as stated.

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.

SUPPLEMENTAL RESPONSE NO. 1: Preserving his prior objections, and with no ability to access any documents maintained by Lexington-Richland School District Five since he is no longer privy to nonpublic documents exclusively available to the District, the majority of the materials requested here are equally available to Plaintiff as to Defendant, and may be found at <https://www.lexrich5.org/Page/29486> and <https://www.lexrich5.org/Page/13591>. By way of additional response, please see documents identified in Supplemental Response No. 1 to Request 2 above, which include any and all documents within Plaintiff's custody and control which may be responsive to this Request including those which came into his possession while a member of the School Board, and which will be supplemented as stated.

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.

SUPPLEMENTAL RESPONSE NO 1: Attached hereto are copies of counsel's emails with Bristow Marchant dated September 9, 2022, June 27, 2022, June 23, 2022, April 11, 2022, and April 5, 2022. These are identified as MARCHANTKL0001 through

MARCHANTKL0013.

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 previously served.

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

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1: See Facebook pages for Ken Loveless and Ken Loveless for School Board, both public sites equally available to Plaintiff as Defendant. Additionally, some of the documents produced in Supplemental Response No. 1 to Request No. 2 contain postings made by Ken Loveless and will be supplemented as stated.

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

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1: None of which Plaintiff is aware, unless the documents produced in Supplemental Response No. 1 to Request 2 above, may include documents that are responsive to this request, and communications Plaintiff may have had with his counsel, which are privileged. Documents identified in Supplemental Response No. 1 to Request 2 above will be supplemented as stated above.

12. All communications with Jason Valek.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1: Reserving all rights, these are produced in Supplemental Response No. 1 to Request No. 2 set forth above, which contain all

communications known to Plaintiff or his counsel to exist; there are posts from Jason Valek on social media contained in the documents produced and which will be supplemented if any responsive documents are located.

13. All communications with Stacey Dillworth Price.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1 : None of which Plaintiff is aware, unless the documents previously identified and produced herein may be responsive to this request. The documents produced in Supplemental Response No. 1 to Request No. 2 will be supplemented as stated and if any communications with Stacey Dillworth Price are found while this counterclaim remains pending before this Court, they will be produced.

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.

SUPPLEMENTAL RESPONSE NO. 1: Reserving all prior objections, none of which Plaintiff is aware. However, please see documents identified in Supplemental Response No. 1 to Request No. 8, to the extent Marchant contacted Plaintiff or his counsel in response to “this lawsuit, Stiles or Kevin Scully.”

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

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1: Preserving all objections previously made, any and all responsive documents are included in the documents identified in Supplemental Response No. 1 to Request No. 2 above and will be supplemented as identified above.

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

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1: Preserving all objections previously made, any and all responsive documents are included in the documents identified in Supplemental Response No. 1 to Request No. 2 above and will be supplemented as stated above.

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.

SUPPLEMENTAL RESPONSE NO. 1: Preserving all objections previously made, any and all responsive documents are included in the documents identified in Supplemental Response No. 1 to Request No. 2 above. If any additional responsive documents are located while this counterclaim remains pending before this Court, the responses will be su

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.

SUPPLEMENTAL RESPONSE NO. 1: Preserving all objections previously made, any and all responsive documents are included in the documents identified in Supplemental Response No. 1 to Request No. 2 above.

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.

SUPPLEMENTAL RESPONSE NO. 1: Preserving all objections previously made, any and all responsive documents are included in the documents identified in Supplemental Response No. 1 to Request No. 2 above. Further answering this Request, the documents identified in Supplemental Response No. 1 to Request No. 2 above include all records Plaintiff has been able to locate through the offices of his prior counsel, Herb Louthian. KLOVLESS_SUPPRFP007852 – KLOVLESS_SUPPRFP008056.

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.

SUPPLEMENTAL RESPONSE NO. 1: Preserving all objections previously made, any and all responsive documents are included in the documents identified in Supplemental Response No. 1 to Request No. 2 above which will be supplemented as stated.

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.

SUPPLEMENTAL RESPONSE NO. 1: Preserving all objections previously made, any and all responsive documents are included in the documents identified in Supplemental Response No. 1 to Request No. 2 above, however, Plaintiff is not currently aware of any responsive documents.

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.

SUPPLEMENTAL RESPONSE NO. 1: Preserving all objections previously made, any and all responsive documents are included in the documents identified in Supplemental

Response No. 1 to Request No. 2 above which will be supplemented as stated.

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.

SUPPLEMENTAL RESPONSE NO. 1: Preserving all objections previously made, any and all responsive documents are included in the documents identified in Supplemental Response No. 1 to Request No. 2 above.

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 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.

RESPONSE: Irrelevant. Abusive. Made in bad faith. Manipulative. Sanctionable.

SUPPLEMENTAL RESPONSE NO. 1: Preserving all objections previously made, any and all responsive documents are included in the documents identified in Supplemental Response No. 1 to Request No. 2 above.

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.

SUPPLEMENTAL RESPONSE NO. 1: Preserving all objections previously made, any and all responsive documents are included in the documents identified in Supplemental Response No. 1 to Request No. 2 above.

[signature block next page]

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

January 6, 2023

I, Beth Cogan, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of Supplemental Response to RFP on all
counsel of record and *Pro Se* parties by electronic mail.
Date: 1/6/2023 Signed: Beth K Cogan

RECEIVED
Jan 27 2023
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
CHIEF JUSTICE JEAN H. TOAL,
Case No. 2022-CP-40-01364

Kenneth B. Loveless, ...Appellant,

v.

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

NOTICE OF APPEAL

Appellant Kenneth B. Loveless appeals from the trial court's Order that granted Defendant's Motion to Compel, Deem Matters Admitted and for Sanctions filed December 21, 2022, that was received by Appellant on December 21, 2022. Appellant appeals from the trial court's Order that granted Defendant's Motion for Judgment on the Pleadings filed December 22, 2022, that was received by Appellant on December 22, 2022, and from the Order that denied Motion for Reconsideration filed on January 10, 2023, that was received by Appellant on January 10, 2023. Appellant also appeals from the trial court's Form 4 Order filed January 12, 2023, that was received by appellant on January 12, 2023. Copies of the orders are attached hereto as **Exhibit A, Exhibit B, Exhibit C and Exhibit D.**

s/ Desa Ballard
Desa Ballard (S.C. Bar No. 498)
Harvey M. Watson III (S.C. Bar No. 74053)
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January 27, 2023

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ATTORNEY FOR INTERVENOR SOUTH CAROLINA PRESS ASSOCIATION



ELECTRONICALLY FILED 2023 Jan 27 9:22 AM RICHLAND COUNTY COMMON PLEAS CASE#2022CP4001364

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Kenneth B. Loveless,

C/A No.: 2022-CP-40-01364

Plaintiff,

RECEIVED

Jan 27 2023

SC Court of Appeals

v.

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

**ORDER GRANTING DEFENDANT'S
MOTION TO COMPEL, DEEM
MATTERS ADMITTED
AND FOR SANCTIONS**

Defendant.

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.

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.

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

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

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.

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), SCRCF (“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.

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]



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

Electronically signed on 2022-12-21 09:55:10 page 9 of 9

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EELEECOTRONICALLY FILED - 2022 DEC 21 10:26 AM - RICHLAND - COMMON PLEAS - CASE# 2022CP4001364



ELECTRONICALLY FILED - 2023 Jan 27 9:22 AM - RICHLAND COUNTY 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
FIFTH JUDICIAL CIRCUIT

C/A No.: 2022-CP-40-01364

RECEIVED
Jan 27 2023

SC Court of Appeals

**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 an 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).

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.* §

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

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

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.

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

(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

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 FOLLOWS]



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 signed on 2022-12-21 10:10:20 page 11 of 11

ROA 000718

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ELECTRONICALLY FILED 2023 Jan 27 8:23 AM RICHLAND COMMON PLEAS CASE#2022CP4001364

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

KENNETH B. LOVELESS,

C.A. No. 2022-CP-40-01364

Plaintiff,

v.

**ORDER DENYING PLAINTIFF'S
MOTION TO RECONSIDER**

LESLEY ANN STILES A/K/A
LESLIE LOU STILES,

Defendant.

RECEIVED

Jan 27 2023

SC Court of Appeals

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]

ROA 000719



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

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ROA 000720

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

FORM 4

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:

RECEIVED
Jan 27 2023
SC Court of Appeals

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

Date

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-Fileers or who are appearing pro se. See Rule 77(d), SCRCp.

[illegible]



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 signed on 2023-01-11 17:23:54 page 4 of 4

ROA 000724

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 STATUS REPORT
ON MOTION FOR RULE
TO SHOW CAUSE**

On December 21, 2022, the Court entered an Order (the "Discovery Order") compelling Plaintiff Kenneth B. Loveless to disclose in response to 30 interrogatories and 25 document requests and deeming 18 requests to admit as admitted as a sanction for discovery abuse. On January 5, 2023, when Loveless failed to disclose within the time ordered by the Court, Defendant Leslie Stiles moved for a rule to show cause. The Court held a hearing on January 27, 2023, during which Stiles reported Loveless had still not complied with the Discovery Order and detailed major gaps in the Loveless production and deficiencies in the manner of production. Interrogatory responses also remained defective. Loveless claimed, in part, that he was attempting to comply, but the potentially responsive information was too voluminous to meet the deadline. The Court gave Loveless until February 28, 2023, to fully and finally comply and ordered the parties to report thereafter as to what, if any, discovery issues remain outstanding. Stiles now reports as follows:

1. **Loveless did not meet the February 28 deadline to complete supplementing his discovery responses.** On February 28, 2023, Loveless served his second supplemental responses to document requests (**Exhibit A**) along with 13 PDF files with documents. Based on the representations of Loveless' counsel on January 27, there are 80,000 potentially responsive emails

and other categories of documents that do not appear to have been produced (more on that below). Loveless did not supplement his interrogatory responses. On March 3, 2023, Loveless served second supplemental responses to interrogatories (**Exhibit B**) that failed to remedy any defect cited in the Discovery Order or the rule to show cause.

2. **Loveless is unwilling to furnish the texts in an electronic form that would allow chronological review and review of attached images.** The bulk of Loveless' supplemental production is 12 PDF files representing Cellebrite digital forensic reports of Loveless' text messages with potential witnesses in this case. These phone extraction reports comprise approximately 7,600 pages with 14,683 unique instant or text messages spanning from 2018 to 2023 between Loveless and 12 potential witnesses. However, these reports are not chronologically organized and the content (e.g., photos, etc.) are tiny thumbnail images that cannot be downloaded or viewed at a resolution large enough to use them. On March 1, 2023, the undersigned contacted Loveless' counsel and asked for an Excel version of the Cellebrite reports and for a production form that allowed access to the attached images (**Exhibit C**). When Loveless' responded without answering these questions, counsel pressed for specific answers to the questions posed and suggested Loveless produce the Celebrite files in .ufdr form (i.e., the Celebrite native production file). See Ex. C. In response, Loveless claimed he was entitled to reimbursement of \$4,390 if Stiles wanted the files in another format. Stiles noted her disagreement, explaining "a PDF report that is not in chronological order and that does not allow the user to access all the content is not reasonably usable within the meaning of the rule." Ex. C. Unless the parties agree or the court orders otherwise, a responding party must produce electronically stored information (ESI) "in a form or forms in which it is ordinarily maintained or in a form or forms that are reasonably usable[.]" Rule 34(b)(1), SCRCP. The PDF reports are neither. The format in which Celebrite collections are

“ordinarily maintained” is the company’s proprietary .efdr file format that can be loaded and manipulated by a Celebrite reader. This would be an acceptable production form. Alternatively, Stiles invited Loveless to simply reproduce the report in Excel format and produce the images contained in the texts in native format. Neither is acceptable to Loveless because, in their current form, it is extremely difficult to review 14,683 text messages across 12 different reports that are not in chronological format. Celebrite is a common phone extraction tool with many user-friendly options for searching, organizing, and producing content. Loveless should not be permitted to choose the least accessible format when a usable format is available at no additional cost.

3. **Loveless persists in interposing non-specific, boilerplate objections, including objections the Court already overruled.** In her January 23, 2023, memorandum in support of her motion for a rule to show cause, Stiles argued Loveless continued to stand on objections the Court overruled, explaining Loveless’ first supplemental responses “renewed” and “expressly reserved” objections the Discovery Order overruled and imbedded *new* reasons for withholding discovery in a footnote. See Def.’s Mem., 1–2. This intransigence persists. See Ex. A.

4. **Document Request have not been supplemented consistent with the Discovery Order.** In her January 2023 memorandum, Stiles argued Loveless both failed to label and organize documents *and* he failed to specifically respond to Document Request Nos. 1–2, 4–7 & 9–25. These problems largely persist. While the 13 PDF files Loveless produced have been labeled with numbers that correspond to specific categories (Stiles takes no issue with this practice), many categories still simply reference a dump of 7,851 pages of documents and leave it to Stiles to ferret out whether responsive information is, in fact, contained within that disorganized dump of non-chronological, incomplete images. See Def.’s Mem. 5–7 (filed Jan. 23, 2023) (“The way Loveless has produced Facebook records makes it difficult if not impossible to review or use as evidence in

this case. Photos and messages are cut-off or incomplete. Many of the pages are simply blank grey or blank white space with no content whatsoever.”). Instead of correcting this production and organizing it, Loveless’ most recent “supplement” continues to reference and incorporate this document dump as purportedly responsive to many categories of documents. See Ex. A at Resp. Nos. 1–2, 4–5, 10–11, 15–17, 21–25. Accordingly, as to these items, Loveless has made no supplement and still relies on the document dump that prompted the Court’s last hearing and order. Further, during that hearing, Loveless’ counsel claimed her client had not complied with the Discovery Order because they lacked sufficient time to wade through 80,000 emails that had been collected and were being reviewed in anticipation of producing them. Aside from a handful of additional emails produced in response to Document Request No. 20, there is no evidence that any of those 80,000 emails have been produced by Loveless here.

5. **Loveless again fails to supplement interrogatories.** The Discovery Order overruled objections and required Loveless to fully disclose in response to 30 interrogatories. That did not happen. In her January 23, 2023 memorandum, Stiles argued Loveless failed to supplement Interrogatory Nos. 6–7, 9–12, 15–16, 20, 23 & 28–30, explaining Loveless’ responses (1) continued to stand on overruled objections, (2) offered argumentative, non-substantive responses, (3) simply ignored some interrogatories, and (4) failed to submit a verification. See Def.’s Mem., 7–10. The most recent “supplement” (Ex. B) fails to resolve *any* of these deficiencies.

* * *

This dispute concerns discovery Stiles served on April 13, 2022. It has required two hearings and three orders (one written, two oral) simply to reach this impasse. Based on the foregoing and Loveless’ counsel’s concession at the last hearing that there are some 80,000 potentially responsive emails yet to be produced, this dispute is far from over. One might have

expected Loveless to take discovery seriously after the Court observed his conduct reflected “a lack of seriousness” and “an intentional departure from the discovery rules[.]” Discovery Order, 3. He did not. During the January 27, 2023 hearing, the Court generously offered Loveless 30 more days to do what he long should have done, while warning he risked having his Reply/Answer to Stiles’ counterclaim struck. And yet, here we are.

Stiles’ prior motions seeking sanctions have urged the Court to compel disclosure, overrule objections, and deem matters admitted—all of which it has done. Thus far the Court has declined to order Loveless to pay fees and costs or fine him \$25,000 per week until compliance is had. Some further penalty is necessary. Stiles’ arguments in her motion for a rule to show cause and memorandum in support remain probative of the issues. She respectfully incorporates them here.

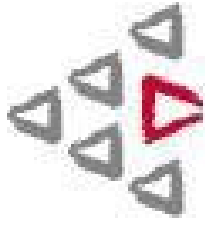
Respectfully submitted,

s/Christopher P. Kenney
Christopher P. Kenney (SC Bar No. 100147)
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street (29201)
Post Office Box 1090
Columbia, SC 29202
(803) 252-4848
(803) 252-4810 (facsimile)
cpk@harpootlianlaw.com

March 27, 2023
Columbia, South Carolina.

Exhibit A

(Loveless' Second Supplemental
Response to Document Requests)



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

February 28, 2023

Via Email (cpk@chriskennedy.law)
Christopher Kenney, Esquire
Chris Kenney Law
Post Office Box 1377
Columbia, South Carolina 29202

Re: *Kenneth B. Loveless v. Lesley Stiles*
Case No: 2022-CP-40-01364

Dear Chris:

Please find enclosed and hereby served upon you are Plaintiff's Second Supplemental Responses to Request for Production for the above-referenced matter. If you have any questions, please do not hesitate to call.

With warm personal regards, I am,

Sincerely yours,

s/Desa Ballard

Desa Ballard
desab@desaballard.com

cc: Via Email
Jay Bender, Esquire
Ken Loveless

ROA 000731

ELECTRONICALLY FILED 2023 Mar 27 9:03 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,	)	Civil Action No.: 2022-CP-40-01364
	)	
Plaintiff	)	
vs.	)	
	)	SUPPLEMENTAL NO. 2
Lesley Ann Stiles a/k/a	)	PLAINTIFF'S RESPONSE TO
Leslie Lou Stiles,	)	REQUEST FOR PRODUCTION
	)	
Defendant	)	

TO: CHRISTOPHER KENNEY, ESQUIRE, ATTORNEY FOR DEFENDANT

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all responsive documents were provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2 as KLOVLESS_SUPPRFP000001–KLOVLESS_SUPPRFP007851.

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all responsive documents were provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2 as KLOVLESS_SUPPRFP000001 – KLOVLESS_SUPPRFP007851.

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

SUPPLEMENTAL RESPONSE NO. 2: None.

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

SUPPLEMENTAL RESPONSE NO. 2: Plaintiff previously provided and

ROA 000732

identified all documents responsive to this request in Plaintiff's Supplemental Response No. 1 to Request No. 2.

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all non-privileged documents responsive to this request were previously provided and identified in Plaintiff's Supplemental Response No. to Request No. 2.

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, attached hereto are copies of documents responsive to this request, including materials received by Mr. Loveless during his service as a member of the Board of Trustees that remain in his possession identified as:

- HAMMOND 000001-000743
- HOGAN 000001-000543
- BLACKBURN 000001-000306
- GANTT 000001-000028
- HUTCHISON 000001-000029
- HUDDLE 000001-003355
- MELTON 000001-000195
- CATES 000001-000030
- GARDNER 000001-001418

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, attached hereto and identified as BOARD_MEETING 000001-BOARD_MEETING 001524 are copies of documents responsive to this request, including documents and material received by Plaintiff during his service as a member of the Board of Trustees that remain in his possession.

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.

SUPPLEMENTAL RESPONSE NO. 2: Any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 8 as MARCHANTKL0001 through MARCHANTKL0013. Plaintiff is unaware of any other documents that are responsive to this request.

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

SUPPLEMENTAL RESPONSE NO. 2: Please see the following link responsive to this request: <https://www.facebook.com/help/901690736606156>.

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

SUPPLEMENTAL RESPONSE NO. 2: Documents responsive to this request were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 10.

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

SUPPLEMENTAL RESPONSE NO. 2: To the extent that the documents produced
ROA 000734

in Plaintiff's Supplemental Response No. 1 were not responsive, Plaintiff is unaware of any documents that are responsive to this request.

12. All communications with Jason Valek.

SUPPLEMENTAL RESPONSE NO. 2: Please see the attached communications identified as VALEK 000001-VALEK 000404 which are responsive to this request.

13. All communications with Stacey Dillworth Price.

SUPPLEMENTAL RESPONSE NO. 2: Please see the attached communications identified as PRICE 000001-PRICE 000007 which are responsive to this request.

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, none of which Plaintiff is aware. Any and all documents responsive to this request were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 8.

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2 as KLOVLESS_SUPPRFP000001-KLOVLESS_SUPPRFP007851.

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all objections previously made, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2.

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2.

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2.

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all objections previously made, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 19, and included all records Plaintiff has been able to locate through the offices of his prior counsel, Herb Louthian.

KLOVLESS_SUPPRFP007852 – KLOVLESS_SUPPRFP008056.

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all objections previously made, please see the attached communications identified as SHEALY 000001-SHEALY 000614 which are responsive to this request.

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.

SUPPLEMENTAL RESPONSE NO. 2: **To the extent that the documents identified in Plaintiff's Supplemental Response No. 1 to Request No. 2 were not responsive, Plaintiff is not currently aware of any documents that are responsive to this request.**

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.

SUPPLEMENTAL RESPONSE NO. 2: **Preserving all prior objections, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2.**

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

SUPPLEMENTAL RESPONSE NO. 2: **Preserving all objections previously made, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2.**

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 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.

SUPPLEMENTAL RESPONSE NO. 2: **Preserving all objections previously made, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2 as KLOVLESS_SUPPRFP000001 – KLOVLESS_SUPPRFP007851.**

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all objections previously made, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2 as KLOVLESS_SUPPRFP000001 – KLOVLESS_SUPPRFP007851.

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.

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

February 28, 2023

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

I, Beth Cogan, an employee with Ballard & Watson, do hereby certify that on February 28, 2023, I served a copy of the **Supplemental No. 2 Response to Request for Production** in the above-captioned case on the following individuals by electronic mail using their email address listed in the Attorney Information System, addressed as follows:

Christopher Kenney, Esquire
Chris Kenney Law
cpk@chriskkenney.law

Jay Bender, Esquire
Baker, Ravenel & Bender, L.L.P
jbender@brblegal.com

s/Beth Cogan
Beth Cogan, Paralegal

February 28, 2023

Exhibit B

(Loveless' Second Supplemental
Response to Interrogatories)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless,	)	Civil Action No.: 2022-CP-40-01364
	)	
Plaintiff	)	
vs.	)	
	)	SUPPLEMENT NO. 2
Lesley Ann Stiles a/k/a	)	PLAINTIFF'S RESPONSE TO FIRST
Leslie Lou Stiles,	)	SET OF INTERROGATORIES
	)	
Defendant	)	

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.

SUPPLEMENTAL RESPONSE NO. 2:

- 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.
- F. Kim Benson. Plaintiff has a copy of a transcript from Benson's deposition.
- G. Ed White. Plaintiff has a copy of White's affidavit.
- H. Beth Hutchinson. No known 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.

SUPPLEMENTAL RESPONSE NO. 2:

- 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.
- F. Kim Benson has made statements on Facebook, including Deep Dive, and other online publications which are defamatory of Plaintiff and constitute libel *per se*. Stiles has republished and ratified the statements made by Benson.
- G. Ed White has made false statements to the public regarding Plaintiff which are

defamatory and constitute libel *per se*. Stiles has republished and ratified the statements made by White.

H. Beth Hutchinson was involved in a conspiracy with Ed White, and Kevin Scully to manufacture and publish false statements regarding Plaintiff. This will be supplemented after her deposition is taken.

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.

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

March 3, 2023

I, Beth Cogan, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of Second Supplemental Response to Plaintiff's Motion on all
counsel of record and *Pro Se* parties by electronic mail.
Date: 3/13/2023 Signed: Beth K Cogan

ROA 000743

Exhibit C

(Email Thread with Desa Ballard)

From: [Chris Kenney](#)
To: [Desa Ballard](#)
Cc: [Beth Cogan](#); [Haley Hubbard](#); [Bender, Jay](#); heather@harpootlianlaw.com
Subject: Re: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP
Date: Friday, March 3, 2023 12:32:59 PM

Please see #3 below. Thanks.

On Mar 3, 2023, at 12:20 PM, Desa Ballard <desab@desaballard.com> wrote:

I didn't understand you to say there is content that you cannot access. Please be more specific.

From: Chris Kenney <cpk@chriskenny.law>
Sent: Friday, March 3, 2023 12:19 PM
To: Desa Ballard <desab@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Cc: Haley Hubbard <haley@desaballard.com>; 'Bender, Jay' <jbender@brblegal.com>; 'heather@harpootlianlaw.com' <heather@harpootlianlaw.com>
Subject: RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP

I disagree that a PDF report that is not in chronological order and that does not allow the user to access all the content is reasonably usable within the meaning of the rule. I understand from your response below that you are unwilling to produce an Excel or .ufdr file. Please let me know if your position changes.

From: Desa Ballard <desab@desaballard.com>
Sent: Friday, March 3, 2023 10:46 AM
To: Chris Kenney <cpk@chriskenny.law>; Beth Cogan <Beth@desaballard.com>
Cc: Haley Hubbard <haley@desaballard.com>; 'Bender, Jay' <jbender@brblegal.com>; 'heather@harpootlianlaw.com' <heather@harpootlianlaw.com>
Subject: RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP

My client incurred expenses of \$4,390.23 for third party IT specialists to download the files you are requesting (Cellebrite). We converted them to PDF as a convenience to you to make them "reasonably usable" as required by Rule 34. We did not ask for payment of the significant expense in producing them. If you wish to reimburse my client's costs (for the outside IT people), I will ask him to consider providing you with the Cellebrite files.

Rule 34 (b)(1) requires us to produce the "electronically stored information. . . in a

ROA 000745

form that [is] reasonable usable, which we did. Rule 30(b)(2) does not require us to produce “electronically stored information in more than one form.”

Today’s supplemental ROGS will include witnesses whose relevance and knowledge we were not aware of at the time we initially responded to your ROGS.

We will continue to update our discovery responses in the future as information becomes available to us. We continue to learn more about Ms. Stiles’ actions against Mr. Loveless.

db

From: Desa Ballard
Sent: Wednesday, March 1, 2023 2:06 PM
To: Chris Kenney <cpk@chriskennedy.law>; Beth Cogan <Beth@desaballard.com>
Cc: Haley Hubbard <haley@desaballard.com>; 'Bender, Jay' <jbender@brblegal.com>; 'heather@harpootlianlaw.com' <heather@harpootlianlaw.com>
Subject: RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP

As soon as I can, not before Friday.

From: Chris Kenney <cpk@chriskennedy.law>
Sent: Wednesday, March 1, 2023 1:09 PM
To: Desa Ballard <desab@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Cc: Haley Hubbard <haley@desaballard.com>; 'Bender, Jay' <jbender@brblegal.com>; 'heather@harpootlianlaw.com' <heather@harpootlianlaw.com>
Subject: RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP

Your characterization below is not accurate, but that is beside the point. Could you please address my questions?

1. When do you plan to supplement those interrogatories? If there are other items, please let me know when I can expect to receive them.
2. Correct, the Cellebrite reports were provided in PDF, but the PDF reports are not chronological. I am asking for the Excel version of those reports. Alternatively, you could produce the .ufdr file and I will run my own reports from it.
3. There are thumbnail images and hyperlinks in the Cellebrite report, but they are tiny and do not open when I click the link. Can those images or other message

attachments be provided as native files? Or, if you send me the .ufdr file I can probably pull them myself.

And yes, I left Dick's office, but Heather is still assisting me. Thank you for your assistance with these items.

From: Desa Ballard <desab@desaballard.com>
Sent: Wednesday, March 1, 2023 11:42 AM
To: Chris Kenney <cpk@chriskennedy.law>; Beth Cogan <Beth@desaballard.com>
Cc: Haley Hubbard <haley@desaballard.com>; 'Bender, Jay' <jbender@brblegal.com>; 'heather@harpootlianlaw.com' <heather@harpootlianlaw.com>
Subject: RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP

We are supplementing the interrogatories, I realized I needed to add Kim Benson, since she and Ms. Stiles coordinated with one another in the filing of the ethics complaint against Jan Hammond (per Ms. Benson's SEC deposition). In light of the broad interpretation of discovery imposed by Justice Toal, there may be other people I need to name.

I will coordinate with my IT person; everything gathered in the Cellebrite collection was supposed to be provided in PDF, and I thought it was.

Remind me why Heather still needs to be copied? I thought you left Dick's office.

db

From: Chris Kenney <cpk@chriskennedy.law>
Sent: Wednesday, March 1, 2023 11:36 AM
To: Beth Cogan <Beth@desaballard.com>
Cc: Desa Ballard <desab@desaballard.com>; Haley Hubbard <haley@desaballard.com>; 'Bender, Jay' <jbender@brblegal.com>; 'heather@harpootlianlaw.com' <heather@harpootlianlaw.com>
Subject: RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP

Thank you, Ms. Cogan.

Desa,

A couple questions based on my partial review:

1. Do you intend to supplement your client's interrogatory responses?
2. Will you produce the Excel report for each of the Cellebrite collections? The PDF version of the reports are not chronological.

ROA 000747

3. Can you produce the Cellebrite collections in a manner that allows me to open or review the attached images? The current reports have hyperlinks, but they do not link to anything when I click them.

Please advise.

Adding Heather to the thread.

Thank you,
Chris

Christopher P. Kenney
CHRIS KENNEY LAW
Post Office Box 1377
808 Lady Street, Suite D7 (29201)
Columbia, South Carolina 29202
803-546-3695
cpk@chriskenny.law

CONFIDENTIALITY NOTICE: This email is sent by an attorney and may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are not authorized to read, print, copy, retain, or disseminate any part of this communication. If you have received this communication in error, please delete this message from your system immediately and notify the sender immediately. Thank you.

From: Beth Cogan <Beth@desaballard.com>
Sent: Wednesday, March 1, 2023 7:25 AM
To: Chris Kenney <cpk@chriskenny.law>
Cc: Desa Ballard <desab@desaballard.com>; Haley Hubbard <haley@desaballard.com>; Bender, Jay <jbender@brblegal.com>
Subject: RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP

Good morning,
I inadvertently attached the wrong response last night. Please see the attached Second Supplemental Response.
-B

From: Beth Cogan
Sent: Tuesday, February 28, 2023 8:01 PM
To: Chris Kenney <cpk@chriskenny.law>
Cc: Desa Ballard <desab@desaballard.com>; Haley Hubbard <haley@desaballard.com>; Bender, Jay <jbender@brblegal.com>
Subject: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second

ROA 000748

Supplemental Response to RFP

Good evening,

Please see the attached Second Supplemental Responses to RFP for the above-referenced matter. The production is being sent via dropbox. Let me know if you have any trouble accessing.

[https://www.dropbox](https://www.dropbox.com/) [REDACTED]
[REDACTED]

Kindest Regards,

-Beth

Beth Cogan, Paralegal
Ballard & Watson, Attorneys at Law
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803.796.1066 Facsimile
beth@desaballard.com
www.desaballard.com

ROA 000749

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless,	)	Civil Action No.: 2022-CP-40-01364
	)	
Plaintiff	)	
vs.	)	
	)	PLAINTIFF'S RESPONSE TO
Lesley Ann Stiles a/k/a	)	DEFENDANT'S STATUS REPORT ON
Leslie Lou Stiles,	)	MOTION FOR RULE TO SHOW
	)	CAUSE
Defendant	)	

Plaintiff Kenneth Loveless, by and through his undersigned counsel, submits the following response to Defendant's Status Report on Motion for Rule to Show Cause, filed on March 27, 2023.

On February 28, 2023, counsel for Loveless served on defense counsel his second supplemental responses to Defendant's request for production, in compliance with the February 28 deadline set by the Court. **Exhibit A.** Included with Loveless' responses were thirteen (13) PDF files containing responsive text messages between Loveless and other potential witnesses identified in Defendant's request for production as well as hundreds of pages of documents, correspondence, and notes from Board meetings. Upon serving these responses, Loveless' counsel advised Defendant that Loveless would provide supplemental responses to Defendant's interrogatories by March 3, 2023. As promised, Loveless then served upon defense counsel his second supplemental response to interrogatories just three days later on March 3, 2023. **Exhibit B.**

After this Court granted Defendant's Motion to Compel on December 2, 2022, Loveless anticipated the Form 4 orders that were expected by virtue of the Court's verbal instructions.¹

¹ The unsolicited proposed order granting the motion to compel, deem request to admit admitted, was gratuitously provided by Defense counsel, and during Christmas week, Plaintiff's counsel attempted to respond to the unexpected order. Several emails were exchanged between counsel and the Court, because Defense counsel submitted two

Nonetheless, Loveless immediately retained two IT specialists to perform data extractions from his phone and from the email server for his business Loveless Commercial Contractor Inc. in order for Loveless to produce responsive documents and correspondence.² As Loveless' counsel reported to the Court at the hearing on December 2, 2022, Loveless and his counsel genuinely felt confident in their objections to the discovery requests, which made clear Defendant intended to litigate this case beyond the narrow issues in the complaint. At that time, Loveless had done all he was required to do, but counsel "had not been able to find an extra 60 hours in a week" to finalize responses.

With the Court's extension to February 28, 2023, counsel and staff was able to properly review the massive amount of data obtained by Plaintiff's specialists in order to provide the supplemental responses the court ordered in granting Defendant's Motion to Compel. Affidavits from both IT specialists who assisted in gathering responsive data at Plaintiff's request, detailing the work they performed are attached and incorporated herein as **Exhibit D** and **Exhibit E**. Additionally, the undersigned counsel's IT specialist performed a separate data extraction for additional emails. The data extracted from both the cellphone and email server was provided to Defendant in PDF format. Each of the thirteen PDF files produced were organized and labeled with numbers that correspond to specific categories and specific document requests in compliance with Rule 34(b)(1), SCRCP.

Rule 34(b)(2), SCRCP provides that "a party need not produce the same electronically stored information in more than one form." Loveless has already provided Defendant with the

proposed orders (one of which was expected) and counsel attempted to respond to the Court in a timely manner as to the surprise unanticipated order. *See emails between Desa Ballard and Hon. Jean Toal* (copied to opposing counsel) dated December 22, 2022. **Exhibit C**.

² In doing so, Loveless' expenses were higher than they otherwise would have been because his retained experts worked over the Christmas and New Year's holiday to produce the raw data from which the requested materials could be extracted.

electronically stored information (“ESI”) in a form that is reasonably useable pursuant to Rule 34(b)(1) and is therefore not required to provide this data in another form especially when doing so would come at a great expense to Loveless. Defendant has requested that Loveless provide the cellphone data to her in the Cellbrite proprietary. UFDR format or an Excel format. Loveless has already incurred expenses of \$4,390.23 to extract these files and provide them in PDF format, which is a widely used and accepted form and completely in compliance with Rule 34. If Loveless were to provide Defendant with the ESI in either of the forms she has requested, it is estimated that this would cost Loveless an additional \$4,000.00 as indicated by Mr. Johnson’s affidavit.

Defendant claims that Loveless did not furnish the text messages in an electronic form that would allow chronological review and review of attached images. This claim is patently false. The PDF format allows Defendant to review the text messages in chronological order by date and time of the conversation, and any attachments to those messages can be opened and viewed. In preparing the discovery responses, counsel for Loveless reviewed the text message reports and was able to do so in chronological order.³ Furthermore, counsel for Loveless has previously informed defense counsel that, even though it is not required, Loveless would consider providing Defendant with the cellphone data in another format so long as Defendant agreed to reimburse Loveless for expenses incurred for that process (excluding his business correspondence). **Exhibit F.**

Stiles has requested the EIS be provided in the Cellbrite proprietary. UFDR file format, which if provided to Defendant, would allow her to access the entirety of Loveless’ cellphone data (including all Plaintiff’s work related to Loveless Commercial Contracting Inc.) to which she is not entitled. Loveless has confirmed with Lester Johnson, the IT specialist who performed the

³ Note Defendant’s “Status Report” is unsupported by affidavit, and there is no evidence Defendant utilized any IT expertise in attempting to accurately access the data produced.

cellphone extraction, that there is no way to separate the cellphone data that is responsive to Defendant's requests from the rest of Loveless' private cellphone data. See Exhibit A, ¶ 15. Additionally, as set forth in Mr. Johnson's affidavit, it is more than possible for Defendant and her counsel to review the text message data in chronological order and to review any attachments to those text messages through the Adobe Acrobat Professional software. This software is less than \$20.00 per month, which pales in comparison to the additional \$4,000.00 expense to Loveless to produce the data in the format requested by Defendant. It would be unreasonable to demand that Loveless undertake such a large expense to re-format this data when it has already been provided in a form that is reasonably usable.

Regarding Defendant's claims that Loveless has failed to supplement interrogatories, as set forth above, Loveless served second supplemental responses to Defendant's interrogatories on March 3, 2023. These supplemental responses to Interrogatories 1 and 2 contained witness information that Loveless learned after the Court's discovery Order was issued. Aside from Interrogatories 1 and 2, Loveless had no additional information with which to supplement any other interrogatories as his first supplemental response contained complete responses to those interrogatories. Prior to serving the second supplemental responses to Defendant's interrogatories, counsel for Loveless informed defense counsel of what information would be supplemented and when defense counsel could expect to be served with responses. **Exhibit G.** After serving the second supplemental responses, counsel for Loveless received no further communication from defense counsel regarding the sufficiency of those responses until being served with Defendant's status report on March 27, 2023. **Exhibit H.**

Defendant is using this "status report" (which is not recognized the South Carolina Rules of Civil Procedure) as a second Motion to Compel in an effort to obtain items for her convenience,

instead of recognizing the thoroughness and responsiveness of Plaintiff's supplemental responses.

Note, Plaintiff has appealed the Court's order dated December 22, 2022 (which dismissed on a Rule 12(b)(6) motion a novel issue) making expediting of this matter illogical and abusive.

Plaintiff has taken seriously his obligation to respond to and supplement discovery, and he has made every effort to comply with the Court's discovery order in this matter as set forth above. Defendant seeks further penalties against Plaintiff for his alleged failure to comply with the Court's order, however Defendant's request is without merit and premature considering that Defendant has admittedly not reviewed Plaintiff's discovery production in its entirety since it was not provided in Defendant's desired format. It would be unreasonable for Plaintiff to incur penalties for failing to comply with discovery when he has produced the requested documents and correspondence in a format that is reasonably usable and meets the requirements of Rule 34, SCRCF. Accordingly, Plaintiff Kenneth Loveless respectfully requests that this Court deny the Defendant's request to impose further penalty upon the Plaintiff.

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)

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haley@desaballard.com

ATTORNEYS FOR PLAINTIFFS

April 17, 2023

ROA 000754



STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kenneth B. Loveless.

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

**SUPPLEMENTAL NO. 2
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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all responsive documents were provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2 as KLOVLESS_SUPPRFP000001-KLOVLESS_SUPPRFP007851.

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all responsive documents were provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2 as KLOVLESS_SUPPRFP000001 – KLOVLESS_SUPPRFP007851.

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

SUPPLEMENTAL RESPONSE NO. 2: None.

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

SUPPLEMENTAL RESPONSE NO. 2: Plaintiff previously provided and
ROA 000755

identified all documents responsive to this request in Plaintiff's Supplemental Response No. 1 to Request No. 2.

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all non-privileged documents responsive to this request were previously provided and identified in Plaintiff's Supplemental Response No. to Request No. 2.

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, attached hereto are copies of documents responsive to this request, including materials received by Mr. Loveless during his service as a member of the Board of Trustees that remain in his possession identified as:

- HAMMOND 000001-000743
- HOGAN 000001-000543
- BLACKBURN 000001-000306
- GANTT 000001-000028
- HUTCHISON 000001-000029
- HUDDLE 000001-003355
- MELTON 000001-000195
- CATES 000001-000030
- GARDNER 000001-001418

7. To the extent not already produced, all communications and documents relating to any

ROA 000756

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, attached hereto and identified as BOARD_MEETING 000001-BOARD_MEETING 001524 are copies of documents responsive to this request, including documents and material received by Plaintiff during his service as a member of the Board of Trustees that remain in his possession.

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.

SUPPLEMENTAL RESPONSE NO. 2: Any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 8 as MARCHANTKL0001 through MARCHANTKL0013. Plaintiff is unaware of any other documents that are responsive to this request.

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

SUPPLEMENTAL RESPONSE NO. 2: Please see the following link responsive to this request: <https://www.facebook.com/help/901690736606156>.

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

SUPPLEMENTAL RESPONSE NO. 2: Documents responsive to this request were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 10.

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

SUPPLEMENTAL RESPONSE NO. 2: To the extent that the documents produced

ROA 000757

in Plaintiff's Supplemental Response No. 1 were not responsive, Plaintiff is unaware of any documents that are responsive to this request.

12. All communications with Jason Valek.

SUPPLEMENTAL RESPONSE NO. 2: Please see the attached communications identified as VALEK 000001-VALEK 000404 which are responsive to this request.

13. All communications with Stacey Dillworth Price.

SUPPLEMENTAL RESPONSE NO. 2: Please see the attached communications identified as PRICE 000001-PRICE 000007 which are responsive to this request.

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, none of which Plaintiff is aware. Any and all documents responsive to this request were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 8.

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2 as KLOVLESS_SUPPRFP000001-KLOVLESS_SUPPRFP007851.

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all objections previously made, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2.

ROA 000758

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2.

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2.

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all objections previously made, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 19, and included all records Plaintiff has been able to locate through the offices of his prior counsel, Herb Louthian.

KLOVLESS_SUPPRFP007852 – KLOVLESS_SUPPRFP008056.

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all objections previously made, please see the attached communications identified as SHEALY 000001-SHEALY 000614 which are responsive to this request.

ROA 000759

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.

SUPPLEMENTAL RESPONSE NO. 2: To the extent that the documents identified in Plaintiff's Supplemental Response No. 1 to Request No. 2 were not responsive, Plaintiff is not currently aware of any documents that are responsive to this request.

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all prior objections, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2.

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

SUPPLEMENTAL RESPONSE NO. 2: Preserving all objections previously made, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2.

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 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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all objections previously made, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2 as KLOVLESS_SUPPRFP000001 – KLOVLESS_SUPPRFP007851.

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.

SUPPLEMENTAL RESPONSE NO. 2: Preserving all objections previously made, any and all responsive documents were previously provided and identified in Plaintiff's Supplemental Response No. 1 to Request No. 2 as KLOVLESS_SUPPRFP000001 – KLOVLESS_SUPPRFP007851.

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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haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

February 28, 2023



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	FIFTH JUDICIAL CIRCUIT
Kenneth B. Loveless,	)	Civil Action No.: 2022-CP-40-01364
	)	
Plaintiff	)	
vs.	)	
	)	SUPPLEMENT NO. 2
Lesley Ann Stiles a/k/a	)	PLAINTIFF'S RESPONSE TO FIRST
Leslie Lou Stiles,	)	SET OF INTERROGATORIES
	)	
Defendant	)	

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.

SUPPLEMENTAL RESPONSE NO. 2:

- 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.
- F. Kim Benson. Plaintiff has a copy of a transcript from Benson's deposition.
- G. Ed White. Plaintiff has a copy of White's affidavit.
- H. Beth Hutchinson. No known statements.

ROA 000762

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.

SUPPLEMENTAL RESPONSE NO. 2:

- 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.
- F. Kim Benson has made statements on Facebook, including Deep Dive, and other online publications which are defamatory of Plaintiff and constitute libel *per se*. Stiles has republished and ratified the statements made by Benson.
- G. Ed White has made false statements to the public regarding Plaintiff which are

defamatory and constitute libel *per se*. Stiles has republished and ratified the statements made by White.

H. Beth Hutchinson was involved in a conspiracy with Ed White, and Kevin Scully to manufacture and publish false statements regarding Plaintiff. This will be supplemented after her deposition is taken.

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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226 State Street
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harvey@desaballard.com
haley@desaballard.com

ATTORNEYS FOR PLAINTIFF

March 3, 2023

I, Beth Cogan, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of Second Supplemental Response to RO65 on all
counsel of record and *Pro Se* parties by electronic mail.
Date: 3/3/2023 Signed: Beth K Cogan

ROA 000764



From: [Toal, Jean](#)
To: [Desa Ballard](#)
Cc: [Chris Kenney](#); [Beth Cogan](#); [Poswal, Chukwuzitelu](#); [Heather Hardy](#)
Subject: Re: Loveless v. Stiles, 2022-CP-40-001364: draft orders
Date: Thursday, December 22, 2022 1:30:49 PM

Desa I have already filed the order but I'll be glad to consider your filing and will treat it as a motion to reconsider.
Jean Toal

Sent from my iPhone

On Dec 22, 2022, at 11:42 AM, Desa Ballard <desab@desaballard.com> wrote:

*** EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***
I have 10 days to provide my comments on the proposed order for judgment on the pleadings. May I have until Dec. 27th?

db

From: Chris Kenney <cpk@harpootlianlaw.com>
Sent: Friday, December 16, 2022 5:57 PM
To: Desa Ballard <desab@desaballard.com>; Beth Cogan <Beth@desaballard.com>
Cc: Toal, Jean <JToal@sccourts.org>; Poswal, Chukwuzitelu <cposwal@sccourts.org>; Heather Hardy <heather@harpootlianlaw.com>
Subject: Loveless v. Stiles, 2022-CP-40-001364: draft orders

Ms. Ballard,
Pursuant to Chief Justice Toal's instruction, attached please find draft orders granting Defendant's motion to compel and motion for judgment on the pleadings. Please let me know if you have any questions.
Thank you,
Chris Kenney

Christopher P. Kenney
RICHARD A. HARPOOTLIAN, P.A.
1410 Laurel Street
Post Office Box 1090
Columbia, South Carolina 29202
(803) 252-4848
(803) 252-4810 (facsimile)

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ROA-000765

attachment.

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**ROA 000766**



|                         |   |                                   |
|-------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS      |
|                         | ) | FIFTH JUDICIAL CIRCUIT            |
| COUNTY OF Richland      | ) | Civil Action No: 2022-CP-40-01364 |
|                         | ) |                                   |
| Kenneth B. Loveless,    | ) |                                   |
|                         | ) |                                   |
| Plaintiff,              | ) | AFFIDAVIT                         |
| vs                      | ) | OF                                |
|                         | ) | LESTER J. JOHNSON JR.             |
|                         | ) |                                   |
| Leslie Ann Stiles a/k/a | ) |                                   |
| Leslie Loy Stiles,      | ) |                                   |
|                         | ) |                                   |
| Defendant               | ) |                                   |
| _____                   | ) |                                   |

Personally appeared before me Lester J. Johnson Jr., who being duly sworn, deposes and states as follows:

1. Affiant is a licensed Private Investigator in the State of South Carolina, License #2875, doing business as The Johnson Group LLC. Post Office Box 1200 Lexington, South Carolina, 29071.
2. Affiant is a retired law enforcement officer from the South Carolina Law Enforcement Division with twenty-eight years (28) of experience, of which fourteen (14) years included the investigation and/or management of cases related to technology crimes, which included electronic evidence. Affiant was the Special Agent in Charge of the South Carolina Computer Crime Center from its inception in 2001 until his retirement in 2007. Affiant investigated or managed over One Thousand (1000) cases during this time.
3. Since becoming a Private Investigator in 2011, Affiant has continued to investigate and conduct analysis of electronic evidence in numerous cases.
4. Affiant has received more than seven hundred (700) hours of training in the handling and analysis of electronic evidence from the following institutions: SEARCH, National White Collar Crime Center, Access Data, Encase, Celebrite and, Federal Bureau of Investigations, United States Secret Service, Paraben Corporation and Carnegie Mellon University.

ROA 000767



5. On December 22, 2022, Affiant was engaged by the Plaintiff to conduct a Digital Forensic Examination of evidence submitted by the Plaintiff. Affiant executed the proper evidence chain of custody and took possession of the evidence on this December 28, 2022.
6. Plaintiff asked the Affiant to examine the submitted evidence and provide a report showing text messages between Plaintiff and his wife and a submitted list of individuals.
7. Affiant created an image of the evidence provided.
8. Affiant analyzed the information and produced several reports showing the text conversations between the Plaintiff and his wife and the submitted names in a Portable Document Format (PDF), which was the requested format from the Plaintiff's Counsel.
9. Affiant provided the above-described reports to Plaintiff's Counsel, per the request of the Plaintiff, on January 5, 2023.
10. Affiant was contacted by Plaintiff's Counsel on March 28, 2023, and was requested to review a motion made by Counsel on behalf of the Defendant, asserting the reports provided did not present the information in chronological order, and the attachments were too small to see and did not open as an attachment. Defendants Counsel further requested the reports be provided in an Excel format or a .ufdr file of Plaintiff's phone be provided so that he may produce his own reports. Plaintiff's Counsel requested Affiant respond to these assertions in the form of an Affidavit.
11. Affiant reviewed the provided reports and conducted a random sampling of an excess of sixty (60) percent of the reported information and found all the reports provided the text conversations in chronological order by date and the time of the conversation on the date.
12. Affiant reviewed the provided reports and conducted a random sampling of an excess of sixty (60) percent of the reported information and found all the reports provided the attachments contained in the text messages were able to be opened and viewed without fail.

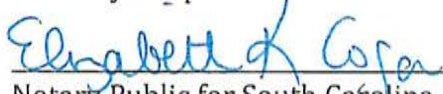
**ROA 000768**

13. Affiant accomplished the above actions described in paragraphs eleven (11) and twelve (12) of this Affidavit in Adobe Acrobat Professional, a readily accessible commercially available software. Sold for \$19.99 monthly subscription fee.
14. Affiant, to limit the risk and liability of maintaining another person's personal information, does not maintain the person's data. To re-create the reports in another format as requested by Defendant's Counsel would require Affiant to duplicate the earlier tasks at a cost of approximately \$4,000.00.
15. The .UFDR file requested by Defendant's Counsel would in fact allow him to produce his own reports, assuming he has access to the Cellebrite Physical Analyzer Software, however, the limited scope of information agreed be shared by the Plaintiff would be violated as to provide the .UFDR file would provide *all* of the information stored on the Plaintiff's phone at the time the image was extracted and there is no way to provide this file and protect the integrity of the remaining information from being accessed



Lester J. Johnson Jr.  
The Johnson Group LLC.

SWORN to before me this  
10th day of April 2023



Notary Public for South Carolina

My Commission Expires: 11-1-2023

ROA 000769



STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Kenneth B. Loveless,

vs.

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

Plaintiff

Defendant

) IN THE COURT OF COMMON PLEAS

) FIFTH JUDICIAL CIRCUIT

) Civil Action No.: 2022-CP-40-001364

) **AFFIDAVIT OF JAMES WIRTH**

Personally appeared before me, James Wirth, who being duly sworn, deposes and states as follows:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein.
2. I am the Microsoft 365 administrator for lovelesscontracting.com.
3. On December 28, 2022, I was engaged by the Plaintiff to extract emails from Plaintiff's email server in order for him to respond to discovery requests.
4. Plaintiff provided a list of email address for me to extract, and provide a report showing emails to and from Plaintiff's email address to list of email addresses.
5. On or about December 28, 2022, I pulled the Office365 reports and extracted data from Plaintiff's Microsoft Exchange mailbox.
6. I provided the above-described reports to Plaintiff's counsel, per the request of the Plaintiff, on December 28, 2022.

Respectfully submitted,

James Wirth

Sworn to before me this  
14<sup>th</sup> day of April, 2023.

Notary Public for SC

My commission expires: 3/7/26

ROA 000770





**From:** Desa Ballard <desab@desaballard.com>  
**Sent:** Friday, March 3, 2023 10:46 AM  
**To:** Chris Kenney <cpk@chriskkenney.law>; Beth Cogan <Beth@desaballard.com>  
**Cc:** Haley Hubbard <haley@desaballard.com>; 'Bender, Jay' <jbender@brblegal.com>; 'heather@harpootlianlaw.com' <heather@harpootlianlaw.com>  
**Subject:** RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP

My client incurred expenses of \$4,390.23 for third party IT specialists to download the files you are requesting (Cellebrite). We converted them to PDF as a convenience to you to make them "reasonably usable" as required by Rule 34. We did not ask for payment of the significant expense in producing them. If you wish to reimburse my client's costs (for the outside IT people), I will ask him to consider providing you with the Cellebrite files.

Rule 34 (b)(1) requires us to produce the "electronically stored information. . . in a form that [is] reasonable usable, which we did. Rule 30(b)(2) does not require us to produce "electronically stored information in more than one form."

Today's supplemental ROGS will include witnesses whose relevance and knowledge we were not aware of at the time we initially responded to your ROGS.

We will continue to update our discovery responses in the future as information becomes available to us. We continue to learn more about Ms. Stiles' actions against Mr. Loveless.

db



**From:** [Desa Ballard](#)  
**To:** [Chris Kenney](#); [Beth Cogan](#)  
**Cc:** [Haley Hubbard](#); "Bender, Jay"; "heather@harpootlianlaw.com"  
**Subject:** RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP  
**Date:** Wednesday, March 1, 2023 11:41:54 AM

---

We are supplementing the interrogatories, I realized I needed to add Kim Benson, since she and Ms. Stiles coordinated with one another in the filing of the ethics complaint against Jan Hammond (per Ms. Benson's SEC deposition). In light of the broad interpretation of discovery imposed by Justice Toal, there may be other people I need to name.

I will coordinate with my IT person; everything gathered in the Cellebrite collection was supposed to be provided in PDF, and I thought it was.

Remind me why Heather still needs to be copied? I thought you left Dick's office.

db

**From:** Chris Kenney <cpk@chriskennedy.law>  
**Sent:** Wednesday, March 1, 2023 11:36 AM  
**To:** Beth Cogan <Beth@desaballard.com>  
**Cc:** Desa Ballard <desab@desaballard.com>; Haley Hubbard <haley@desaballard.com>; 'Bender, Jay' <jbender@brblegal.com>; 'heather@harpootlianlaw.com' <heather@harpootlianlaw.com>  
**Subject:** RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP

Thank you, Ms. Cogan.

Desa,

A couple questions based on my partial review:

1. Do you intend to supplement your client's interrogatory responses?
2. Will you produce the Excel report for each of the Cellebrite collections? The PDF version of the reports are not chronological.
3. Can you produce the Cellebrite collections in a manner that allows me to open or review the attached images? The current reports have hyperlinks, but they do not link to anything when I click them.

Please advise.

Adding Heather to the thread.

Thank you,  
Chris

Christopher P. Kenney  
CHRIS KENNEY LAW

ROA 000772

Post Office Box 1377  
808 Lady Street, Suite D7 (29201)  
Columbia, South Carolina 29202  
803-546-3695  
[cpk@chriskenny.law](mailto:cpk@chriskenny.law)

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**From:** Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>  
**Sent:** Wednesday, March 1, 2023 7:25 AM  
**To:** Chris Kenney <[cpk@chriskenny.law](mailto:cpk@chriskenny.law)>  
**Cc:** Desa Ballard <[desab@desaballard.com](mailto:desab@desaballard.com)>; Haley Hubbard <[haley@desaballard.com](mailto:haley@desaballard.com)>; Bender, Jay <[jbender@brblegal.com](mailto:jbender@brblegal.com)>  
**Subject:** RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP

Good morning,  
I inadvertently attached the wrong response last night. Please see the attached Second Supplemental Response.  
-B

**From:** Beth Cogan  
**Sent:** Tuesday, February 28, 2023 8:01 PM  
**To:** Chris Kenney <[cpk@chriskenny.law](mailto:cpk@chriskenny.law)>  
**Cc:** Desa Ballard <[desab@desaballard.com](mailto:desab@desaballard.com)>; Haley Hubbard <[haley@desaballard.com](mailto:haley@desaballard.com)>; Bender, Jay <[jbender@brblegal.com](mailto:jbender@brblegal.com)>  
**Subject:** (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP

Good evening,  
Please see the attached Second Supplemental Responses to RFP for the above-referenced matter. The production is being sent via dropbox. Let me know if you have any trouble accessing.

<https://www.dropbox.com/scl/fo/3rwxftm9eco1r3w2owe54/h?dl=0&rlkey=udlnfdwskht662qao7exjuaai>

Kindest Regards,  
-Beth

ROA 000773

Beth Cogan, Paralegal  
Ballard & Watson, Attorneys at Law  
226 State Street  
West Columbia, South Carolina 29169  
803.796.9299  
803.796.1066 Facsimile  
[beth@desaballard.com](mailto:beth@desaballard.com)  
[www.desaballard.com](http://www.desaballard.com)

ROA 000774





**From:** [Chris Kenney](#)  
**To:** [Desa Ballard](#); [Beth Cogan](#)  
**Cc:** [Haley Hubbard](#); "[Bender, Jay](#)"; "[heather@harpootlianlaw.com](mailto:heather@harpootlianlaw.com)"  
**Subject:** RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP  
**Date:** Wednesday, March 1, 2023 1:09:14 PM

Your characterization below is not accurate, but that is beside the point. Could you please address my questions?

1. When do you plan to supplement those interrogatories? If there are other items, please let me know when I can expect to receive them.
2. Correct, the Cellebrite reports were provided in PDF, but the PDF reports are not chronological. I am asking for the Excel version of those reports. Alternatively, you could produce the .ufdr file and I will run my own reports from it.
3. There are thumbnail images and hyperlinks in the Cellebrite report, but they are tiny and do not open when I click the link. Can those images or other message attachments be provided as native files? Or, if you send me the .ufdr file I can probably pull them myself.

And yes, I left Dick's office, but Heather is still assisting me. Thank you for your assistance with these items.

**From:** Desa Ballard <[desab@desaballard.com](mailto:desab@desaballard.com)>  
**Sent:** Wednesday, March 1, 2023 11:42 AM  
**To:** Chris Kenney <[cpk@chriskenny.law](mailto:cpk@chriskenny.law)>; Beth Cogan <[Beth@desaballard.com](mailto:Beth@desaballard.com)>  
**Cc:** Haley Hubbard <[haley@desaballard.com](mailto:haley@desaballard.com)>; 'Bender, Jay' <[jrbender@brblegal.com](mailto:jrbender@brblegal.com)>; 'heather@harpootlianlaw.com' <[heather@harpootlianlaw.com](mailto:heather@harpootlianlaw.com)>  
**Subject:** RE: (Loveless v. Stiles 2022-CP-40-001364) Ltr to Kenney encl Second Supplemental Response to RFP

We are supplementing the interrogatories, I realized I needed to add Kim Benson, since she and Ms. Stiles coordinated with one another in the filing of the ethics complaint against Jan Hammond (per Ms. Benson's SEC deposition). In light of the broad interpretation of discovery imposed by Justice Toal, there may be other people I need to name.

I will coordinate with my IT person; everything gathered in the Cellebrite collection was supposed to be provided in PDF, and I thought it was.

Remind me why Heather still needs to be copied? I thought you left Dick's office.

db

**From:** Chris Kenney <[cpk@chriskenny.law](mailto:cpk@chriskenny.law)>  
**Sent:** Wednesday, March 1, 2023 11:36 AM **ROA 000775**

State of South Carolina )  
County of Richland )

In The Court of Common Pleas  
Fifth Judicial Circuit  
2022-CP-40-01364

Kenneth B. Loveless, )  
Plaintiff, )  
vs. )  
Leslie Ann Stiles, et al., )  
Defendants. )

---

Transcript of Record

December 2, 2022  
Columbia, South Carolina

B E F O R E:

The Honorable Jean Hoefer Toal, Judge

A P P E A R A N C E S:

Desa Ballard, Esquire  
Attorney for the Plaintiff

Christopher P. Kenney, Esquire  
Attorney for Defendant Stiles

ALSO PRESENT:

Jerry J. Bender, Esquire  
Attorney for South Carolina Press Association

Tucker A. Player, Esquire  
Attorney for Benson, Kohlar, Hutchison, et al.

James Bradley Ward, Esquire  
Attorney for Defendant Lexington-Richland School District 5

Sarah Kovalchek, Esquire  
Andrew S. Radeker, Esquire  
Taylor M. Smith, IV, Esquire  
Attorneys for Defendant Scully

Elizabeth B. Harris, CVR-M-CM  
Circuit Court Reporter

I N D E X

| <u>Witness/Description</u>                      | <u>Page No.</u> |
|-------------------------------------------------|-----------------|
| Motions for Scully and Stiles Combined. . . . . | 5               |
| Motions for Stiles. . . . .                     | 83              |
| Certificate Page. . . . .                       | 130             |

E X H I B I T S

| <u>No.</u> | <u>Description</u>      | <u>Ev.</u> |
|------------|-------------------------|------------|
|            | No exhibits introduced. |            |

1           THE COURT: I have many matters in items 1 through 15  
2 on my agenda that deal with two pending cases. One is  
3 Kenneth B. Loveless against Kevin Scully, and the other is  
4 Kenneth B. Loveless against Lesley Ann Stiles. Both of  
5 them have companion fact patterns and -- but they have some  
6 different issues and different attorneys. I am going to  
7 call them in the order that they are listed on the docket.  
8 So, I will call *Scully* first. So, Kevin B. Loveless --  
9 Kenneth B. Loveless against Kevin Scully. Attorneys for  
10 the plaintiffs are Ms. Desa Ballard and Harvey Watson;  
11 attorney for the defendant is Jerry Jay Bender and others.

12           MR. RADEKER: Drew Radeker here for defendant Scully,  
13 along with Taylor Smith and Sarah now Kovalchek who  
14 recently got married.

15           THE COURT: Very good.

16           MR. RADEKER: Mr. Bender is here for the South  
17 Carolina Press Association as a proposed intervener.

18           THE COURT: Well, the best thing you can do is have  
19 him at your side for any matters pertaining to this area of  
20 the law.

21           So, welcome, Mr. Bender.

22           MR. BENDER: That's a dangerous thing to hear, Your  
23 Honor.

24           THE COURT: That doesn't mean he always wins by any  
25 means.

1           Now, when we look at this constellation of matters,  
2       Mr. Bender, you're here for the Press Association?

3           MR. BENDER: That's correct, Your Honor.

4           THE COURT: All right.

5           MR. BENDER: A motion to intervene on behalf of the  
6       Press Association in both cases to contest the motion by  
7       the plaintiff in both cases for a confidentiality order or  
8       a gag order.

9           THE COURT: Right. Well, I don't mind hearing that  
10      first if that is amenable to the parties. It's a discrete  
11      issue, and so, Mr. Kenney, listen up to that. We're going  
12      to hear -- if you've got any opinions on the plaintiff's  
13      side for ---

14          Ms. Ballard, you represent the plaintiff in both  
15      actions, correct?

16          MS. BALLARD: I am, Your Honor. Thank you.

17          THE COURT: Good. Okay. Well, the rest of you  
18      lawyers for the parties themselves listen up, and I'm going  
19      to hear from Mr. Bender and Ms. Ballard on both of these  
20      motions.

21          Mr. Bender, you are the moving party, so you may  
22      proceed.

23          MR. BENDER: May it please the court, Your Honor? I'm  
24      here on behalf of the South Carolina Press Association,  
25      South Carolina not-for-profit corporation that represents

1 eighty-eight newspapers published in South Carolina. It  
2 moves to intervene under the authority of the South  
3 Carolina Supreme Court in *David v. Jennings*, which has  
4 sanctioned intervention as a mechanism by which third  
5 parties may intervene in proceedings to challenge closure  
6 orders and similar rulings by a court that affect First and  
7 Fourteenth Amendment rights of third parties.

8 I've cited cases in my memorandum which deal with the  
9 presumed unconstitutionality of prior restraint, and the  
10 First and Fourteenth Amendments protect not only  
11 publication but the right of the public to receive  
12 information. And intervention will allow the Press  
13 Association, on behalf of newspapers and the public  
14 at-large, to gather information in cases brought by, at the  
15 time, an elected public official claiming to have been  
16 defamed by publications critical of his public office. And  
17 I think there are legitimate reasons for intervention to  
18 allow interest other than those of the specific parties to  
19 be asserted, and for that reason I'd move for intervention  
20 on behalf of the Press Association. I'll be happy to  
21 address the First and Fourteenth Amendment issues now or  
22 wait until you make a determination on intervention,  
23 whichever pleases you.

24 THE COURT: Let's deal with intervention right now,  
25 and thank you.



1 I'll hear from Ms. Ballard. Ms. Ballard.

2 MS. BALLARD: Thank you, Your Honor. This -- these  
3 are two cases that were brought by Mr. Loveless, in his  
4 individual capacity against two other individuals.

5 THE COURT: I'm not hearing you very well.

6 MS. BALLARD: Oh.

7 THE COURT: How about check that microphone, and you  
8 kind of got to bring it to you. There you go.

9 MS. BALLARD: Can you hear me now?

10 THE COURT: I can hear you now. Thank you.

11 MS. BALLARD: Okay. I'm a cell phone commercial.

12 Your Honor, Mr. Loveless has brought these two  
13 lawsuits in his individual capacity against two other  
14 individuals. And the reason I originally asked to limit  
15 discovery is because the discovery that was served by Ms.  
16 Lyles, one of the two defendants, went into great detail  
17 about what went on during deliberations of the school board  
18 in the Lexington-Richland School District, none of which  
19 has anything to do with this matter. And I was attempting  
20 to limit the inquiries in this matter to the defamation  
21 action. And I'm -- my -- made my motion to limit the  
22 discovery or to issue a confidentiality order because I  
23 don't believe my client has authority to speak as to what  
24 went on in executive session or any other things involving  
25 the school board, nor do I think that is relevant to the

1 issues that are before the court in these two cases. And  
2 so it was my motion for my alternate requested relief which  
3 was confidentiality which triggered Jay's motion to  
4 intervene.

5 And I don't disagree with anything he said if this  
6 was, in fact, a matter of public interest. But I believe  
7 once we address the discovery issues, I think you'll agree  
8 that the Press Association and other press that's shown an  
9 interest in this case is expecting to hear things that  
10 probably aren't going to be litigated in this case. And I  
11 don't mind Jay being a party to it. My point is this case  
12 is not going to involve discovery into who said what during  
13 school board deliberations.

14 My client has sued as an -- sued as an individual, not  
15 as a member of the school board. I understand that affects  
16 his status as a public official, but we're not talking  
17 about public matters. We're talking about a private  
18 lawsuit between my client and two different individuals who  
19 have defamed him.

20 THE COURT: All right, Mr. Bender, anything further?  
21 She's consented to your intervening.

22 MR. BENDER: I can't argue against that.

23 THE COURT: Well, here's what we're going to do. I  
24 grant to motion for intervention by the Press Association  
25 in both the *Scully* case and Ms. Stile's case.

1           Ms. Ballard, you have a motion pending on the  
2           discovery issues which also gets into the issue of the  
3           confidentiality order.

4           MS. BALLARD: Yes.

5           THE COURT: I'm going to hear those now.

6           MS. BALLARD: Okay.

7           THE COURT: So, you may proceed.

8           MS. BALLARD: Thank you. Thank you very much, Your  
9           Honor. As I said ---

10          THE COURT: Now, let me just straighten out, by the  
11          way, for the record for the benefit of the court reporter  
12          and Ms. Bora. I've just ruled on item number 3, which is a  
13          motion to intervene on behalf of the Press Association.  
14          I've granted that motion.

15          Now -- and you help me here, Ms. Ballard. I want to  
16          proceed to the place on the agenda where we take up your --  
17          yes, it's ---

18          MS. BALLARD: It's number 5.

19          THE COURT: --- number 5, I think.

20          MS. BALLARD: Number 5.

21          THE COURT: And is there a parallel motion in the  
22          *Stiles* case?

23          MS. BALLARD: There is. That's also number 11.

24          THE COURT: Number 11?

25          MS. BALLARD: Yes.

1           THE COURT: All right. So, now we're going to proceed  
2 to hear the motions with respect to protective orders and  
3 confidentiality orders in the *Scully* case -- that's item  
4 number 5 motion -- and a motion for protection from  
5 discovery which is a little -- well, they're aligned, which  
6 is number 11.

7           Here's how we're going to do that. I'm going to allow  
8 Ms. Ballard, as the moving party, to present on both of  
9 these matters. I will then turn to Mr. Bender, who has  
10 intervened specifically on the confidentiality matter, and  
11 then I will turn to the attorneys for *Scully* and for  
12 *Stiles*. Is there any objection to proceeding that way?

13          Hearing none, you may proceed, Ms. Ballard.

14          MS. BALLARD: Thank you very much, Your Honor. As I  
15 said, my client in his individual capacity has filed a  
16 defamation action, has filed two defamation actions against  
17 two individuals. My client was at the time of the events  
18 which led to the filing of these lawsuits was a member of  
19 the school board of the Lexington-Richland District 5. I  
20 thought I brought a fairly simple lawsuit, and then I got  
21 discovery from Ms. Stiles's lawyers, who, who asked a  
22 number of questions to which I objected about who voted for  
23 what during executive session meetings of the school board  
24 and multiple, multiple things that had nothing to do with  
25 this case, well beyond the scope a Rule 26. So, I objected

1 to those individual questions as being beyond the scope of  
2 Rule 26.

3 And because I could foresee what was going to happen,  
4 I filed the motion so early on we could determine that the  
5 proceedings at the school board and who did what at the  
6 school board have nothing to do with this case. And so my  
7 motion is to limit discovery to the issues relevant to this  
8 case, which are defamation and the defenses that are raised  
9 in reference to defamation.

10 I think my client as a now former member of the school  
11 board can't answer those questions about what went on at  
12 the school board because of legislative protection. He,  
13 he's not supposed to talk about what went on in the school  
14 board, nor should he in his individual capacity as a  
15 plaintiff be asked to do so. It's irrelevant to this case.  
16 It has nothing to do with the, the issues to be litigated,  
17 whether statements were defamatory and whether they're  
18 protected under one or multiple other theories.

19 So, basically my motion was, one, for a limiting of  
20 discovery to matters that are relevant, which I didn't  
21 think was that dramatic a request. But I did in the  
22 alternative say if we are going to allow such broad,  
23 irrelevant discovery, that things related to the school  
24 board which my client used to be on should not be made  
25 public because as the state law requires by statute, the

1 school board acts as a group. No, no one member of the  
2 school board can speak for the school board or no former  
3 member of the school board can speak for the school board,  
4 and this case is not a case to inquire into who did what,  
5 who decided who to fire who, who decided what to vote on,  
6 on different matters. This is a defamation case. It has  
7 nothing to do with decisions that were made by the school  
8 district, by the school board.

9 So, by way of alternate relief, other than limiting  
10 the discovery to the relevant matters, which I thought was  
11 a given, I said if there is going to be broad-scale  
12 discovery, I would ask for confidentiality because my  
13 client can't speak for the school board, and I don't think  
14 he should be required to answer questions about school  
15 board actions since they're irrelevant to this case. That  
16 was why I filed the motion, the alternate request for  
17 confidentiality. Granting the limitation to relevant  
18 discovery solves the entire problem, Your Honor.

19 THE COURT: All right.

20 MS. BALLARD: Thank you.

21 THE COURT: Thank you, Ms. Ballard.

22 All right, Mr. Bender, I'll hear from you now both on  
23 the motion to limit discovery and the motion for  
24 confidentiality.

25 MR. BENDER: Thank you, Your Honor. There is a

1 misconception among school board members throughout the  
2 state of South Carolina that the Freedom of Information  
3 Act, which allows meetings closed to the public known as  
4 executive sessions, prohibit the later discussion by  
5 participants in that meeting of what happened. The law is  
6 silent on any obligation by any public official attending  
7 an executive session to restrict post-meeting comments by  
8 that person. And I think it's quite clear that even if  
9 you're on a school board, you do not surrender your own  
10 individual First and Fourteenth Amendment rights to comment  
11 on matters of public interest, even if the discussion can  
12 be allowed behind closed doors pursuant to statute.

13 That's the fundamental premise of the plaintiff's  
14 complaint here. He has complained that he's been defamed  
15 by comments on Facebook pages addressing issues on  
16 Lexington-Richland School District 5 and its board of  
17 trustees, but he wants to say I can't be compelled to  
18 disclose what was said in executive sessions or closed  
19 meetings, whether they were lawfully conducted or not. And  
20 in the alternative, if there is no limitation on discovery  
21 imposed on the defendants in these actions that I have  
22 brought, that they should be gagged from commenting on  
23 matters of public interest. That's a classic public  
24 restraint or prior restraint where the court or a  
25 legislative body seeks to restrict in advance of speech



1     what can be said.     And I have addressed the right to  
2     receive information as a corollary to the right of citizens  
3     to speak.

4             So, I think that in the defamation case, the  
5     defendants are entitled as part as a response to criticism  
6     of District 5 and the plaintiff in particular to learn what  
7     actions were taken on behalf of the school district or  
8     members of the board.   I don't think there's any cone of  
9     silence that exists under the Freedom Of Information Act  
10    that would restrict board members from being deposed about  
11    what happened in an executive session or any other meeting,  
12    whether it was lawfully conducted or not, and that's a  
13    question of the scope of discovery.   If, if Mr. Loveless  
14    doesn't want to be required to speak about his actions as a  
15    board member, dismissal of the case would solve his  
16    problem.

17            I think it's absurd he claims that this is a private  
18    lawsuit.   No.   It's a lawsuit brought because he was  
19    criticized as a public official, and he's using the public  
20    resources of South Carolina, the judicial system, to seek  
21    redress for criticism about him in his public capacity.   To  
22    restrict the parties from discussing what Mr. Loveless  
23    might reveal in discovery is an impediment to ascertaining  
24    the propriety of actions taken by this school board, which  
25    has thousands of students, hundreds of employees, and

1 millions of dollars in public funds to be spent in hopes of  
2 furthering the educational interest of children.

3 So, I think discovery has to be considered in the  
4 context of this particular lawsuit, and I think Mr.  
5 Loveless certainly can be asked about what was discussed in  
6 meetings of the school board, whether they were conducted  
7 lawfully or not. And then the participants in this  
8 litigation cannot be gagged to reveal what was said beyond  
9 what is in the code of professional responsibility that  
10 limits extrajudicial comment by the attorneys to those  
11 circumstances where the extrajudicial comment is reasonably  
12 calculated to prejudice the tribunal before which the case  
13 might be considered.

14 So, I think when you -- when you're asked to impose  
15 prior restraint, the plaintiff has to meet a strict  
16 scrutiny analysis: is there a compelling governmental  
17 interest being served by prior restraint? There is no  
18 governmental interest at stake here. There is the private  
19 interest of the plaintiff seeking to avoid disclosure of  
20 actions he and others took on behalf of the school board.

21 Would a prior restraint serve that governmental  
22 interest that would be irreparably harmed but for the prior  
23 restraint? Well, since there is no compelling governmental  
24 interest, there is nothing that prior restraint would serve  
25 to further that governmental interest. And then perhaps

1 the most difficult thing for a party seeking a prior  
2 restraint to establish is that this is the least  
3 restrictive alternative available to protect this  
4 compelling governmental interest. And since there is no  
5 governmental interest to be protected, there is nothing  
6 that would be the least restrictive alternative, for that  
7 reason, the confidentiality motion should be denied. Thank  
8 you.

9 THE COURT: Thank you, sir.

10 And anything in addition, Mr. Kenney, for your client,  
11 Scully?

12 MR. KENNEY: Your Honor, Chris Kenney on behalf of  
13 Lesley Stiles.

14 THE COURT: Stiles, okay.

15 MR. KENNEY: And thank you, Your Honor. May it please  
16 the court? As to this motion, Ms. Stiles would adopt all  
17 the arguments of the Press Association and make a few  
18 additional ones.

19 First of all, since it's apparently our discovery that  
20 prompted the motion, I think it's important to correct a  
21 couple of misconceptions about what the case is about. If  
22 you look at the Loveless complaint, the statements that are  
23 at issue in this case are listed in paragraphs 15 and 16 of  
24 that complaint. I'm not going to go through all of them.  
25 There's seven that purportedly were made by Ms. Stiles and

1 then twenty-six purportedly made by other people, but all  
2 of those statements, Chief, have to do with Mr. Loveless's  
3 service on school board.

4 So, so, the starting point for all of this is any of  
5 claims and of the defenses, including the defense of truth,  
6 begins from the starting point that we are talking about a  
7 public official's performance on a public body. That's the  
8 starting point.

9 The next point I would mention is -- I thought I  
10 understood Ms. Ballard to say that what prompted the motion  
11 was some ---

12 THE COURT: Well, let's stop at public official. Of  
13 course because it's a comment about a public official, the  
14 strictest scrutiny is made. That's the highest level of  
15 examination under the constitution about whether or not a  
16 libel or a slander is actionable, and that's, of course,  
17 *New York Times v. Sullivan*, *Harte Hanks*, and line of cases  
18 that talks about the highest level of scrutiny which is  
19 when a public official sues because of comment made that  
20 with less scrutiny might more -- might be more available  
21 for possible action. But when it's a public official  
22 operating in their public capacity and a comment is made  
23 about that, then there is the highest level of scrutiny  
24 from a constitutional standpoint as to whether the action  
25 made proceed. Is that basically what you're arguing in

1 terms of the character of this lawsuit as a lawsuit against  
2 a public official?

3 MR. KENNEY: That's exactly right, Your Honor, and,  
4 and one thing I would add to that is yes, there's the  
5 Loveless claim for defamation, the constitutional malice  
6 standard you described, defenses of truth, and others, but  
7 Ms. Stiles has also brought a counterclaim for abuse of  
8 process, and Your Honor will hear some argument about that  
9 perhaps later, later this morning.

10 But the point is, Your Honor, I heard Ms. Ballard say  
11 that what prompted the motion is our request for  
12 information about something that happened in executive  
13 session, and when we get to our motion to compel, Your  
14 Honor has the motion and attached to it discovery devices  
15 that we served: interrogatories, document requests, and  
16 requests to admit.

17 I'll be honest, Your Honor. I just looked back  
18 through them. We've got about thirty interrogatories;  
19 we've got a number of document requests and requests to  
20 admit. I do not see the discovery device that Ms. Ballard  
21 is describing that purportedly is seeking information about  
22 executive session. We do have some executive sessions  
23 issues in this case pertaining to the school board that is  
24 related to another motion. But in terms of the documents  
25 and interrogatories and requests to admit that we have

1 served on the plaintiff in this case, our requests are not  
2 seeking, asking him to reveal anything about what might  
3 reasonably be considered executive session material.

4 We're asking for communications. We are asking for  
5 agreement as to whether certain public statements are true  
6 or false. We're asking for him to identify legal authority  
7 that is the basis of his claim, and a number of other  
8 things that I'm not going to go through every one of them  
9 right now, but I do not see the purported offending  
10 discovery device that, that apparently brings us here to  
11 this motion.

12 And that brings me to my final point. With respect to  
13 the protective order, to be honest with, with Your Honor,  
14 until I was here this morning, I did not understand the  
15 basis for this motion because the motion does not describe  
16 any specific, particularized harm that would occur to Mr.  
17 Loveless for having to respond to discovery in the ordinary  
18 course that would allow the court to decide that some prior  
19 restraint or some confidentiality order is warranted.

20 And as Your Honor knows, typically the way we deal  
21 with this under Rule 26(c) is it's a balancing inquiry  
22 that, that occurs after a burden shifting. And so the way  
23 this works, the way it's supposed to work, at least, is the  
24 party objecting to discovery has to give us a reason as to  
25 why the discovery would cause annoyance, embarrassment,

1 oppression, or undue burden upon good cause shown. And if  
2 the court looks at the plaintiff's motion for a protective  
3 order here, there's no good cause for anything. Nothing is  
4 shown. That's no specific representation; there's no  
5 specific discovery device pointed to.

6 Now, that's the starting point and they fail under --  
7 to shift the burden to us because they make no showing.  
8 Then you move to the defendant, and we would have to come  
9 to the court and say, well, Your Honor, you ought to order  
10 the discovery because it's relevant to this defense or this  
11 claim and it's not undue ---

12 THE COURT: Well, relevance is not a determination in  
13 discovery phase. Discovery is allowed on matters that are  
14 relevant or may seek the -- or may lead to the discovery of  
15 relevant information. So, relevance is not be going to be  
16 a consideration here. I've not known in all the years I've  
17 been trying cases and hearing them of relevance being a  
18 touchstone here. So, you don't need to argue that is what  
19 I'm telling you.

20 MR. KENNEY: Thank you, Your Honor, and I, I agree.  
21 It's very broad. Discovery is very broad, but at that  
22 point we would come back and, and dispute the assertion of  
23 burden or harm.

24 THE COURT: Correct. It all focuses on the burden  
25 under 26(c).



1 MR. KENNEY: That's correct.

2 THE COURT: But not on the broad parameters of  
3 relevance.

4 MR. KENNEY: That's correct, Your Honor.

5 THE COURT: All right, sir.

6 MR. KENNEY: And after that point, then it's up to the  
7 court to, to weigh, to balance those two competing  
8 interests.

9 THE COURT: I understand.

10 MR. KENNEY: And, and, Your Honor, we don't get to the  
11 balancing because we've not -- they haven't shown good  
12 cause at the outset.

13 THE COURT: I understand.

14 MR. KENNEY: And so we just respectfully ask that the  
15 motion be denied. We have a motion to compel to deal with  
16 some of these particular items. Those ought to be dealt  
17 with in the ordinary course, not this prior restraint we,  
18 we just ---

19 THE COURT: Understood.

20 MR. KENNEY: Thank you.

21 THE COURT: All right, anything to add on behalf ---

22 MR. SMITH: No thank you, Your Honor.

23 THE COURT: --- on behalf of Scully?

24 MR. SMITH: Correct, Your Honor, and, and briefly, we  
25 also ---

1           THE COURT: You always say your name when we've got  
2 so ---

3           MR. SMITH: Taylor Smith here.

4           THE COURT: --- many lawyers. That's for the court  
5 reporter.

6           MR. SMITH: Taylor Smith for the defendant Kevin  
7 Scully, Your Honor, and briefly we'll just indicate the  
8 procedural stance of our case since it is slightly  
9 different from that of Ms. Stiles and her case so Your  
10 Honor can understand the difference there.

11           We have not served discovery in this case. In fact,  
12 it was the initial inquiry as to the deposing of Mr.  
13 Loveless in our case which gave rise to this motion being  
14 filed. And so, Your Honor, as to that burden shifting we  
15 just talked about, it's impossible in our case as there's  
16 no discovery to even consider that we filed. But, Your  
17 Honor, that all stems from the unique nature of this case  
18 to how -- the purpose for which it might've been brought,  
19 which is why we initially attempted to depose Mr. Loveless.

20           We also have an abuse of process counterclaim in this  
21 case, Your Honor, because we suspect that the unusual  
22 nature of this case may eventually lead to evidence that  
23 there was another purpose sought in bringing this.

24           Again, I also join in the statements made by counsel  
25 for the Press Association about the constitutional

1 infirmity of Your Honor possibly issuing an order to stop  
2 the speech of matters found aside from those of counsel  
3 governed under our rules.

4 And, Your Honor, I would also like to point out that  
5 he, Mr. Bender, is correct that there is no law concerning  
6 the executive session speech, what occurs not being  
7 prohibited thereafter.

8 Finally, Your Honor, I just want to point out that we  
9 are here on today are statements which Mr. Loveless brought  
10 before this court. As the plaintiff in this case, he had  
11 the ability to choose which statements would be of issue to  
12 harm his reputation allegedly.

13 THE COURT: Yeah, fourteen that he lists in the  
14 paragraphs with respect to Scully.

15 MR. SMITH: Correct, Your Honor, and so what I am  
16 indicating, Your Honor, is that he at this point cannot  
17 avail himself of saying that these matters are those things  
18 which can't then be sought to learn about their truth or  
19 potential, even that of opinion, which we might assert  
20 regarding his activity certainly as a public official when  
21 this action started on the school board.

22 Even looking at the complaint, Your Honor, you can see  
23 that the Facebook group which is referenced here, D5 and --  
24 D5 is, in fact, a group, a forum, if you will, established  
25 for the purpose of examining these public officials.

1 Clearly, Your Honor, a matter of public concern about this  
2 public official. So, Your Honor, I would just like to  
3 point that out in this case so Your Honor can see. We also  
4 respectfully ask that the motion be denied.

5 THE COURT: Thank you, sir.

6 Ms. Ballard, I'll come back to you for reply on all  
7 arguments.

8 MS. BALLARD: Thank you, Your Honor. I don't disagree  
9 with anything Mr. Bender said about the First Amendment  
10 and, and inquiry into the goings-on of government. I do  
11 disagree, though, with Your Honor's statement that  
12 relevance is not a legitimate factor to be looking at at  
13 this time. I think relevance is the critical issue to  
14 looking at this time, and relevance under Rule 26 is  
15 related to anything that's relevant or may lead to the  
16 discovery of relevant information, as you said.

17 THE COURT: Right.

18 MS. BALLARD: And the -- and in Mr. Scully's case, for  
19 instance, some of the, the statements that he made that are  
20 the basis of the defamation against him ---

21 THE COURT: Mr. Scully?

22 MS. BALLARD: Against Mr. Scully's lawsuit, yes.

23 THE COURT: Right. I'm looking at the fourteen  
24 statements right now.

25 MS. BALLARD: Okay. Just the first two I would:

1 Crooked Ken is an unethical hypocrite and a liar. And the  
2 second one is:

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

6 I don't know how inquiries into the operations of the  
7 school district and who ---

8 THE COURT: Ms. Ballard, number 3:

9 What do you get when you elect the dumbest people  
10 in the district to be in charge of education?  
11 Incompetent imbeciles embarrassing our district.

12 MS. BALLARD: Right.

13 THE COURT: 4: Why he is a loser.

14 5: Ethics violation. Waffle House quorums, FOIA  
15 violations. This board is much for following  
16 rules -- is not much for following rules. We  
17 don't have a board we can trust. Ten on board.  
18 You have to be concerned about ethics. Corrupt  
19 Ken Loveless proved to lie and ignore ethics  
20 guidelines. Crooked board trying to keep its  
21 misdeeds hidden, et cetera. Incompetent  
22 micromanaging by board. Last place Ken and Jan  
23 want to be is on the witness stand where they  
24 have to tell the truth. Ken proven liar, ethics  
25 violator, untrustworthy. Board settling personal

1           vendettas. Crooked Ken strikes again.

2           That's all the allegations, and the majority of them  
3 deal directly by words with board. Fourteen of them are  
4 involved with commentary made about the District 5 board  
5 and Mr. Loveless as a school board member, from what I can  
6 tell from the material that's been given to me.

7           Now, I'm not reciting those by way of saying they're  
8 true or not true or proper to have been said at all. So,  
9 please understood that in the first instance. We're  
10 talking about the relevance of discovery here. It's Mr.  
11 Loveless who has put these statements at issue.

12          MS. BALLARD: Correct.

13          THE COURT: In saying that these are defamatory and  
14 libelous and slanderous.

15          MS. BALLARD: Yes.

16          THE COURT: And, therefore, defendant is propounding  
17 discovery request in an effort to defend against the  
18 contention by plaintiff that these statements are libelous,  
19 slanderous, and defamatory.

20          It seems to me that relevance is not an issue that  
21 prevents the propounding of the discovery that is at issue  
22 right now. But beyond all that, it doesn't have to be  
23 directly relevant. It can lead to the discovery of  
24 relevant information. And in the years I've been in  
25 practice, I have seen almost never any restraint on

1 discovery if it touches upon the matters in contention  
2 between the parties, as these matters clearly do.

3 Now, you got the other thing, which is does the FOIA  
4 or some other provision of law prevent executive session  
5 matters from being discussed outside. I know of none. And  
6 then comes the question is there something so aggravating  
7 in a personal way under rule 26(c) that a confidentiality  
8 order should be propounded.

9 I, frankly, think the relevance issue is not a  
10 deciding factor, and you have not propounded anything that  
11 says specifically what should be balanced and weighed in  
12 26(c) to give you a confidentiality order. So, kind of  
13 help me with that piece of it.

14 MS. BALLARD: I'll be happy to, Your Honor. We don't  
15 get to that balancing issue because -- and let me give you  
16 some context. The first lawsuit that was brought to which  
17 my client was not a party was a lawsuit filed by the  
18 publisher of the *State* newspaper against the school  
19 district alleging that the school district had violated the  
20 Freedom on Information Act. My client's not a party to  
21 that, and that action has been dismissed.

22 But the gist of that action was, you know, who decided  
23 to either fire or talk the superintended into quitting and  
24 lots of things about the goings-on in the school district.  
25 No discovery occurred in that lawsuit to my knowledge other



1     than some affidavits that were filed. Because, I suppose,  
2     they couldn't get the answers that they wanted by the *State*  
3     bringing the lawsuit against District 5, they've decided by  
4     way of defense to these defamatory statements that they  
5     want to explore those same issues in this case.

6             My point is everything that the school board did is  
7     public record. All the votes are public record. They are  
8     recorded in the minutes. They're recorded who voted on  
9     what and what the exact question was, and if -- all that is  
10    already out there for the world to consume. Now what  
11    they're asking is, you know, what was your position about  
12    this and, you know, why did you do whatever you did.  
13    That's not relevant to whether these statements are  
14    defamatory, and, and that's why I say I can't get beyond  
15    the relevance issue because while ---

16            THE COURT: I completely disagree you about that.

17            MS. BALLARD: I understand you do. I understand you  
18    do, but I think it's important to protect Mr. Loveless's  
19    position on the scope of discovery that should be allowed  
20    in this action. What I, I said to somebody as I -- we were  
21    coming in, you know, I filed a simple defamation, and  
22    somebody's trying to turn it into an international  
23    incident.

24            THE COURT: Well, Ms. Ballard ---

25            MS. BALLARD: And that's what that ---

1 THE COURT: Well, Ms. Ballard ---

2 MS. BALLARD: That's what's happening.

3 THE COURT: Hold for a minute. I have nothing in here  
4 that goes to the *State* newspaper suit about the firing of  
5 the superintendent. All I've got is the averments that I'm  
6 looking at right now.

7 MS. BALLARD: Correct.

8 THE COURT: And in connection with those, his position  
9 about things, what he thought about things and so forth,  
10 questions about that cannot in discovery be objected to on  
11 relevance grounds. That is in Rule 26. Over time, courts  
12 were faced with problems of speaking objections and  
13 attempts to get the witness not to say anything. Now they  
14 do it by saying object to the form of the question. It  
15 drives me nuts when I read these depositions.

16 MS. BALLARD: I mean.

17 THE COURT: But both the federal courts and our courts  
18 have made it clear that relevance objections are not going  
19 to be a means of preventing discovery, preventing  
20 depositions of parties, and that kind of thing. The only  
21 thing in 26 that accommodates that at all is the personal  
22 embarrassment and so forth, and there you've got to discuss  
23 the specific things that are asked and balance it against  
24 the right of the litigant to ask those questions in the  
25 broader context of the lawsuit.

1           This is a lawsuit in which Mr. Loveless claims that he  
2 was defamed and libeled and slandered.

3           MS. BALLARD: Yes.

4           THE COURT: And he claims it on the basis of a whole  
5 bunch of things that have to do with the board meetings he  
6 attended. The fact that they're in executive session is  
7 not going to impact this discovery, and certainly not on  
8 the basis of relevance.

9           MS. BALLARD: Your Honor.

10          THE COURT: So, I don't understand that argument at  
11 all.

12          MS. BALLARD: Part of what you may not be aware of is  
13 that Lexington County School District 5 enacts policies  
14 that is -- are, are authorized by statute, and one of the  
15 policies that the district enacted years ago, long before  
16 Mr. Loveless was on the school board, was that matters that  
17 are discussed in executive is privilege are -- excuse me.

18          THE COURT: I'm very, I am very aware of those  
19 policies and have been for years, both as an attorney and  
20 as a judge. I don't know of any case that has ever said  
21 those policies bar examination of a witness in a deposition  
22 about matters that occurred in executive session. In, in a  
23 deposition, I'm not even aware of a ruling about the  
24 relevance as being of not -- of preventing examination on  
25 those matters. In the trial of a case, certainly relevance

1 will be something that could be considered, but we are  
2 talking now about discovery.

3 MS. BALLARD: Yes.

4 THE COURT: And talking about executive session  
5 matters, and that policy is not going to be something that  
6 prevents this discovery from taking place. How the witness  
7 answers, I have no idea.

8 MS. BALLARD: Your Honor.

9 THE COURT: And that may have to be explored further,  
10 but I see nothing in what is in front of me right now that  
11 would justify me from passing a confidentiality order or  
12 limiting the scope of discovery in what is otherwise a very  
13 normal matter.

14 MS. BALLARD: It is otherwise a very normal matter,  
15 and as we're having this dialogue, it occurs to me that  
16 the, the individual questions that are asked in  
17 depositions, for instance, or the individual questions that  
18 are asked in written discovery is probably a better place  
19 to examine whether they are pushing too far outside the  
20 scope of relevance.

21 THE COURT: Well, I don't think you're going to get  
22 any place with relevance as a means of instructing your  
23 client not to answer a question in the deposition. I just  
24 will say that to you. I find nothing that -- the only  
25 thing you've got is 26(c) and the ---

1 MS. BALLARD: Your Honor, I ---

2 THE COURT: --- personal embarrassment and things of  
3 that nature. And I see nothing now, since he's the one  
4 that put these matters at issue, that would intersect  
5 there, but I'm not predicting what happens in the future.

6 But for right now, I think, suffice it to say, I deny  
7 the motion to limit discovery, and I deny the motion to  
8 issue a gag order or a protective in this regard. I see no  
9 basis for either one in either case at the moment.

10 MS. BALLARD: Thank you so much, Your Honor.

11 THE COURT: All right.

12 MS. BALLARD: Appreciate it.

13 THE COURT: Now we go back to -- I've just heard  
14 number 5, 9, and 11, I think, 11.

15 And, Ms. Bora, that has been denied. That's 5 and 11,  
16 and now I go back to motion number 1. This is in the  
17 *Scully* case.

18 MS. BALLARD: Yes.

19 THE COURT: And so *Scully* folks can get assembled now.  
20 It looks like you are. No, not -- everybody's assembled,  
21 all right. This is ---

22 MS. BALLARD: Mr. Player is the moving party on that,  
23 Your Honor.

24 THE COURT: Ma'am?

25 MS. BALLARD: Tucker Player is the moving party on

1       that, Your Honor.

2           THE COURT: All right, Mr. Player.

3           MR. PLAYER: Yes, ma'am.

4           MS. BALLARD: He doesn't represent any of the parties.  
5       That was the only reason I made that distinction.

6           THE COURT: All right, and this is a motion to quash a  
7       subpoena, Mr. Player?

8           MR. PLAYER: Yes, Your Honor.

9           THE COURT: All right, and this is a subpoena for you?

10          MR. PLAYER: Me and about ten other people. Well,  
11       there were thirty-one actual targets originally. I don't  
12       represent all thirty-one of them, just a large group of  
13       about twelve.

14          THE COURT: Well, I need to know who I'm dealing with  
15       now. That's why I'm asking these questions. The pleadings  
16       say one thing, and I need to know exactly which subpoenas  
17       I'm being asked to quash.

18          MR. PLAYER: Well, one subpoena that was sent and is  
19       -- I believe is they're attempting to domesticate it in  
20       California where it is asking for all Facebook posts of  
21       thirty-one people, including me and my clients that are  
22       listed in the caption of my motion. And, quite frankly,  
23       they can't have them. Federal law is about as clear as it  
24       gets. I mean ---

25          THE COURT: I'm going to let you argue that in a

1 minute.

2 MR. PLAYER: Yes, Your Honor.

3 THE COURT: I just simply need to know who all we're  
4 talking about. I can't just rule in the abstract. I need  
5 all the people you're talking about that you're asking me  
6 to quash subpoenas for.

7 MR. PLAYER: Yes, Your Honor. I don't represent --  
8 these are the thirty-one people they targeted.

9 THE COURT: No. You tell me who you represent.

10 MR. PLAYER: Yes, Your Honor. Hold on one second,  
11 Your Honor.

12 THE COURT: You know, I see on the caption:

13 On Behalf of Kim Benson, Arlence Kohlar, Beth  
14 Hutchison, Laurene Mensch, Michelle Carpenter,  
15 William Salter, Sheena Wilson, April Alsup, Josh  
16 Gray, Danielle Gray, Joann Claspill, Mary Rose  
17 Satterfield, and Tucker Player.

18 This was electronically filed on September 21, 2022.  
19 Is that the group that you are asking for subpoenas to be  
20 quashed?

21 MR. PLAYER: Yes, Your Honor.

22 THE COURT: All right. Well, let's just be sure we  
23 know what we're doing. I can't deal with people that are  
24 not ---

25 MR. PLAYER: I understand, Your Honor.



1 THE COURT: --- here contesting, so.

2 MR. PLAYER: I apologize.

3 Essentially, they have requested the Facebook posts of  
4 thirty-one people, and all of these people were included in  
5 that subpoena. My understanding is they are attempting to  
6 domesticate it in California. Facebook's policy says they  
7 will not release this information. Federal law prohibits  
8 them from releasing this information. And then we have the  
9 Section 230 problems that go back to what we believe is the  
10 frivolous nature of this lawsuit to begin with.

11 THE COURT: Well, Mr. Player, let me try to get you  
12 focused a little bit, if I could. I am not dealing with  
13 Facebook at this time. Facebook certainly has the policies  
14 that they object whenever they are subpoenaed, and I'm not  
15 dealing -- I don't need to deal with them because they're  
16 not asked to do anything. These are subpoenas again for  
17 individuals for their emails, as I understand it.

18 MS. BALLARD: That's not correct, Your Honor. He's  
19 referring to one subpoena that I issued to Facebook.

20 THE COURT: To Facebook, okay, then let me just be ---

21 MS. BALLARD: Domesticated in California and served on  
22 Facebook.

23 THE COURT: Okay, and so you're asking Facebook to --  
24 not these individuals?

25 MS. BALLARD: Correct.

1 THE COURT: Okay.

2 MR. PLAYER: For our information.

3 THE COURT: I get that, Mr. Player. I'm just trying  
4 to figure exactly who I'm dealing with and what law  
5 pertains to them. If you're dealing with Facebook, now,  
6 then the federal legislation with respect to the issuance  
7 of the ---

8 MR. PLAYER: Information.

9 THE COURT: --- the giving of information about  
10 postings and so forth comes into play.

11 MR. PLAYER: Yes, Your Honor.

12 THE COURT: All right. So, what I'm trying to figure  
13 out is what status you got to raise those things. It's  
14 Facebook that's being asked, not you. Am I right?

15 MR. PLAYER: But they are asking for my private  
16 information, which I believe is being ---

17 THE COURT: Well, but I -- you know, I understand all  
18 that, but Facebook is the party that's being asked to be  
19 prevented from issuing these materials, right?

20 MR. PLAYER: Right, but those -- I have a personal,  
21 individual interest in that material.

22 THE COURT: You may well. I'm sure everybody does,  
23 but I'm being asked here to quash a subpoena directed to  
24 Facebook, and your privacy concerns are the area of the law  
25 that I can look at in this regard. I have to look at the

1 area of the law that deals with Facebook. It's the one  
2 being asked. If Facebook violates your confidentiality,  
3 then that's betwixt you and Facebook. The legal document  
4 that I am looking at right now is issued only as to  
5 Facebook. Am I not right?

6 MR. PLAYER: I, I think all of these ---

7 THE COURT: So, what authority have I got?

8 MR. PLAYER: Because the, the subpoena to Facebook,  
9 which is invalid on its face because of the federal law and  
10 is seeking information that has no basis in this case  
11 except to harass the witnesses that Mr. Loveless has chosen  
12 to harass, including an attorney that is tangentially  
13 albeit admitted in the case. But they're asking for text  
14 and pictures of me and my children in a private setting in  
15 Facebook.

16 THE COURT: I get how outraged you are that your  
17 personal emails are being asked, but you are not being  
18 asked to provide them at all. Who is asked to be providing  
19 them is Facebook. Facebook ---

20 MR. PLAYER: And, Your Honor ---

21 THE COURT: Let me ---

22 MR. PLAYER: Yes, Your Honor.

23 THE COURT: Let me finish first, if you don't mind.

24 MR. PLAYER: Yes. I apologize.

25 THE COURT: I'm not trying to offend you; I'm not

1     trying to denigrate your arguments. I got a big docket  
2     about this case, of which this is a small piece, and what  
3     I'm simply telling you is I don't see where I've got  
4     jurisdiction over Facebook right now to do anything.

5             You are asking me to quash a subpoena she directed to  
6     Facebook. Facebook apparently is taking all the action you  
7     would like them to take. At the present time, they're not  
8     cooperating with her a bit. She's having to domestic it in  
9     California. They have an array of lawyers that will deal  
10    with it, I feel sure. This is simply a question of my  
11    authority.

12            I'm not -- please understand me I'm not ---

13            MR. PLAYER: I understand, Your Honor.

14            THE COURT: --- trying to say that this isn't an  
15    invasion of your privacy and so forth and so on. I'm  
16    simply looking at my own authority to deal with this issue  
17    at the moment.

18            MR. PLAYER: Yes, Your Honor.

19            THE COURT: And that's, that's where I'm struggling.

20            MR. PLAYER: And, and if I could address that?

21            THE COURT: Thank you.

22            MR. PLAYER: She has to domesticate a South Carolina  
23    subpoena in California. A South Carolina subpoena issues  
24    from a South Carolina court. So, there is -- she has  
25    issued on -- as an officer of the court a subpoena on

1     behalf of these courts to California. The subpoena comes  
2     from here. It has to be valid here and then go to  
3     California and be domesticated. And what I'm saying, this  
4     is -- and it's an invalid subpoena. It should have never  
5     gone to California to start with because this court can't  
6     issue a subpoena for information that's protected under the  
7     federal law, and it has absolutely no basis in this  
8     lawsuit. That's what -- this court can send a subpoena for  
9     records for the lawsuit at which it is targeted. How are  
10    my Facebook posts or any of these witnesses who basically  
11    said nothing in a deposition ---

12           THE COURT: Mr. Player, Mr. Player, you're getting --  
13    you were mixing about ten different concepts together.  
14    You've got all the defense that everybody feels about their  
15    privacy being invaded by this very board subpoena. I get  
16    that. But the only issue before the court right now is  
17    whether I've got the authority, looking at this South  
18    Carolina subpoena, to make some determination right now  
19    about Facebook and whether Facebook violates the federal  
20    law if it responds to this subpoena. I just don't have  
21    anything in front of me that I feel gives me the authority  
22    to look at that.

23           Facebook apparently -- when this thing is domesticated  
24    in California and Facebook decides whatever it's going to  
25    say about responding to this subpoena, if Facebook decides

1 to respond by giving all this material up, then relief can  
2 be sought here by you if that is going to result in an  
3 invasion of your privacy here or perhaps in California. I  
4 don't know. I haven't looked that up, but ---

5 MS. BALLARD: I have, Your Honor. The motion to ---

6 THE COURT: Well, I'm going to get to you, Ms.  
7 Ballard.

8 MS. BALLARD: Okay. Thank you.

9 THE COURT: I'm going to get to you.

10 So, that's what I'm having heartburn about. I'm going  
11 to listen to Ms. Ballard, but what I will just assume, for  
12 purposes of this discussion, that this subpoena is very  
13 broadly asking for a lot of personal information that you  
14 all don't feel like you should give and that is very  
15 personal. And I get that, and to the extent those issues,  
16 I would deal with those because I don't think she's able  
17 because you would be making a 26(c) argument about personal  
18 nature of them and the injury you would suffer.

19 Those things I can deal with, but what I can't deal  
20 with -- at least right now, in my humble opinion -- is the  
21 issuing of the subpoena to a California corporation that  
22 she's attempting to domesticate there. There is nothing  
23 for me to look at right now because it hasn't been  
24 domesticated, and no request for Facebook can be even dealt  
25 with in terms of whether it will be honored or not.

1           What I would need in order to have South Carolina law  
2           start looking at this situation would be a situation in  
3           which Facebook decided it was going to give these up. That  
4           would be an amazing thing, in my view, and very unlikely to  
5           occur based about on what I know nationally about the  
6           litigation in this area. So, I don't think I need to spend  
7           a lot of time on this here and now, with great respect for  
8           your privacy concerns. I share them. I wouldn't like it  
9           either. I'm not on Facebook for many good reasons. That's  
10          one of them, but I understand what you're ---

11          MR. PLAYER: With that being said, Your Honor, I'll  
12          withdraw the motion. So, you don't have to hear Ms.  
13          Ballard's argument.

14          THE COURT: That's great. That's great. Thank you so  
15          much.

16          MR. PLAYER: Thank you.

17          THE COURT: The motion is withdrawn.

18          MS. BALLARD: Your Honor, since the motion's  
19          withdrawn, I won't go into ---

20          THE COURT: Exactly. You've got another ---

21          MS. BALLARD: I won't go into our argument.

22          THE COURT: --- fulcrum in which this can be explored.

23          MS. BALLARD: Correct.

24          THE COURT: Very good, legitimate points on all sides.

25          MS. BALLARD: Thank you.



1 MR. PLAYER: Thank you, Your Honor.

2 THE COURT: Withdrawn. That's number 1. Number 2 is  
3 similarly a motion to compel discovery from you, Mr.  
4 Player. Now, is that going to be withdrawn at the present  
5 time? Probably should be. Y'all don't have any issues  
6 between the two of you.

7 MS. BALLARD: Mr. Player has provided me with all the  
8 information he says he has. I take him at his word, so I  
9 do withdraw that motion.

10 THE COURT: So, we're going to -- that will be  
11 withdrawn?

12 MS. BALLARD: Correct.

13 THE COURT: And now we can come to number 4, which is  
14 the motion for Rule 11 sanctions, and this is in *Scully*  
15 now?

16 MS. BALLARD: Your Honor, this relates to a motion  
17 filed by Mr. Player seeking attorney's fees from my client  
18 on behalf of some people that I deposed in the *Scully*  
19 matter. He filed a lengthy motion for fees and costs.

20 THE COURT: Okay. Well, let me hear him on that.

21 MS. BALLARD: That's where it starts, and my motion  
22 comes after that.

23 THE COURT: I got you.

24 Mr. Player.

25 MR. PLAYER: Yes, Your Honor.

1           THE COURT: This is all wrapped up in these emails and  
2 the motion to quash we just talked about, right?

3           MR. PLAYER: A little bit, Your Honor. I mean, this  
4 was my motion for fees and costs. When Mr. Loveless filed  
5 the lawsuit, he immediately schedule -- or very close to  
6 after he filed the lawsuit, he scheduled the deposition of  
7 several teachers, former teachers, and anybody who had been  
8 on the Facebook page, and I offered -- I, I've been in  
9 District 5 since I was six and I coached there. I, I  
10 raised my kids there, so I know a lot of the folks, and I  
11 offered to represent the teachers in the deposition for  
12 free. There were some other people that hired me are, are  
13 -- the three that are -- the motion is filed on behalf of  
14 all paid me \$300 to sit there through their deposition that  
15 day.

16           I've handled defamation cases. I've learned a great  
17 deal from Mr. Bender. Not pleasantly, some of them, and so  
18 when people come into my office to bring a defamation case,  
19 I say come back tomorrow. I'm going to go on the internet  
20 and see what I can find, and then I go on the internet and  
21 I just do a general search, and I find cases they've been  
22 involved in. I usually get their Social Security number  
23 and run their credit, and the next day they have a memo:  
24 you file this lawsuit, every single bit of this is coming  
25 out because it's your reputation, and you are putting it in

1 the public controversy.

2 I spent two and half hours typing in Mr. Loveless's  
3 name, and I didn't need to search anything else. I, I  
4 found his election reports in terms of how much taxpayer  
5 money he was getting. I put those report -- everything I  
6 did, I put out there. Everything is the public record;  
7 everything is about Mr. Loveless. I never accused him of  
8 abusing his wife, but there is a lawsuit when he sued a  
9 fellow that he thought was involved with his wife and may  
10 have caused his divorce. And in the counterclaim, that guy  
11 said you got divorced because you abused your wife, not  
12 because I did anything. That's what I did. I took what  
13 was in the public record, and I presented it to show,  
14 number one, he's a bully. The guy gets \$60 million in  
15 taxpayer money and he's suing the stay-at-home dad of a  
16 teacher -- I mean, the stay-at-home-husband of a teacher,  
17 and Lesley, I believe, is ---

18 THE COURT: Mr. Player, I'm going to try to get you  
19 folks to focus on what we are dealing with at the present  
20 time. This is your motion to get sanctions against Mr.  
21 Loveless for deposing your clients?

22 MR. PLAYER: Yes, Your Honor.

23 THE COURT: And these are clients that asked you to do  
24 a search on Mr. Loveless, and you did that and then put the  
25 information out there?

1 MR. PLAYER: Yes, Your Honor.

2 THE COURT: And you want sanctions against him for  
3 what?

4 MR. PLAYER: For -- I -- we believe he conducted these  
5 depositions for an improper purpose and to harass people  
6 and to silence them. These were all people that  
7 participated in the D5 forum on Facebook.

8 THE COURT: Got it. I need to hear no further.

9 MR. PLAYER: Okay.

10 THE COURT: Let me hear from Ms. Ballard.

11 MR. PLAYER: Yes, ma'am.

12 MS. BALLARD: Thank you, Your Honor. Mr. Player's  
13 motion was filed on behalf of Mary Rose Wood, Arlene  
14 Dinicola, D-i-n-i-c-o-l-a, and Tiffany Tryon, which are  
15 three individuals that I did depose in the *Scully* matter  
16 shortly after this lawsuit was filed. Mr. Player called me  
17 ahead of time and said he was going to be representing one  
18 of the teachers. I said great.

19 I had no objections to the depositions; I had no  
20 requests not to take the depositions. I never heard from  
21 anyone saying these are irrelevant. They shouldn't be  
22 taken. Mr. Player even attended the depositions and made  
23 no objections during the depositions.

24 As I described in my motion for Rule 11 sanctions, we  
25 conducted six depositions by 3 o'clock in the afternoon.

1 None took even two hours. There were no objections during  
2 the depositions. In fact, Mr. Player spent almost as much  
3 time as I did asking questions of the witnesses, and then  
4 sixty days after those depositions were taken, he files his  
5 motion for fees and costs.

6 And, and the point that I found difficult to accept is  
7 all the stuff that he attached to his motion, which  
8 includes, among other things, pleadings filed thirty-nine  
9 years ago that are not online that you don't find when you  
10 search. You have to go to dig through courthouse records  
11 to find litigation from thirty years ago and thirty-nine  
12 years ago. You have to get up and go to the courthouse to  
13 look at Mr. Loveless's domestic action. You don't find  
14 that stuff online, and he went to all that trouble to file  
15 a motion. And what he said in his motion for fees and  
16 costs, he begins by saying, well, you know what? Mr.  
17 Loveless doesn't have a reputation worth protecting, and  
18 this lawsuit should never have been filed, and he basically  
19 argues for a dismissal of the lawsuit, and he goes on to  
20 attach all these things that he had to physically go pull  
21 out of hard files. Some of them, I don't know if they were  
22 in storage or on microfiche or what.

23 THE COURT: They're public records but just weren't

24 ---

25 MS. BALLARD: They're all public records.

1 THE COURT: --- on the internet.

2 MS. BALLARD: Yes, but not available online because  
3 they're so old.

4 THE COURT: Yeah.

5 MS. BALLARD: And my, my point was he didn't object to  
6 the depositions. He didn't object -- I think he, he  
7 objected to the form of the questions in two of the  
8 depositions, which are -- is what he's supposed to do. But  
9 there was no suggestion that these depositions were being  
10 taken in bad faith or for an improper purpose. These  
11 depositions were taken for the purpose of pursuing the  
12 knowledge of these people regarding the subject matter of  
13 our lawsuit.

14 THE COURT: Okay. Let me just get straight then about  
15 this.

16 MS. BALLARD: Okay.

17 THE COURT: There are -- he has a motion for Rule 11  
18 sanctions.

19 MS. BALLARD: No, that's mine.

20 THE COURT: You have a motion for Rule 11 sanctions,  
21 and then he has -- does he have a motion for fees and  
22 costs?

23 MS. BALLARD: His motion for fees and costs relates to  
24 the taking of the depositions, and he wants you to fine and  
25 sanction Mr. Loveless for taking depositions that he didn't

1 even object to.

2 THE COURT: Yeah, and that's number 6 on the list.

3 MS. BALLARD: That is number -- that is his motion.

4 Yes, number 6 is Mr. Player's motion, and because ---

5 THE COURT: And your motion is number 11 for the Rule  
6 11 sanctions?

7 MS. BALLARD: Yes, Your Honor.

8 THE COURT: That he jumped up and started talking  
9 about, but really that's your motion.

10 MS. BALLARD: That is my motion.

11 THE COURT: And his motion is the one further on down  
12 the line?

13 MS. BALLARD: Exactly.

14 THE COURT: Okay. All right, here's what I'm going to  
15 do about that. Number one, Mr. Player's motion for fees  
16 and costs is denied. Your motion for Rule 11 sanctions,  
17 denied without prejudice to rebringing it at some later  
18 date if this becomes an issue on down the line in terms of  
19 the defamation, libel, slander case itself.

20 MS. BALLARD: Thank you, Your Honor.

21 THE COURT: All right.

22 MS. BALLARD: Are you doing a Rule 4, by the way,  
23 on ---

24 THE COURT: I'm doing a Rule 4 for each of these  
25 things.



1 MS. BALLARD: Thank you.

2 THE COURT: So Ms. Bora will note this on each of  
3 these things, and what she will note on number 4, which is  
4 your motion for Rule 11 sanctions, she will say denied  
5 without prejudice.

6 MS. BALLARD: I didn't mean Rule 4. I meant Form 4.

7 THE COURT: Ma'am?

8 MS. BALLARD: I meant Form 4, not Rule 4, but that's  
9 what I was asking.

10 THE COURT: Number 4.

11 MS. BALLARD: Yes.

12 THE COURT: Right. Number 4 is denied without  
13 prejudice. Mr. Player's motion for fees and costs, number  
14 6, which is the fees and costs for the deposition of his  
15 clients that he represented at the deposition, is denied.

16 MS. BALLARD: Thank you, Your Honor.

17 THE COURT: Okay, and that's number 6. All right, now  
18 we come to number 7.

19 MR. PLAYER: Your Honor.

20 THE COURT: Yes.

21 MR. PLAYER: Those are the conclusion of my motions.

22 Can I go?

23 THE COURT: You may.

24 MR. PLAYER: Thank you.

25 THE COURT: You may. Thank you so much. Thank you

1       very much, Mr. Player. Good to see you.

2               MR. PLAYER: Good to see you, too.

3               All right, now number 7, and this again is in the  
4       *Scully* case, is plaintiff's motion to dismiss, motion to  
5       bifurcate, and reply to counterclaim. That's number 7, Ms.  
6       Ballard.

7               MS. BALLARD: Yes. I'm looking for it now. In, in  
8       Ms. Stiles's answer to this complaint, she included a claim  
9       for abuse of process.

10              THE COURT: Ms. Scully did?

11              MS. BALLARD: I'm sorry?

12              THE COURT: Are you talking about Ms. Stiles or Mr.  
13       Scully?

14              MS. BALLARD: Ms. Stiles's answers.

15              THE COURT: Okay, get your -- get focused back on  
16       number 7 on my docket.

17              MS. BALLARD: Number 7 on the docket is ---

18              THE COURT: Motion to dismiss and motion to bifurcate  
19       and ---

20              MS. BALLARD: To bifurcate.

21              THE COURT: --- reply to counterclaim ---

22              MS. BALLARD: It's listed as ---

23              THE COURT: --- Kenneth B. Loveless, plaintiff.

24              MS. BALLARD: It's listed as ---

25              THE COURT: This is in *Scully*.

1 MS. BALLARD: But it's not. It's *Stiles*.

2 THE COURT: It's, it's ---

3 MS. BALLARD: The roster is wrong.

4 THE COURT: Huh?

5 MS. BALLARD: The roster is incorrect. This is a  
6 motion to strike a counterclaim filed by Ms. Stiles.

7 MR. RADEKER: There is -- Drew Radeker for the  
8 defendant *Scully*, and I, I hate to interrupt, but just to  
9 save a little time on housekeeping, there is such a motion  
10 in the *Scully* case that, that was filed. If the plaintiff  
11 is withdrawing that motion, then that's fine with me. But  
12 I just wanted to point out there may be a similar motion in  
13 Ms. Stiles's case, but there is a motion like this in  
14 *Loveless v. Scully*.

15 MS. BALLARD: He is correct. There is one in each.

16 THE COURT: All right. Well, then are we going to  
17 hear this at this time, or are you going to withdraw it?

18 MS. BALLARD: No, Your Honor. I'd like to be heard.

19 THE COURT: Well, that's just what ---

20 MS. BALLARD: And the *Scully* matter would go first.

21 THE COURT: --- I was trying to get you to do. All  
22 right, number 7 is the motion to dismiss and motion to  
23 bifurcate and reply to counterclaim. Now, the reply to  
24 counterclaim doesn't involve anything I would currently  
25 hear because a counterclaim is just that: they made a

1 claim.

2 MS. BALLARD: Correct.

3 THE COURT: And you made -- they made a cross-claim  
4 and you've made a reply to that.

5 MS. BALLARD: Correct.

6 THE COURT: That's just in the record, but I guess you  
7 did it in the same document. So, all I'm seeing here is a  
8 motion to bifurcate with respect to those matters.

9 MS. BALLARD: And the reason for that, Your Honor, is  
10 because the counterclaims are for abuse of process which,  
11 of course, can't be determined until these cases are  
12 concluded. It unnecessarily complicates these cases,  
13 already complicated though they, are, to, at that same we  
14 are litigating the defamation claims, to also be litigating  
15 the abuse of process counterclaims. And my motion was to  
16 bifurcate those to be heard separately, and only if Mr.  
17 Loveless is unsuccessful in his case and they, therefore,  
18 can meet the elements of an abuse of process claim.

19 THE COURT: Yes, abuse of process would certainly be  
20 affected by.

21 MS. BALLARD: Correct.

22 THE COURT: I'm not saying it's completely contingent  
23 on because ---

24 MS. BALLARD: Correct.

25 THE COURT: --- abuse of process is very murky about

1     this issue, but it's ---

2             MS. BALLARD: My point is ---

3             THE COURT: --- but it ---

4             MS. BALLARD: --- we don't need to clutter this case  
5 by hearing that case at the same time.

6             THE COURT: All right, I'm going to turn to *Scully* and  
7 ask your position on that, Mr. Radeker.

8             MR. RADEKER: We think it would be less efficient to  
9 bifurcate the case and thus create two trials. It's not  
10 like we're talking about some plaintiff's case that's going  
11 to take a week or more to try and some defendant's case  
12 that's going to take a week or more to try here, and  
13 there's no indication in the record that this would be some  
14 kind of lengthy thing. It would be inefficient to  
15 bifurcate the case and have two trials.

16             THE COURT: Mr. Radeker, wouldn't an element of abuse  
17 of process be the outcome of the litigation?

18             MR. RADEKER: Your Honor, I think you might be  
19 thinking of malicious prosecution, and malicious  
20 prosecution requires the underlying proceedings to be  
21 terminated in the now-plaintiff's favor.

22             THE COURT: Right.

23             MR. RADEKER: So, I don't think it's required or  
24 anything.

25             THE COURT: But it is an element.

1 MR. RADEKER: So.

2 THE COURT: Abuse of process, a relevant piece of  
3 evidence in connection with abuse of process would be the  
4 outcome of the case, would it not?

5 MR. RADEKER: I agree it would be relevant, just not  
6 an element of the claim.

7 THE COURT: It's not an element.

8 MR. RADEKER: Yeah. Right.

9 THE COURT: I stand corrected on that. I agree with  
10 you on that. I nevertheless say that bifurcation would be  
11 appropriate here because of confusion. So, I will  
12 bifurcate.

13 Now, there is another corollary in here, and maybe  
14 you're going to take this up someplace else. There's a  
15 motion to dismiss, and that's to dismiss the whole action.

16 MS. BALLARD: Your Honor, that was my motion.

17 THE COURT: That's what I'm asking you. Is there  
18 someplace else on here where ---

19 MS. BALLARD: We moved to dismiss the abuse of process  
20 counterclaim because it fails to state a cause of action  
21 for relief to be granted, the same thing that you're  
22 talking about, which is that there is no evidence that this  
23 lawsuit has been ---

24 THE COURT: This is a motion to dismiss with respect  
25 to counterclaim?

1 MS. BALLARD: Correct.

2 THE COURT: All right. I will deny that motion at  
3 this time with direction that it can be renewed at the time  
4 of the bifurcated portion of the trial that gives rise to  
5 it.

6 MS. BALLARD: Thank you, Your Honor. You're going to  
7 do Form 4s on those as well?

8 THE COURT: That's correct.

9 MS. BALLARD: Thank you very much.

10 MR. RADEKER: Thank you, Your Honor.

11 MR. KENNEY: Your Honor, I apologize for interrupting.  
12 Chris Kenney on behalf of Ms. Stiles. I, I just wanted to  
13 make sure I was clear because there is a identical motion  
14 in the *Stiles* case.

15 THE COURT: We're going to get to it.

16 MR. KENNEY: Yes, Your Honor. I, I just wanted to be  
17 clear. Did you grant the motion to bifurcate or deny it?

18 THE COURT: I granted the motion to bifurcate. I just  
19 think it leads to less confusion. I stand corrected on  
20 what I initially said to Mr. Radeker. It is true:  
21 malicious prosecution is the one where conclusion of the  
22 litigation in favor of the plaintiff is required. Not so  
23 with abuse of process but, nevertheless, the elements of  
24 abuse of process are impacted by what happened with the  
25 trial, at least potentially. And, therefore, I think it's



1 easier on everybody if the claims of defendant are resolved  
2 after the main suit is resolved.

3 MR. KENNEY: And, Your Honor, the point of  
4 clarification I'm seeking, is that as to trial or as to  
5 discovery and trial?

6 MS. BALLARD: That is as to trial. Bifurcation is a  
7 trial thing.

8 MR. KENNEY: Thank you.

9 THE COURT: Discovery will commence on all these  
10 issues just like -- it's kind of like I bifurcate punitive  
11 damages all the time in every case I've got that involves a  
12 claim form. But discovery encompasses everything that's in  
13 the case.

14 MR. KENNEY: Thank you, Your Honor. Appreciate it.

15 THE COURT: Okay. All right, so now we've got number  
16 8. This is a motion to quash by the plaintiff.

17 MS. BALLARD: Let me find it, Your Honor.

18 THE COURT: All right.

19 MS. BALLARD: Oh, Ms. Stiles filed a motion -- or,  
20 excuse me. Subpoena?

21 THE COURT: Yeah. This is the first *Stiles* motion.

22 MS. BALLARD: I believe it is.

23 THE COURT: It's number 8.

24 MS. BALLARD: It is. That is.

25 THE COURT: We are, we are out of ---

1 MS. BALLARD: We're out of *Scully*.

2 THE COURT: --- *Scully*.

3 MS. BALLARD: Correct.

4 THE COURT: And we're into *Stiles*.

5 MS. BALLARD: Correct.

6 THE COURT: The first, first *Stiles* motion.

7 MS. BALLARD: Correct. Ms. Stiles filed discovery  
8 against a third-party by the name of Contract Construction.  
9 It's a construction company that has built and continues to  
10 build commercial buildings around the state, and they asked  
11 for communications with Mr. Loveless and lots of different  
12 things that are again irrelevant.

13 And Contract Construction did not object to the motion  
14 but I did. I objected to the subpoena and moved to quash  
15 it on relevance grounds because, among other things, the  
16 issues related to Mr. Loveless and Contract Construction  
17 are currently a matter that's pending before the State  
18 Ethics Commission. Has nothing to do with this case, and  
19 to the extent they are attempting to do discovery regarding  
20 the State Ethics Commission charges in this case, it's an  
21 abuse. And I think a subpoena to Contract Construction in  
22 a defamation lawsuit is beyond the pale in terms of  
23 relevance and just reasonable scope of discovery, Your  
24 Honor, and that's why I made a motion to quash it.

25 THE COURT: All right, Mr. Kenney.

1           MR. KENNEY: Yes, Your Honor. Thank you. May it  
2 please the court? We oppose the motion to quash. By way  
3 of explanation, the -- as we've already discussed, the  
4 statements in the complaint that are purportedly defamatory  
5 have to do with Mr. Loveless's performance on a number of  
6 controversial matters as a member of the school board. One  
7 of those matters that several of the comments are  
8 referential to is an ethics dispute matter where Mr.  
9 Loveless took official action even though the Ethics  
10 Commission had advised you must refrain because of a  
11 affiliation with an entity doing business with the school  
12 district, the entity of Contract Construction. They were a  
13 contractor for the school district building an elementary  
14 school. Mr. Loveless was a very well documented critic of  
15 the project in the public record. He was a critic at  
16 public meetings and he took action, visiting the site and  
17 other official, official things.

18           The Ethics Commission, he sought their advice and they  
19 told him on two different occasions Section 8-13-700  
20 requires you to refrain because the affiliation between Mr.  
21 Loveless and Contract Construction is, is another contract  
22 with a state entity. SLED was doing a million-dollar  
23 project and Contract Construction was the general on the,  
24 on the project, and Mr. Loveless's company was hired as the  
25 sub on the project. So, that was the affiliation that

1 required recusal. And so this was discussed during school  
2 board meetings amongst Mr. Loveless and his colleagues on  
3 the board. It was a hotly contested matter.

4 THE COURT: I'm familiar with the details there, Mr.  
5 Kenney. This is a subpoena to Contract Construction  
6 Services, not to Mr. Loveless.

7 MR. KENNEY: Yes, Your Honor.

8 THE COURT: Not to Loveless Construction. It's to  
9 Contract Services, and they haven't objected, right?

10 MR. KENNEY: They have not objected. I've spoken to  
11 Billy McGee. He represents Contract Construction, and he  
12 is aware of the motion. He's aware of the hearing this  
13 morning, and Mr. McGee and I have agreed we're going to  
14 work together on any production. If any objections arise  
15 later, we'll deal with them, but they are prepared to work  
16 with us cooperatively, and we'll work with them.

17 THE COURT: Very good. Thank you. That's all I  
18 needed to hear.

19 MR. KENNEY: Thank you, Your Honor.

20 MS. BALLARD: Your Honor, Mr. Loveless has waived  
21 confidentiality of the SEC proceedings. Anything that  
22 might be relevant is public record already in the SEC  
23 proceedings. They can get whatever they want regarding  
24 Contract Construction.

25 THE COURT: They're talking about wanting to get

1 things out of the company, Contracting Services, and it has  
2 not ---

3 MS. BALLARD: On the same issue.

4 THE COURT: It doesn't matter, Ms. Ballard. They may  
5 have all kinds of different avenues they want to proceed  
6 with in terms of discovery. That's what we're talking  
7 about now.

8 MS. BALLARD: Right.

9 THE COURT: This company does not object, so I'm going  
10 to deny the motion to quash.

11 MS. BALLARD: Thank you, Your Honor.

12 MR. KENNEY: Thank you, Your Honor.

13 THE COURT: All right, now there's a motion to  
14 overrule District 5 claims of attorney-client privilege.  
15 This is defendant's motion.

16 MR. KENNEY: Thank you, Your Honor. This was a  
17 motion. I believe Mr. Bradley is here, Ward Bradley is  
18 here for School District 5.

19 THE COURT: Hello. Hello, Mr. Bradley. Nice to see  
20 you.

21 MR. BRADLEY: Hello, Your Honor. Pleasure to be here.

22 THE COURT: You come on up here and sit next to Mr.  
23 Kenney in case there's anything you need to add to this  
24 matter. Your speaking is not required, but if you're up  
25 here right close to him, then if you need to say anything,

1     you can.

2           MR. KENNEY: Your Honor, the history of this is we  
3     issued subpoenas to Mr. Loveless's colleagues on the school  
4     board and to the district, and what we were seeking were  
5     communications with Mr. Loveless and about Mr. Loveless  
6     because, as we've already discussed, his reputation and his  
7     performance on the school board are all issues that we are  
8     attempting to discover in relation to this case.

9           THE COURT: And what we're talking about here is  
10    simply the subpoena to the district. We are not talking  
11    about these other members of the school board.

12          MR. KENNEY: Well, actually, Your Honor, it arises  
13    pursuant to a response of some of the individual members.

14          So, the factual background is I was contacted by  
15    Andrea White, who is the former counsel for the school  
16    district. Ms. White indicated that she would respond in  
17    terms of all of the emails that the district had. So,  
18    these would be the board members' individual accounts, the  
19    @schoolboard email accounts essentially, and any, any  
20    school board records, but that it was up to individual  
21    members to, to look into their personal email or their  
22    personal cell phone to deal with the response.

23          And so I communicated with several of the members of  
24    the school board, and one of those individuals, a former  
25    member named Jan Hammond, produced some documents to me.

1 Ms. Hammond, her documents she produced to me included Ms.  
2 White as a communicant on some of those emails. And at  
3 that point, I reached out to her and said you know you're  
4 on these emails. I do not believe they're privileged.  
5 However, how about take a look and let me know your  
6 position. I received a letter attempting to claw those  
7 documents back, and that's what has prompted this motion.

8 THE COURT: Okay. I got it now. So, it's really the  
9 district is trying to claw back the documents because they  
10 contend they're attorney-client privileged documents.

11 MR. KENNEY: That, that was Ms. White's position, Your  
12 Honor. Since then, Ms. White has withdraw as counsel for  
13 the school board, and Mr. Bradley has the privilege of, I  
14 understand, being their new counsel. We spoke briefly  
15 yesterday. I shared with him the items that are, are  
16 disputed, a copy of the motion, but we haven't had a chance  
17 to confer any further about whether that position is the  
18 same or different from what ---

19 THE COURT: Well, this is one of the clients? The  
20 school board member was one of the clients ---

21 MS. BALLARD: These are the ---

22 THE COURT: Whoa, whoa, whoa.

23 MS. BALLARD: --- subpoenas to the individuals.

24 THE COURT: Wait. Wait.

25 MS. BALLARD: I was just trying to clarify.



1           THE COURT: Sure. I'm going to go right to you. I'm  
2 not ---

3           MS. BALLARD: Okay.

4           THE COURT: --- trying to prevent you from speaking at  
5 all. I'm just trying to -- if I am understanding  
6 correctly, Ms. White was a school board member. She gave  
7 her emails up.

8           MR. KENNEY: That's not correct, Your Honor.

9           THE COURT: I mean, Ms. White was the lawyer for the  
10 school district.

11          MR. KENNEY: That's right.

12          THE COURT: Ms. Hammond, a school board member,  
13 produced a bunch of emails, including some from Ms. White,  
14 who was then the attorney, and that would make her the  
15 attorney for the school board district and for the members  
16 of the school board in the conduct of their official duties  
17 as school board members, I would assume.

18          MR. KENNEY: And that is one of the issues that we're  
19 asking Your Honor to decide. It's our position and, and  
20 belief that because of the school board's policies -- and  
21 let me take these emails in, in two categories, okay,  
22 because I think there's two issues here.

23                 One issue is we have emails where there is not a  
24 quorum of the school board. So, one or two or three  
25 members and Ms. White communicating. Now, the board's

1 policy is that -- at the time, the board policy is that the  
2 school board or the district gets advice from counsel by  
3 acting through the superintendent or the board, meaning a  
4 quorum acting in its official capacity. So, one of the  
5 issues that we are raising is that I do not believe that  
6 individual members of the school board communicating with  
7 the lawyer have a privilege of the district.

8 THE COURT: Boy, I'm never going to support you on  
9 that, Mr. Kenney. I can just tell you that right now. You  
10 know, the law favors attorney-client privilege, and I  
11 wouldn't rule but -- now, the attorney is acting for the  
12 individuals as well as for the school district. The thing  
13 to look at is whether Ms. Hammond, because she voluntarily  
14 gave them up, she waived the privilege.

15 MR. KENNEY: Well, Your Honor, and I'm not going to  
16 quarrel with you on, on where you're going to come down on  
17 that. I'm going to move on to my second argument. But as  
18 to the point you raised, I actually don't believe that Ms.  
19 Hammond, even if she did it in error, I don't believe she  
20 waived the privilege accidentally on behalf of the school  
21 district. So, I'm hearing what Your Honor says. Let me  
22 move on to my second argument.

23 THE COURT: Okay. Fine.

24 MR. KENNEY: Because I think you're going to -- might  
25 see this one differently.

1           One of these emails has Mr. Loveless, Mr. Loveless's  
2 wife, who is not a member of the school board.

3           THE COURT: That destroys privilege.

4           MR. KENNEY: And Ms. White, and the difference between  
5 this email and the other ones that we just described a  
6 minute ago is counsel was clearly aware. She's responding  
7 and addressing both of them. So, there's not some accident  
8 here. There's not some, you know, inadvertent effort by a  
9 member to disclose this. This is a, a stranger to whatever  
10 privilege might exist.

11          THE COURT: Okay. I get the argument.

12          MR. KENNEY: Yes, Your Honor.

13          THE COURT: So, there's one category of emails where  
14 someone else is included on the email who is not in any  
15 colorable sense a client.

16          MR. KENNEY: That's correct.

17          THE COURT: There are other emails where there's all  
18 school board members in them. They are certainly arguably  
19 clients.

20          MR. KENNEY: Correct.

21          THE COURT: All right. I get it.

22          MR. KENNEY: Thank you.

23          THE COURT: I'm going to turn to Ms. Ballard.

24          Ms. Ballard.

25          MS. BALLARD: Your Honor, the only point I wanted to

1 clarify is that this was not a subpoena to the district.

2 These were three subpoenas to individual board members.

3 They were three subpoenas to Jan Hammond, Nikki Gardner,  
4 and Cathy Huddle, and they don't have individual counsel.

5 Mr. Bradley is here for the school district.

6 THE COURT: As I understand what I'm hearing here, and  
7 you see if you agree. It's just a claw back request with  
8 respect to Hammond's disclosure of the emails, and what Mr.  
9 Kenney, all Mr. Kenney says that's really pertinent to that  
10 is that one of the emails that has Ms. White on it has a  
11 non school board member, Mr. Loveless's wife, Jan.

12 MS. BALLARD: And my point, that since there were  
13 three subpoenas and only one person, I believe, has  
14 responded, the issue is going to be the same for the other  
15 two who have subpoenaed -- have, have received subpoenas.  
16 And I don't speak for them either, but I just want to make  
17 sure the record was clear.

18 THE COURT: I understand.

19 MS. BALLARD: This was a subpoena not to the district  
20 but to the individual members.

21 THE COURT: I got you. Well, what I'm going to do is  
22 this. I'm going to allow ---

23 And, Ward, if you have anything -- Mr. Bradley, if you  
24 have anything further to say, I'll hear you.

25 But I am going to allow the district to claw back any

1 communications that have Ms. White and school board members  
2 on them, whether it's a majority of the school board or  
3 whatnot. I'm going to allow the school district to claw  
4 those back. But with respect to any emails that have Ms.  
5 White and a school board member and somebody who's not on  
6 the school board, I am not going to require that they be  
7 clawed back. Is that -- does everybody understand what  
8 I've done?

9 MR. KENNEY: Your Honor, I understand your ruling. We  
10 accept it. I've handed Mr. Bradley the ones that you've  
11 just ruled on to be clawed back. I'll destroy the rest at  
12 my office, and I've kept the one that Mr. Loveless's wife  
13 was a party to.

14 THE COURT: Excellent, and obviously if there's some  
15 other issue that comes up with regard to these other  
16 subpoenas that are out there, we'll deal with it when it  
17 comes. Right now we haven't heard anything about that, but  
18 I would think those people will hear what's been ruled  
19 here, and they will hopefully refrain from disclosing  
20 anything that involves material that -- because the lawyer  
21 and the school board members or the superintendent are  
22 involved and no other outside party, those I would protect.  
23 And so they can just know they don't need to give those.

24 MS. BALLARD: Mr. Kenney has produced those documents  
25 to me that he received from Ms. Hammond. I just want to

1 know which ones he's handed back.

2 THE COURT: He's going, he's going to handle that with  
3 you.

4 MS. BALLARD: Okay. All right. Thank you very much.

5 THE COURT: If there's any issue about it, you let me  
6 know.

7 MR. KENNEY: Your Honor, if we get any more in the  
8 future, we'll send them to Mr. Bradley.

9 THE COURT: There you go, and then y'all can get  
10 straight what should be given up and whatnot. I think  
11 everybody understands here what I am saying: only if  
12 outside parties are on them, that any attorney emails to  
13 the board members and the officials of the district get  
14 revealed. Otherwise, they are confidential.

15 MS. BALLARD: Thank you, Your Honor.

16 THE COURT: Okay. All right, and I guess that ought  
17 to take care of number 9, motion to overrule the district's  
18 claim of attorney-client privilege. That has been  
19 partially granted, as I have just described, unless there's  
20 some other issue involved, Mr. Bradley.

21 MR. BRADLEY: No, ma'am. I was just waiting for you  
22 to finish. I didn't want to walk off while you were still  
23 talking. I was trying to be polite. Thank you, Judge.

24 THE COURT: So, that number 9 is protected is the same  
25 way that I just discussed.

1           Number 10, motion to compel, deem matters admitted for  
2 sanctions. This is defendant's motion.

3           MR. KENNEY: Thank you, Your Honor. This has to do  
4 with some of those discovery -- well, really all of the  
5 discovery devices that we were talking about earlier this  
6 morning. And we filed a motion. We attached discovery  
7 that is at issue, and there was also some argument about  
8 this in the memo that we submitted.

9           Your Honor, the bottom line as to this motion is the  
10 plaintiff is unwilling to produce any documents or  
11 substantively respond to discovery in a case that he filed.  
12 And I would be happy to go through the many requests that  
13 we, we served, and I'm happy to walk through each one of  
14 them with Your Honor and explain why I think it's a  
15 reasonable discovery request, why it is within the scope of  
16 discovery, why it is not abusive, unduly burdensome.

17          THE COURT: So, you have propounded a number of  
18 requests to produce, and he has refused to produce  
19 anything?

20          MR. KENNEY: Well, Your Honor, I have no production,  
21 that is correct, but it's beyond just document requests.  
22 There are interrogatories that have been objected to. Some  
23 of them, Your Honor, are quite simple, having to do with  
24 things like identify the person that you're referring to  
25 and ---

1 THE COURT: Has he answered any interrogatories?

2 MR. KENNEY: They have been answered but objected to  
3 in a way, Your Honor, that I believe is abusive of the  
4 rules and, and this ---

5 THE COURT: Basically nothing's been done. All of  
6 them have been -- the ones that have been answered have  
7 been answered by objection.

8 MR. KENNEY: Objection and, and, Your Honor, let me  
9 say one thing about objections. In most cases, you know,  
10 you hear a lot of discovery disputes, and in most cases the  
11 way the objection process is supposed to work is you are  
12 supposed to put the other side on notice of what you're  
13 holding back and why so that they can evaluate the merit of  
14 the objection because what that does is it spares Your  
15 Honor of having this, this hearing right here.

16 What has happened here is I have very, let's say,  
17 cursory and, frankly, in some cases, sarcastic responses  
18 and objections to discovery requests, some of which we  
19 highlight in the motion. But, for example, let me give you  
20 one example.

21 THE COURT: I've seen them.

22 MR. KENNEY: Okay.

23 THE COURT: But I think it's a good idea when you  
24 don't answer it and things of that nature, right?

25 MR. KENNEY: I'm sorry, Your Honor?



1           THE COURT: Some of them he answers by saying he  
2 objects to everything, but it would be a good idea.

3           MR. KENNEY: Yeah. Nice, nice try.

4           THE COURT: Nice try.

5           MR. KENNEY: Nice try.

6           THE COURT: Things of that nature. I've read all  
7 these.

8           MR. KENNEY: Your Honor, if you've read all of them,  
9 that's about all the argument I have. You know, in eleven  
10 years of practicing law, I've had many discovery disputes.  
11 I have not seen any responses like these.

12          THE COURT: I'll turn to Ms. Ballard. Ms. Ballard.

13          MS. BALLARD: Thank you, Your Honor. With reference  
14 to the request to produce and the request for  
15 interrogatories, in light of Your Honor's earlier rulings  
16 regarding the scope of discovery, I would request to be  
17 given thirty days to supplement our responses to the  
18 interrogatories and the request to produce.

19          However, on the requests for admissions, Mr. Kenney  
20 has asked you to deem the requests for admissions admitted  
21 because he didn't like our objections, and I agree one of  
22 them was a sarcastic comment. I take full responsibility  
23 for that and I apologize for it. But Rule 36(a) clearly  
24 says that if we are denying the matter, we have to explain  
25 why we are denying the matter, and we have to fairly meet

1 the substance of the requested admission, and this is a  
2 quotation:

3 When good faith requires that a party qualify his  
4 answer or deny only a part of the matter which an  
5 admission is requested, he shall specify so much  
6 as is true and qualify or deny the remainder.

7 In other words, I couldn't just say yes or no to them.  
8 They're poorly written. So, what I did is I've answered  
9 what I could; I objected to the things that I couldn't  
10 address. I certainly did not act in bad faith in not  
11 responding to requests to admit. I responded to every one  
12 of them, and a motion to deem them admitted is, is throwing  
13 the baby out with the bath water.

14 If he has an objection to a particular answer in -- to  
15 a particular request to admit, I'll be happy to consider  
16 it, but I did what I was required to do by Rule 36 when I  
17 answered poorly drafted requests to admit because I can't,  
18 I can't admit things that are inaccurately stated or  
19 incorrectly stated. I have to explain the basis for my  
20 denial, and that's what I did.

21 THE COURT: I understand.

22 All right, briefly Mr. Kenney.

23 MR. SMITH: Briefly, Your Honor, I disagree that these  
24 are poorly drafted. I believe if you ---

25 THE COURT: Okay. That's fine.

1           MR. KENNEY: Okay. Let me move on. Your Honor, you  
2           should deem the objections, all objections waived because  
3           this case was filed in March. Now it is December. I don't  
4           have a document. I don't have meaningful responses, and  
5           now Ms. Ballard is here asking you for thirty days. I  
6           guarantee you we will be back here in thirty-five days to  
7           deal with whatever future responses and objections she  
8           gives me. The way you cut to the chase on that is the  
9           objections are now waived. Make full responses. And, Your  
10          Honor, we'd like you to retain jurisdiction so, based on  
11          what we get, we can come back to the judge who is familiar  
12          with this case and have them resolved.

13          THE COURT: Well, let me ask you how you can see that  
14          would work. If the objections are waived, then they  
15          respond, and you have to then have a judge evaluate whether  
16          the response is a full response?

17          MR. KENNEY: If it comes to that, Your Honor. I just  
18          -- you know, my concern is this.

19          THE COURT: Okay, we've got three categories of things  
20          here. We have interrogatories, we have request for  
21          admissions, and we have request to produce.

22          MR. KENNEY: Yes.

23          THE COURT: And nothing has been done. There have  
24          been objections lodged to all production and  
25          interrogatories, right?

1 MR. KENNEY: And, and request to admit, yes.

2 THE COURT: And request to admit is basically a bunch  
3 of objections as well?

4 MR. KENNEY: Yes, Your Honor.

5 THE COURT: All right. I find this conduct in  
6 violation of the discovery rules. It cannot be that you  
7 simply don't answer interrogatories and requests for  
8 admissions that you don't like. These three kinds of  
9 discovery are required in every civil case. This is the  
10 plaintiff in the case. The defense's -- I have read all of  
11 these interrogatories. They asked very targeted and  
12 specific questions, and they cannot be done by just saying  
13 they're irrelevant and then saying -- making a sarcastic  
14 comment. I am not going to permit that.

15 MS. BALLARD: I already agreed to supplement our  
16 responses on that, Your Honor.

17 THE COURT: Supplemental responses after they've been  
18 pending since March.

19 MS. BALLARD: This is the first hearing we've had.

20 THE COURT: I understand it's the first hearing you've  
21 had, Ms. Ballard, but this indicates an attitude on the  
22 part of this plaintiff that I find distressing. You cannot  
23 bring a lawsuit like this and not expect to have the  
24 defense ask questions, and you must answer those questions.  
25 And when it is a reputational case of this kind, you

1 subject yourself to questions that may be uncomfortable,  
2 but that's the nature of the beast when you bring a  
3 reputational case.

4 And when you're a public official, the burden is very  
5 high to show that a matter of public interest and the  
6 expression of opinion about that is slanderous, defamatory,  
7 or libelous. And, therefore, it is incumbent on a  
8 plaintiff who brings an action like this to be fully  
9 cooperative. Certainly there many be some objections, but  
10 they should be very targeted and specific objections  
11 directed towards the particular information. Relevance is  
12 not a proper objection ---

13 MS. BALLARD: I was ---

14 THE COURT: --- at all.

15 MS. BALLARD: I was addressing the request that my --  
16 that the request for admission be deemed as admitted when  
17 there's not been any ---

18 THE COURT: Well, apparently that was his approach to  
19 all this discovery, though, Ms. Ballard. Essentially none  
20 of it was answered.

21 MS. BALLARD: That's not true, Your Honor. We  
22 answered the requests to admit and, and you would ---

23 THE COURT: Don't talk about the request to admit.  
24 That's one.

25 MS. BALLARD: That's what I'm ---

1 THE COURT: There are two others ---

2 MS. BALLARD: That's all I'm concerned ---

3 THE COURT: --- interrogatories and request for  
4 production. Those haven't been cooperated with at all.  
5 Those are baseline discovery tools that every litigant,  
6 whether defendant or plaintiff, has to cooperate with.

7 MS. BALLARD: And we understand your ruling on that.

8 THE COURT: And they're going to have to be answered,  
9 and I'm going to give you ten days to file answers to all  
10 of those, the interrogatories and the production requests.

11 With regard to the request for admission, it is --  
12 answering any of those requests by talking about relevance  
13 -- and that was really the gist of most of the refusals to  
14 answer those requests for admissions is that they were  
15 either not true or not relevant. That is not an adequate  
16 response to these very targeted and specific requests for  
17 admission. I am going to deem those requests for  
18 admissions, in light of the time that has passed, admitted.

19 MS. BALLARD: Thank you, Your Honor.

20 THE COURT: All right.

21 MR. KENNEY: Thank you, Your Honor. Ten, ten days for  
22 them to respond. Would your -- would the court retain  
23 jurisdiction to allow you to -- us to report back?

24 THE COURT: Yes, I will.

25 MR. KENNEY: Thank you, Your Honor.

1 THE COURT: Jurisdiction retained over those things,  
2 Ms. Bora.

3 MS. BALLARD: Over the discovery issues?

4 THE COURT: These discovery things, yes.

5 MS. BALLARD: Thank you, Your Honor.

6 THE COURT: Lord knows I don't want to retain any  
7 jurisdiction over trying this case. That's the subject of  
8 specific appointment by the chief justice.

9 All right. Now, I've got -- that was number...

10 MS. BALLARD: That was number 10.

11 THE COURT: That was number 10, admitted, is deemed  
12 admitted and the others, no sanctions but the direction to  
13 answer the interrogs and the production within ten days.

14 MS. BALLARD: Number 11 is the same motion that we've  
15 already argued in the *Scully* case.

16 THE COURT: We've already done 11, and it was denied.

17 MS. BALLARD: Right.

18 THE COURT: 12 is a motion for a rule to show cause by  
19 the defendant Stiles. What's that?

20 MS. BALLARD: Thank you, Your Honor.

21 MR. KENNEY: Thank you, Your Honor. There were a  
22 number of subpoenas. We, we discussed earlier subpoenas to  
23 school board members seeking communications with Mr.  
24 Loveless about Mr. Loveless, and I served them on his  
25 colleagues on the board. Two individuals did not respond,

1 and one individual did respond but objected. One of the  
2 individuals who did not respond, Ms. Hammond, did after the  
3 motion will filed, and so the motion as to Ms. Hammond is  
4 withdrawn.

5 THE COURT: All right.

6 MR. KENNEY: Now, the ---

7 THE COURT: And that means that the motion against who  
8 all is still pending?

9 MR. KENNEY: That would be Nikki Gardner and Ms.  
10 Catherine Huddle. Ms. Gardner didn't make a response, and  
11 I would, as I indicated in the memo, I would welcome to  
12 either carry this motion over or continue it if, if she  
13 would make a response. But otherwise, I'd ask Your Honor  
14 to issue a rule so that we can invite her to be here and  
15 explain why she hasn't responded to the subpoena.

16 THE COURT: I will give Gardner and Huddle ten days to  
17 respond to these motions.

18 MR. KENNEY: Your Honor, if I can interject?

19 MR. BRADLEY: Before you rule, can I be heard on their  
20 behalf? They're here.

21 THE COURT: What's that?

22 MR. BRADLEY: I'm here with them, and they're -- I  
23 would like to be heard before you rule.

24 THE COURT: All right.

25 MR. BRADLEY: If we could.



1 THE COURT: Come on, Mr. Bradley.

2 MR. BRADLEY: Thank you.

3 If y'all will just come down a little closer.

4 THE COURT: Yeah, I'm not taking any testimony, but

5 ---

6 MR. BRADLEY: Well, I understand. I just thought it'd  
7 be good for them to be able to hear better.

8 THE COURT: All right.

9 MR. BRADLEY: I just didn't want to interrupt anything  
10 if that's okay, Your Honor.

11 THE COURT: I'm doing your client a favor. I'm saying  
12 they got ten days to respond rather than just to say we  
13 can't give nothing. They can't do that, Mr. Bradley.

14 MR. BRADLEY: I understand, Judge. I -- if you don't  
15 -- I'll be as brief as I possibly can.

16 THE COURT: All right. Go right ahead.

17 MR. BRADLEY: But I appreciate your indulgence.

18 As indicated before, I represent the school board, and  
19 Ms. Gardner is a former school board member and Ms. Huddle  
20 is a current school board member.

21 THE COURT: All right.

22 MR. BRADLEY: They're not parties; they're not  
23 involved in this. They don't want to be involved in this  
24 any more than they're forced to be involved in this. They  
25 don't have any contact involving this lawsuit.

1           The subpoenas to them asked for any communication that  
2           they've had with Mr. Loveless and any communication they've  
3           had with any other person ever regarding Mr. Loveless.

4           THE COURT: All right.

5           MR. BRADLEY: So, that's pretty broad and goes back  
6           forever as far as I can tell. All of their district  
7           correspondence as part of the school board has already been  
8           provided.

9           THE COURT: I understand ---

10          MR. BRADLEY: Through the school board.

11          THE COURT: --- this is their personal correspondence.

12          MR. BRADLEY: Yes, ma'am. So, this is any personal  
13          correspondence. And so what we're asking is both of them  
14          believe this is undue burden on them and invasive into  
15          their personal life, and not only into their personal life  
16          but into the life of other people with whom they may have  
17          discussed this matter through different sorts of  
18          correspondence that aren't even here. And we would like  
19          some sort of protection for them, first of all, as to a  
20          time limit because they've known Mr. Loveless for a long  
21          time. And, you know, this apparently has only come up over  
22          the last year.

23          So, if you're inclined to order them to comply with  
24          these subpoenas, to limit it at least to the last year, and  
25          to allow them to redact the names of any students. If it's

1 board business that be might through personal  
2 correspondence, or employees of the district, or any third  
3 parties, to protect those people's privacy as well.

4 What they'd really like is to not respond at all, as  
5 they think it is unduly invasive into them as third parties  
6 who are not involved in this and do not wish to be involved  
7 in it.

8 THE COURT: All right, would you ---

9 MR. BRADLEY: But if they are forced to do so, they  
10 would ask for those limitations, Your Honor.

11 THE COURT: How about suggest a specific term of  
12 years. 2022 to -- or give me a ---

13 MR. KENNEY: Your Honor, I'm sorry to interrupt, but  
14 the subpoena is limited from January 1, 2018. That would  
15 be when -- the year Mr. Loveless took office on the school  
16 board.

17 THE COURT: Yeah.

18 MR. KENNEY: To the present. We think that's a  
19 reasonable limitation. As to Mr. Bradley's other concerns,  
20 we have no objection to redacting the name of any minor or  
21 any student. An adult who is an employee, we think that  
22 information ought to be disclosed because some of the  
23 issues in this case that comments were made about have to  
24 do with things like the terminated superintendent Christina  
25 Melton that was a matter of much public controversy.

1 Adults, you know, who are employees of the district, we, we  
2 don't see any concern.

3 THE COURT: I get what you want.

4 MR. KENNEY: Yes, Your Honor.

5 MS. BALLARD: Just to clarify, Your Honor, Mr.

6 Loveless did not become a member of the board until

7 November 2018.

8 THE COURT: November 2018?

9 MS. BALLARD: Yes, yes, Your Honor.

10 THE COURT: All right, and when was his lawsuit  
11 brought?

12 MS. BALLARD: These lawsuits were filed in March of  
13 this year.

14 THE COURT: All right, what I'm going to do is this.  
15 I am going to require that Ms. Gardner and Ms. Huddle  
16 search their personal correspondence records for  
17 correspondence to Mr. Loveless, from Mr. Loveless, or about  
18 Mr. Loveless from 2018, November of 2018 to March of 2020.  
19 I am going to allow them to redact any names of students.  
20 With respect to any other names that are not minors, no  
21 redaction will be required.

22 MR. KENNEY: Point of clarification, Your Honor. You  
23 said March of 2020. The lawsuit was filed in March of  
24 2022.

25 THE COURT: I said March of -- 2022. I'm sorry. I

1 might have mumbled a little bit, but let me clarify again.  
2 It's November 2018 to March 2022.

3 MR. KENNEY: Thank you, Your Honor.

4 THE COURT: All right. Okay. That settles that one.

5 MS. BALLARD: Thank you, Your Honor.

6 THE COURT: Number 13, motion for a judgment on the  
7 pleadings. All right, now we're getting into some material  
8 stuff. We've got motions for judgment on the pleadings.

9 Let me just, before I start cleaning up here, look  
10 with me on the list, counsel, and let me be sure I can see  
11 what we've really got left. I'm going to take a break here  
12 for a minute in mercy for the court reporter.

13 MS. BALLARD: 14.

14 THE COURT: 14 has been dealt with.

15 MS. BALLARD: Correct. 15 has as well.

16 THE COURT: I bifurcated. I granted bifurcation. I  
17 denied the motion to dismiss, right?

18 MR. KENNEY: Correct, Your Honor.

19 MS. BALLARD: Yes.

20 THE COURT: Then the motion to intervene on the Press  
21 Association, that's number 15, I granted.

22 MS. BALLARD: Correct. So, there's -- the only thing  
23 left is number 13 as far as I can tell.

24 MR. KENNEY: I agree, Your Honor.

25 THE COURT: And then that's it. So, the only we've

1 got left is kind of the biggie biggie, which is the motion  
2 for judgment on the pleadings. That's *Stiles*. Now, I  
3 don't think we have such a motion from *Scully*, do we?

4 MS. BALLARD: No, Your Honor.

5 THE COURT: So, all we've got is a motion for judgment  
6 on the pleadings with respect to *Stiles*.

7 It's 11:15 now. In mercy to the court reporter, we  
8 are going to take a fifteen-minute break, and we'll see you  
9 here at 11:30.

10 (OFF THE RECORD.)

11 THE COURT: Now, back to where we were. The last  
12 thing is the motion for judgment on the pleadings by the  
13 defendant *Stiles*.

14 MS. BALLARD: Correct.

15 MR. KENNEY: Thank you, Your Honor, and may it please  
16 the court? We are here asking you to dismiss the  
17 defamation claim as a frivolous claim by a public official  
18 against a private individual over comments that other  
19 people made on a Facebook page that she administered and,  
20 and statements that are alleged to be her statements,  
21 although I'd like to return to that in a moment.

22 Your Honor, briefly I would note that Ms. *Stiles* and  
23 her husband are here in the, in the courtroom, and I won't  
24 belabor, belabor the court with the background. But I do  
25 think it's important that Ms. *Stiles* is a mother who works

1 in the home raising three children who are in District 5  
2 schools. She was and is the administrator of a Facebook  
3 page that is the subject of this controversy, and we're  
4 here asking you to dismiss this claim for essentially five  
5 reasons. I know Your Honor has already read the brief, but  
6 I'm just going to try to hit the high points and then  
7 address whatever questions the court has.

8 I think the easiest way to deal with the issues that  
9 we've raised are to start with the statements that are  
10 alleged to have been made by other people on the Facebook  
11 page that Ms. Stiles was administering. Now, Your Honor,  
12 those claims all fail for two reasons. First of all, they  
13 are precluded under the Communications Decency Act at  
14 Section 230 of that law, precluded as a matter of federal  
15 law. No state law claim or civil action can be brought  
16 because based on the statements of one Facebook user on the  
17 basis that another Facebook user should have censored them,  
18 removed them, deleted them, or otherwise managed those  
19 comments. And then the second reason why the statements of  
20 others fail has to do with just the old common law of  
21 defamation which is -- requires the element of publication.  
22 And Ms. Stiles is not the publisher of statements other  
23 people are alleged to have made.

24 So, when we're talking about statements of others,  
25 these are the statements. It's twenty-six of them. They

1 are in paragraph 16 of the complaint, and I'm going to kind  
2 of lump them all together unless the court has specific  
3 questions about them.

4 Let me turn to the Communications Decency Act. Your  
5 Honor, the analysis, I think, is pretty simple. Section  
6 230, Subsection C(1) and E(3) control the outcome in this  
7 case. And essentially what, what the Communications  
8 Decency Act, Section 230, says is that: A provider or user  
9 of an interactive computer service -- that's Facebook --  
10 any claim based on information provided by another  
11 information content provider -- so, that would be another  
12 user of Facebook -- the publication of one can't be  
13 attributed to the other. That's essentially what the act  
14 says, and this is not a new element of federal law. The  
15 leading case in this circuit is the *Zeran* case versus  
16 American Online, AOL. That's how old this doctrine is, and  
17 what *Zeran* says and what all the cases, whether they have  
18 to do with Facebook or Google since, what they say is that  
19 Ms. Stiles is a Facebook user, and she is not liable for  
20 the statements of any other Facebook user.

21 That's exactly what happened in the *Zeran* case where  
22 AOL was trying to be held liable for comments of a third  
23 party. That is exactly what happened in the *Niemet*  
24 [phonetic] case where a consumer affairs website was sued  
25 under the theory that they ratified the statements of some



1 third-party commenter, same theory Mr. Loveless has here,  
2 that Ms. Stiles somehow ratified their comments. Same  
3 theory -- same outcome in the *Bennett v. Google* case, the  
4 failure to remove a third party's post. Google is not  
5 liable for it; Ms. Stiles is not liable for it in this  
6 case.

7 It is black letter federal law. I've seen nothing in  
8 the case law or in this case that would suggest the outcome  
9 is otherwise. And if you look at the complaint filed by  
10 Mr. Loveless, it is clear that his theory as to all the  
11 statements in paragraph 26 have to do with this idea that  
12 other people said things that Ms. Stiles was supposed to  
13 censor, remove, edit, delete, or somehow she has adopted  
14 them as her own statements. That is -- that argument is  
15 foreclosed as a matter of federal law. I'd submit it's  
16 also foreclosed as a matter of state common law, and so I  
17 think you can grant judgment on the pleadings as to that  
18 entire category of, of this claim and dismiss it with  
19 prejudice.

20 If I could, I'll turn to the second piece of this,  
21 which is the allegation that Ms. Stiles made claims on her  
22 Facebook page. And, Your Honor, I confess in getting ready  
23 for this hearing, I noticed some language in the complaint  
24 that I don't think I adequately addressed in the memo. I  
25 think I want to highlight it here.

1 Paragraph 15, it lists the seven comments that are at  
2 issue. But what the paragraph begins with is:

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

7 And then it goes on to list seven. The reason I want  
8 to highlight that is for the purpose of this motion, we've  
9 kind of treated all of these statements as, at least based  
10 on the allegations, attributed to her. Now, we have denied  
11 that in the answer. We have denied that paragraph in its  
12 entirety, but I think for the purpose of the court's ruling  
13 on this motion, the worst possible outcome for Ms. Stiles  
14 is that they could somehow allege she made those  
15 statements. So, we don't accept that, but I'm going to  
16 presume that is the case for the purpose of this argument.

17 If it were the case that she ratified or endorsed, as  
18 they've alleged, those statements would go out the door the  
19 same way that the paragraph 16 statements would go out the  
20 door under the Communications Decency Act or common-law  
21 publication.

22 So, I think if we assume that she made those comments,  
23 and we dispute that, but if we assume that she did, I think  
24 they fail for three reasons. The first is some of these  
25 statements don't concern Ken Loveless. So, paragraph 15(a)

1 is a comment about the school board. And, Your Honor, on  
2 the back of -- Exhibit A to our motion has a list of the  
3 statements all in one place, but paragraph A has to do with  
4 -- it's a statement about corruption or the appearance of  
5 rewarding friends, but by its expressed terms, it says you  
6 should be, quote: You should be interested in the way your  
7 current school board or trustees is doing business. No  
8 mention of Ken Loveless.

9 THE COURT: Well, was he a member of the board at the  
10 time that statement was made?

11 MR. KENNEY: He was, Your Honor, and let me tell you  
12 why that doesn't matter. There's a number of places you  
13 can look, but probably the easiest place to look is *New*  
14 *York Times v. Sullivan* where after the court goes through  
15 an extensive analysis and adopts the constitutional malice  
16 standard, it disposes with the case by pointing out that  
17 the statements that were purportedly libelous were made  
18 about the commissioners, three commissioners. Excuse me,  
19 let me back up, were made about the police. They were made  
20 about the police, and what the plaintiff wanted to do was  
21 infer that by criticizing the police, they were also  
22 criticizing the commissioner who, who supervised the  
23 police. That has not been held. It was not held in that  
24 case, and I am unable to find a case where criticism of a  
25 public body suffices to be imputed to a specific member.

1           THE COURT: Well, this was a little different, though.  
2           The police -- the commissioner was the commissioner, the  
3           head, the chief of police. The police was just a general  
4           term about all police, right?

5           MR. KENNEY: That is, that is correct, Your Honor.  
6           That is correct.

7           THE COURT: And so what you're saying is that he was  
8           one of the police as well as the commissioner, and *New York*  
9           *Times v. Sullivan* did not find this publication  
10          constitutionally malicious as against him.

11          MR. KENNEY: Well, I, actually I wouldn't even go that  
12          far. What, what I'd say is that it, it was not of and  
13          concerning the plaintiff, which is a -- you know, an  
14          element, just a common-law element before you get to any  
15          consideration of fault or constitutional malice. And, and,  
16          Your Honor, there are some cases and I --

17          THE COURT: The reason I ask, it seemed to me -- I've  
18          read *New York Times v. Sullivan* again in connection with  
19          these proceedings, as I have many times in the past, and  
20          it's interesting. They don't, they don't make the  
21          distinction you're making now with regard to analyzing the  
22          commissioner as a policeman. They simply talk about the  
23          police as something and the commissioner as a something  
24          else and say that the commissioner was not -- no comment  
25          was directed towards the commissioner.

1 MR. KENNEY: And I agree.

2 THE COURT: So, I wonder. I know I'm parsing it  
3 closely, but this is a comment about the whole board of  
4 trustees, of which he was a member.

5 MR. KENNEY: That's correct, Your Honor, and I'm, I'm  
6 looking for our citation here, but what -- and I agree with  
7 your reading of *Times v. Sullivan*. You're exactly correct.  
8 It's correct, criticism of the police. He's the  
9 commissioner that oversees it, but subsequent cases have  
10 held -- and when I sit down and catch my breath, I'll find  
11 it -- that criticism of a public body writ large is ---

12 THE COURT: Is not directed towards an ---

13 MR. KENNEY: -- not sufficient.

14 THE COURT: --- individual member.

15 MR. KENNEY: That's right. It's not of and concerning  
16 the member.

17 THE COURT: I was making a kind of narrow distinction,  
18 which is it took some other cases to embellish *New York*  
19 *Times v. Sullivan* and say what you're saying.

20 MR. KENNEY: I think you're right, Your Honor.

21 So, I'm going to move on to a couple of the other  
22 points we try to raise in the brief. You know, the first  
23 argument not of and concerning some of these statements --  
24 and, and let me say. Some of these arguments that I'm  
25 making would also apply to the paragraph 16 statements.

1 I'm not going to go through give all of them; I don't think  
2 it's a good use of the court's time. We think the CDA is  
3 the best way for you to dispose of those statements, but  
4 some of these arguments, many of them also apply equally to  
5 the statements other people made.

6 Turning to the next grounds to deal with the paragraph  
7 15 statements, many of these -- and I specifically would  
8 point the court to subparagraphs B through G. They're just  
9 not defamatory, Your Honor; they're not actionable.

10 MS. BALLARD: Which paragraph?

11 THE COURT: B as in boy.

12 MS. BALLARD: Okay.

13 MR. KENNEY: 15(b) through 15(g). They're not  
14 actionable. They're, they're what the case law calls  
15 merely unfavorable. They are perhaps criticism, but they  
16 are not actionable on their face. And, and I would sort of  
17 punctuate that point by directing the court to a couple of  
18 cases we cited in the memorandum, some of which Your Honor  
19 is very, very familiar. We cited the *Garrard v. Charleston*  
20 *County School District* case which had to do with the  
21 newspaper that published a report making statements about a  
22 post-game procedure that football players were engaged in  
23 calling the players -- pardon my language; it's in the  
24 opinion -- racist douche bags and characterizing their  
25 activities as racist, and Your Honor was the trial court

1 judge.

2 THE COURT: This was the watermelon case.

3 MR. KENNEY: Yes, Your Honor, and if I'm correct, Your  
4 Honor was the trial court judge. You tried that case, and  
5 you held that those statements were matters of opinion that  
6 were not actionable, and the Court of Appeals has affirmed  
7 your decision. We cite a couple of others like the  
8 *Clifford* case, *Clifford v. Trump*, where the case was  
9 dismissed after the plaintiff or -- the plaintiff sued over  
10 a tweet where she was accused of engaging in a con,  
11 suggesting she had, she had been involved in criminal  
12 activity.

13 And what all these cases kind of boil down to is  
14 there's a class of statements that are opinion that are not  
15 actionable. They are not reasonably understood to assert a  
16 specific objective fact.

17 THE COURT: Let me ask you this. Let's say I agree  
18 with you about 15, that A doesn't -- is not of or  
19 concerning the plaintiff specifically and B versus G are  
20 merely unfavorable. That's 15. Then you got to 16.

21 MR. KENNEY: Well, Your Honor, I'd, I'd be happy to go  
22 through all the 16 because I ---

23 THE COURT: Well, you're asking for summary  
24 disposition of this matter, and I think we're going to have  
25 to look at your complaint, at the complaint to do that.

1 MR. KENNEY: I'd be happy to, Your Honor. In the  
2 memo, we detail the paragraph 16 statements that I believe  
3 you ought to dismiss under this alternative theory. And  
4 again, I think the best way to deal with paragraph 16 is  
5 the CDA. But as alternative grounds, I'd refer Your Honor  
6 to -- I apologize. I would refer Your Honor to page 23 of  
7 the memo, and I'll, I'll tell you which paragraphs.  
8 Paragraph 16, the following subparts I think you can  
9 dispense with under this alternative theory. A as in  
10 alpha.

11 THE COURT: Now hang on. Hang on.

12 MR. KENNEY: Yes, Your Honor.

13 THE COURT: Hang on a moment.

14 MR. KENNEY: Of course, Your Honor.

15 (A PAUSE.)

16 THE COURT: Your Honor, if you're looking at my memo,  
17 I would direct you to perhaps start on page 19.

18 THE COURT: I'm trying to find your memo in this  
19 great, big old barrel of paper I've got.

20 MR. KENNEY: Would you like my copy?

21 THE COURT: No.

22 (A PAUSE.)

23 THE COURT: This is your omnibus memorandum of law?

24 MR. KENNEY: Yes, Your Honor.

25 THE COURT: Okay. I got it now. Now, where are you



1 directing me?

2 MR. KENNEY: I think in light of the court's question,  
3 the place to start is maybe page 19, which I will -- I'd  
4 like to point you to the paragraph 16 portions that are  
5 just not defamatory and then walk forward in the analysis  
6 from there.

7 THE COURT: Right. Okay, I've got it; I've got it.

8 MR. KENNEY: Thank you. Thank you, Your Honor. So,  
9 going back just a moment, when I was talking about  
10 statements that just aren't actionable, they're just not  
11 defamation, okay?

12 THE COURT: Okay. So, now, paragraph 16 of the  
13 complaint talks about things like Crooked Ken and ethics  
14 violations, and the only ones I can see that have any  
15 specification -- a bunch of them are opinions, but the ones  
16 that talk about Crooked Ken are the only ones that arguably  
17 accuse him of something more than just not following the  
18 ethics rules, et cetera, et cetera. So, tell me why you  
19 say that isn't defamatory.

20 MR. KENNEY: Yes, Your Honor. Focusing on -- because  
21 I agree with you. A bunch of them are just opinions and  
22 they ---

23 THE COURT: Opinions. Lord, if we allowed lawsuits  
24 every time somebody said a mean opinion about you, the  
25 courts would be clogged up.

1           MR. KENNEY: I agree, and also some are not of and  
2           concerning him like we talked about a moment ago, but your  
3           question about take Crooked Ken as an example.

4           THE COURT: Yeah, the specific ones that say he's  
5           dishonest or crooked.

6           MR. KENNEY: Yeah. The first point I'd make about  
7           that is back to the argument a minute ago about the CDA, I  
8           don't think you have to actually get into this question of  
9           is it opinion, is it hyperbole. You don't have to reach  
10          that because under federal law, he cannot hold Ms. Stiles  
11          responsible for somebody else calling him Crooked Ken. So,  
12          that's the first point.

13          But as to the, the sort of substance of the statement,  
14          Your Honor, I think that it's rhetorical hyperbole, and the  
15          *Clifford* case is good on this. This is the former  
16          president. Donald Trump tweets a statement about Stephanie  
17          Clifford, essentially accusing her of lying and running a,  
18          quote, con. Accuses her of being a liar and a criminal.  
19          And what the court says, what the Ninth Circuit says is you  
20          have to look at it from the perspective of a reasonable  
21          person reading that type of statement. And I'll tell you  
22          what I found instrumental or instructive in getting ready  
23          this morning was Your Honor's concurrence in the  
24          *Holtzscheiter* ---

25          THE COURT: *Holtzscheiter* number 2. Yes, sir, I

1 remember that quite well.

2 MR. KENNEY: That's exactly right.

3 THE COURT: I would have gone a bit further. In fact,  
4 thank god we've gotten away from all this libel *per quod*  
5 and libel *per* and all that kind of thing and gotten a more  
6 reasonable look at this thing. I would have gone a little  
7 bit further.

8 MR. KENNEY: Your Honor, I thought your concurrence  
9 laid out a nice framework. I would note you still see  
10 smatterings of it throughout the case law. You'll see  
11 smatterings of it in my memo. I'm sure you did.

12 But I think one of the points that jumped out at me in  
13 footnote 2 of your concurrence, you're citing the  
14 restatement, restatement section 6-14, comment D, and one  
15 of the points you were trying to make is that in  
16 determining the defamatory character of the language, the  
17 quote:

18 The meaning of which is clear or otherwise  
19 determined, the social station of the parties in  
20 the community, and the current standards of moral  
21 and social conduct prevalent therein, and the  
22 business and professional calling of the parties  
23 are important factors.

24 And you go on to say that -- it goes on to say:

25 An imputation may be defamatory as applied to one

1 person at a given time and place, although it  
2 would not be derogatory of another at a different  
3 time and place.

4 And I think the point of all of that is to say the  
5 context matters, and in the context of talking about a  
6 public official performing a public duty, debating matters  
7 of public concern by citizens, right, who have hot  
8 disagreements often with those elected officials, the case  
9 law seems to bundle up these types of rhetorical hyperbole,  
10 whether it's Crooked Ken or want a con, what a liar. It's  
11 really sometimes some very, very rude, unpleasant things,  
12 but all of that gets bundled up into this, into this bundle  
13 of rhetorical hyperbole because if we were not to do that,  
14 the chilling effect on public discourse and on the public  
15 space has the sort of deleterious consequences that the  
16 Supreme Court talked about going all the way back to  
17 *Sullivan*.

18 And so I think you need to treat or you should treat  
19 the Crooked Ken statements -- I mean, I believe as quote --  
20 from the complaint, I believe it's in all caps, Your Honor.  
21 And, and so would a reasonable reader look at a statement  
22 made in all caps, perhaps with an exclamation point, and  
23 say, oh, this is a specific accusation of a crime on a date  
24 for this purpose that he committed? I think the answer has  
25 to be, as a matter of law, no. A reasonable person would

1 not draw such a conclusion. So, I think that gets us a  
2 good ways down the road in terms of a lot of the  
3 statements, in terms of the statements.

4 I don't know if it's helpful to the court, but  
5 beginning on page 19 and walking forward to 23, under each  
6 one of these theories I've itemized the subparts that I  
7 think Your Honor should dispense with, these statements,  
8 and grant judgment on the pleadings. I'm happy to read  
9 them into the record.

10 THE COURT: No. I'm very familiar with them and  
11 looked at them in a great deal of detail.

12 MR. KENNEY: A couple other points and then I'll, I'll  
13 sit down and let Ms. Ballard have a chance here. I think  
14 the last point that I'd like to make is there are --  
15 there's a category in the memorandum where I'm asking the  
16 court to find that the statements as to -- the ones  
17 attributed or are purportedly attributed to Ms. Stiles, I  
18 think the way I phrased it in the memorandum are true as a  
19 matter of law. I think maybe a better way to phrase it in  
20 the rubric of the case law is there's no fault as a matter  
21 of law. And, you know, as Your Honor has pointed out  
22 several times, we have an exceedingly high standard in this  
23 case, constitutional malice, which is Ms. Stiles would have  
24 to know that the statements were, in fact, false. Not  
25 minor errors, not slight omissions. Actual knowledge of

1 falsity, a subjective standard as to her mental state, or  
2 she was so reckless in the publication of them that we  
3 attribute that very high standard to her.

4 And the problem in this case for the plaintiff and the  
5 reason we are asking for judgment as a matter of law --  
6 they haven't pled it. They'll never be able to prove it.  
7 The statements in this case, as we've already discussed,  
8 concern his public duties. They arise based on public  
9 debate amongst his fellow board member, statements other  
10 board members have made about him, statements the newspaper  
11 has made about him. They involve statements in this ethics  
12 file -- filing that he's waived the confidentiality on.

13 His lawyer has written a letter to the Ethics  
14 Commission conceding the operative facts. They want to  
15 fight about the law, but there's no dispute about the  
16 facts. All of documents in this filing are based on public  
17 information compiled by a citizen. They're based on school  
18 board documents that are available to the public, board  
19 meetings that Ms. Stiles was privy to through a virtual  
20 platform or in person. And so to the extent she made any  
21 of these statements, if that is true, they will never be  
22 able to plead or prove falsity here.

23 THE COURT: Well, essentially the heart and soul of  
24 the factual premise, what you say is the undisputed facts  
25 surrounding this particular debate, are that he had a

1 contract for a \$1 million construction project as a  
2 subcontractor to a firm that was awarded a contract by  
3 School District 5 as a general contractor for an elementary  
4 school, and that Mr. Loveless sought an opinion from the  
5 Ethics Commission as to the propriety of his dealing with  
6 the Contracting Services or voting on matters pertaining to  
7 the award to them. And Ethics Commission advised that the  
8 better course would be to recuse himself. He did not  
9 recuse himself, and he did not disclose his contract with  
10 SLED to the board members when he voted or took action or  
11 went to meetings and the like. Is that basically the  
12 operative facts around the public, the big public  
13 discussion about his ethics posture?

14 MR. KENNEY: As to the ethics statements, that is the  
15 bulk of the, of the issue, yes, Your Honor.

16 THE COURT: The bulk of these issues and the reason  
17 the term Crooked Ken is used and all that kind of thing is  
18 because of this *contretemps*, for lack of a better word,  
19 that developed ---

20 MS. BALLARD: I'm sorry. What word?

21 THE COURT: --- about his involvement with -- as a  
22 subcontractor with a firm that also got a large contract  
23 from School District 5.

24 MR. KENNEY: That's, that's correct.

25 THE COURT: And his failure to disclose that failure

1 and failure to follow the advice of the Ethics Commission.

2 MR. KENNEY: That's correct.

3 THE COURT: I mean, there are other things obviously  
4 that happened and other mean words that were spoken and  
5 disagreements that were had about all kind of things  
6 related to school policy.

7 I must say in defense of Ms. Ballard, things about  
8 everything from the Waffle House meetings to that kind of  
9 thing are not very pertinent to this. The biggest thing is  
10 the statements that were made either by her, or if she's  
11 responsible for them by others that all seem to have a  
12 focal point around this dispute about his ethics situation.

13 MR. KENNEY: I agree.

14 THE COURT: Is that basically it as you see it?

15 MR. KENNEY: I think that is the, the core of their  
16 argument, as you indicted.

17 THE COURT: And your argument is there is nothing and  
18 no way that a statement could be formulated out of what's  
19 been listed in the complaint that would make it defamatory  
20 for any member of the public to comment about this  
21 situation and in the terms that were used on the internet  
22 and repeated in the complaint?

23 MR. KENNEY: Based on the public record, that's  
24 correct.

25 THE COURT: All right, sir. I think I understand your



1 arguments.

2 MR. KENNEY: Thank you, Your Honor.

3 THE COURT: Ms. Ballard.

4 MS. BALLARD: Thank you, Your Honor. First of all,  
5 this complaint was carefully drafted, and as Your Honor  
6 knows, on motion for judgment on the pleadings, you have to  
7 assume everything in this complaint is true. And the  
8 omnibus memo that Mr. Kenney filed, I, I couldn't help but  
9 notice the first five or six pages cite to nothing other  
10 than news articles published in the *State* newspaper. So,  
11 none of that can be considered. The fact that she's a  
12 mother of three and stays home, none of that can be  
13 considered; that's not in the complaint.

14 THE COURT: I concur.

15 MS. BALLARD: Okay.

16 THE COURT: I think what we're talking about and what  
17 his comments have been directed towards is the complaint  
18 itself.

19 MS. BALLARD: Correct.

20 THE COURT: And not her status one way or another.  
21 So, I agree with you about that.

22 MS. BALLARD: Thank you, Your Honor, and we carefully  
23 drafted this complaint because Ms. Stiles established this  
24 site and held -- and it says that she held herself out as  
25 having verified the validity -- paragraph 8 of my

1 complaint, her quote on the Facebook page when she created  
2 it says: All information posted as a result of much  
3 research and analysis.

4 We went on to say in paragraph 9 -- because we  
5 determined what powers and authorities an administrator of  
6 a Facebook page have regarding editing and deleting and  
7 censoring the things that are put on that page. She had  
8 authority to do that but she didn't. She had full control  
9 and authority to monitor the posts, and she had unfettered  
10 discretion, power, and authority to delete posts, but she  
11 didn't. And, therefore, she undertook the representation  
12 that all of the statements that are contained in our  
13 complaint were ratified by her and were the result of much  
14 research and analysis. She made that representation.

15 It's almost as if the, the lifesaving doctrine, the  
16 swimmer doctrine, you know, if someone's suffering and  
17 they're drowning in the ocean somewhere and a volunteer  
18 runs out to try to save them but they have no duty to try  
19 to save to them but they undertook that duty, they  
20 voluntarily undertook that duty, under those circumstances,  
21 that person has an obligation to act with due care. There  
22 was no duty to start with, but since she injected herself  
23 into and warranted to the public that all information on  
24 this site was the result of much research and analysis, we  
25 have pled a common-law ratification argument that has, that

1 has to be presumed to be true.

2 And we did not allege defamation *per quod*. That has  
3 nothing to do with this, and there are many of the  
4 statements made by Ms. Stiles yourself and, in paragraph  
5 16, of others that are false and defamatory on their face.  
6 For instance, in paragraph 15(b) she says -- she, Ms.  
7 Stiles herself -- says:

8 Mr. Loveless has an EC opinion requiring his  
9 recusal for certain matters, and he refused for a  
10 length of time.

11 That's not true, Your Honor. What Mr. Scott -- what  
12 Mr. Loveless had was a staff letter from the State Ethics  
13 Commission, not an opinion from the State Ethics Commission  
14 but the letter, and there's a distinction, and under Title  
15 VIII there's an absolute distinction. The letter from  
16 staff counsel is not an opinion of the State Ethics  
17 Commission. So, all these posts and, and statements that  
18 said he had an opinion requiring him to be disqualified are  
19 all false, absolutely false. The statutory definition of  
20 what an opinion of the SEC is is very detailed and very  
21 limited, and a letter from Courtney -- I can't think of her  
22 last name -- at the State Ethics Commission doesn't  
23 constitute an opinion of the commission. So, those  
24 statements are just flat out false.

25 The, the act -- well, let me back up. While we're

1 still on the motion on the judgment of the pleadings, the  
2 court has held repeatedly that, you know, we, we do this  
3 rarely. We have to assume everything is true. All  
4 reasonable inferences have to be made in our favor, and if  
5 under any theory that we have set forth in our complaint we  
6 state a cause of action, we must be allowed to proceed  
7 beyond the judgment on the pleading standard.

8 And as I said, we carefully drafted this complaint to  
9 incorporate all the powers that Ms. Stiles voluntarily  
10 undertook when she became the administrator of D5. I  
11 didn't include it in the complaint, but there's a specific  
12 listing on Facebook of what powers an administrator has  
13 over a page that she creates. And she can delete things.  
14 She can flag things. She can mark things as not endorsed  
15 by the administrator of the page. There's a number of  
16 things that she can do and undertook to do when she  
17 declared herself to be the administrator of the page of:  
18 All information is the result of much research and  
19 analysis.

20 Not only is that not true, but that's what she  
21 represented that it is. So, even the statement itself,  
22 that all information posted is the result of much research  
23 and analysis, is false. I mean, that's false. It's not  
24 defamatory to Mr. Loveless, but that's false, too.

25 Because she, as near as we can tell, never exercised

1 any -- I'm getting outside the complaint, but as far as we  
2 can tell, she never deleted or blocked or anything postings  
3 or comments or whatever they're called on the Facebook  
4 page. She just let people run wild on the Facebook page.  
5 Therefore, under common law she ratified and endorsed and  
6 further published the, the defamatory statements that were  
7 made regarding Mr. Loveless, and it's not true.

8 THE COURT: Well, let me just ask you this, Ms.  
9 Ballard.

10 MS. BALLARD: Yes.

11 THE COURT: There is a federal law, as we know, that

12 ---

13 MS. BALLARD: There is.

14 THE COURT: --- impacts here, and in Section 230(c)(1)  
15 and E(3) ---

16 MS. BALLARD: Yes.

17 THE COURT: --- the ---

18 MS. BALLARD: I believe (c)(1) ---

19 THE COURT: --- the provision is ---

20 MS. BALLARD: --- the part he's referring to.

21 THE COURT: --- said that publication on a website of  
22 this type cannot be attributed in state or federal court to  
23 those that operate the site.

24 MS. BALLARD: Unless she voluntarily undertook that  
25 duty on her own, which she did, and that's the common law

1 in South Carolina. If she undertakes the duty, she has to  
2 exercise due care, and the CDA doesn't exempt that. It  
3 doesn't say that she can't voluntarily undertake the duty.  
4 In fact, Section E(3) of the statute, and when -- the  
5 statute, I mean the CDA -- Section E(3) specifically says:

6 Nothing in this section shall be construed to  
7 prevent any state from enforcing any state law  
8 that is consistent with this section.

9 In other words, if we have a common-law doctrine in  
10 South Carolina, and we do, that says if you undertake to  
11 act, you must act with due care, the federal law can't  
12 preempt that. The federal absolutely cannot preempt that,  
13 and if you research the history of the federal act and the  
14 cases that -- I believe it was 1934, the cases that have  
15 been decided since then were focusing on claims that people  
16 were censoring statements that had been made out there and  
17 were taking things off. And the arguments were being made  
18 that, hey, this is a public form. You can't take my stuff  
19 off.

20 Well, Facebook says you can; Facebook says you must.  
21 Facebook says you have all this authority and all these  
22 powers, all of which are incorporated in paragraph 9 of our  
23 complaint. She has a common-law duty to act with due care  
24 as to anything she allows to be put on that page.

25 THE COURT: Well, let me ask you this. Let's assume

1 for a moment that someone who has a website has the same  
2 kind of generalized information.

3 MS. BALLARD: The same kind of what? I'm sorry.

4 THE COURT: Has the same kind of generalized  
5 information that Ms. Stiles put on her website which does  
6 not use the word verification.

7 MS. BALLARD: Paragraph 8 is a quote of what she put  
8 at the beginning.

9 THE COURT: Ma'am?

10 MS. BALLARD: Paragraph 8 of our complaint is the  
11 quote from the opening paragraph of D5.

12 THE COURT: Yeah, and it says: All information posted  
13 is the result of much research and analysis.

14 MS. BALLARD: Correct.

15 THE COURT: That's what it says. It doesn't say -- it  
16 doesn't use the words verify or anything. So, say it says  
17 it's the result of research and analysis. And say someone  
18 posts on a particular website pornography that is very  
19 invasive of people's privacy and so forth. Would the  
20 federal legislation protect a website that had this same  
21 material that was on Ms. Stiles's website from being sued  
22 by the -- for the posting by another of that kind of  
23 pornographic material?

24 MS. BALLARD: Your Honor, under that scenario, the  
25 facts that would be relevant is if the publisher of that

1 page or the formatter of that page -- Facebook, for  
2 instance -- allowed the administrator to delete that  
3 information, that pornographic information.

4 THE COURT: Right. Well, let's say they didn't delete  
5 it.

6 MS. BALLARD: Okay. That ---

7 THE COURT: Because that's what you're saying here is  
8 she should have deleted ---

9 MS. BALLARD: She should have ---

10 THE COURT: --- this information ---

11 MS. BALLARD: --- deleted it because she undertook the  
12 duty to do so.

13 THE COURT: Well, that's what we've got to decide,  
14 what she undertook, but ---

15 MS. BALLARD: Right.

16 THE COURT: --- if the same language that you say  
17 obligates her and she undertakes thereby verification of  
18 all the information, then you're going to be exposing all  
19 the websites to a great deal of liability for failure to  
20 take off their site materials that either are actively  
21 offensive to privacy or may not be true.

22 MS. BALLARD: I didn't undertake that. Ms. Stiles  
23 did.

24 THE COURT: I'm saying this language, and you say she  
25 undertook by the language. I'm not so ---



1 MS. BALLARD: Because she's ---

2 THE COURT: --- sure about that.

3 MS. BALLARD: --- the administrator of the page and,  
4 and the powers of an administrator are wide and broad.

5 THE COURT: Well, those are the powers pf an  
6 administrator under what?

7 MS. BALLARD: Of a Facebook group page.

8 THE COURT: Well, of Facebook, right. That's not the  
9 federal law on the subject. That's Facebook's directive as  
10 to what kind of powers an administrator has, correct?

11 MS. BALLARD: Exactly. Exactly, and my point is that  
12 this federal act has nothing to do with the common law of  
13 South Carolina. It does not interfere.

14 THE COURT: Let's just go one more time at the things  
15 that she should have -- that further investigation should  
16 have caused her to remove because they are, they are false.

17 MS. BALLARD: Well, she undertook that responsibility  
18 when she stated ---

19 THE COURT: I understand you argue she undertook the  
20 responsibility. I want to look one more time at the  
21 citations of libelous statements that you ---

22 MS. BALLARD: Oh, in the complaint?

23 THE COURT: You list a group of libelous statements  
24 ---

25 MS. BALLARD: Yes.

1 THE COURT: --- that were not the expression of  
2 opinion, and you say they are false, and that's why you are  
3 suing her, and she ---

4 MS. BALLARD: And South Carolina law ---

5 THE COURT: --- should have them taken off ---

6 MS. BALLARD: I'm sorry.

7 THE COURT: --- of the website because they were not  
8 true. So, let's look one more time at those statements.  
9 You take your complaint.

10 MS. BALLARD: I've got it.

11 THE COURT: And it's paragraph 16, as I understand it.

12 MS. BALLARD: That's the statements ---

13 THE COURT: Because it's ---

14 MS. BALLARD: --- that she republished.

15 THE COURT: Paragraph 16 says:

16 Further, Stiles acted with actual malice in  
17 undertaking the responsibility for monitoring the  
18 page which imposed upon her the obligation to  
19 delete defamatory posts.

20 MS. BALLARD: Yes.

21 THE COURT: She didn't do that. She published  
22 ratified, and endorsed the statements of others.  
23 These statements include.

24 And then you go down the list of statements. Which of  
25 those statements should have been deleted because they were

1 false?

2 MS. BALLARD: All of them.

3 THE COURT: All right.

4 MS. BALLARD: For a number of different reasons,  
5 context included.

6 THE COURT: Well.

7 MS. BALLARD: And, and as I say ---

8 THE COURT: And does that context include any  
9 attention to fair comment, express of opinion because we  
10 are talking about an area in which you are dealing with a  
11 public official.

12 MS. BALLARD: Correct.

13 THE COURT: And you're dealing with comment about a  
14 public official's performance.

15 MS. BALLARD: Correct.

16 THE COURT: So, in that context, you're saying that  
17 each one of these things was demonstrably false and done  
18 with actual malice.

19 MS. BALLARD: When she republished it, yes.

20 THE COURT: Through republishing, okay.

21 MS. BALLARD: Yes, Your Honor, yes.

22 THE COURT: Okay, and that was because, first of all,  
23 they were demonstrably false because if they weren't false,  
24 then the rest of this really doesn't matter.

25 MS. BALLARD: Right.

1 THE COURT: They were demonstrably false and she  
2 undertook the duty to verify the truth of them.

3 MS. BALLARD: She did.

4 THE COURT: And she didn't do that and, therefore, she  
5 had defamed him, right?

6 MS. BALLARD: Correct. She has republished, and the  
7 federal act does not preempt state law about the voluntary  
8 undertaking of a duty that does not otherwise exist. It  
9 does not supersede the state law of this state that says  
10 certain expressions of opinion can be defamatory depending  
11 on the context and depending on the circumstances  
12 surrounding the statement.

13 THE COURT: And she ---

14 MS. BALLARD: Our courts, Your Honor ---

15 THE COURT: I understand and ---

16 MS. BALLARD: --- has recognized ---

17 THE COURT: --- she says that ---

18 MS. BALLARD: --- that ---

19 THE COURT: You say that she acted with actual malice.

20 MS. BALLARD: Correct.

21 THE COURT: In undertaking the responsibility for  
22 monitoring the page. I don't really understand fully what  
23 that means.

24 MS. BALLARD: Well, what that means is -- and, first  
25 of all, you have to assume it to be true, but what it means

1 is she voluntarily undertook the authority that Facebook  
2 gave to her when, when she created the page and held out to  
3 the world that all content on this page was the result of  
4 much research and analysis. She voluntarily put her rubber  
5 stamp of approval on anything that was posted or commented  
6 on on that page.

7 And again, on a motion for judgment on the pleadings,  
8 Your Honor has to assume our allegations to be true: that  
9 she intended that these things be republished and they were  
10 false.

11 So, the federal law cannot preempt South Carolina  
12 common law duties of voluntarily undertaking to act, which  
13 Ms. Stiles did. And they cannot, they cannot supersede the  
14 common law of South Carolina that has recognized that  
15 certain forms of opinion are, in fact, defamatory and, in  
16 fact, libelous. And while that may be different from other  
17 states and different from what the US Supreme Court has  
18 said ---

19 THE COURT: Right, but the foundation ---

20 MS. BALLARD: --- that's what South Carolina says.

21 THE COURT: I understand, Ms. Ballard, but the core  
22 reason that she acted with actual malice ---

23 MS. BALLARD: Yes.

24 THE COURT: --- is not so much what these things say  
25 or don't say, but that she undertook ---

1 MS. BALLARD: Yes.

2 THE COURT: --- to -- you say she undertook a duty.

3 MS. BALLARD: She did.

4 THE COURT: All right, and that is based on the  
5 representation to the public: All information posted is  
6 as -- is a result of much research and analysis. That is  
7 the ---

8 MS. BALLARD: Yes, Your Honor.

9 THE COURT: That, that is the statement that imposes  
10 the duty on her. Otherwise, all the other allegations  
11 about the truth, the falsity of these things would not be  
12 -- would be much impacted by the federal law.

13 MS. BALLARD: I'm not ---

14 THE COURT: But because she undertook this common law  
15 duty ---

16 MS. BALLARD: Correct.

17 THE COURT: All right, that is the fulcrum point for  
18 addressing her actual malice, which is absolutely required  
19 in these circumstances.

20 MS. BALLARD: Absolutely.

21 THE COURT: Okay.

22 MS. BALLARD: And, and if you read the full -- which  
23 I'd even quote her full preface on the -- from her Deep  
24 Dive. I have it here somewhere, but I didn't publish the  
25 full -- several paragraph statement of why she was creating

1 the page and what she intended to accomplish with the page.  
2 But she made the specific warranty that: All of the  
3 information on this page is the result of much research and  
4 analysis. And that is a common-law duty that she  
5 undertook. Nobody made her undertake that.

6 THE COURT: I understand.

7 MS. BALLARD: And again, as for purposes of -- oh,  
8 here it is, the opening portion of her Deep Dive page goes  
9 into great detail in a post February 24, 2021, about why  
10 she created Deep Dive and what she attempted to accomplish  
11 with it. I didn't put all that in the complaint; I didn't  
12 need to put all that in the complaint. All I had to put in  
13 the complaint is that she voluntarily undertook that duty  
14 to monitor it and to verify that it was accurate or  
15 whatever word she used, a: Result of much research and  
16 analysis. She labeled that. So, she voluntarily undertook  
17 and those are common-law rights that are governed under  
18 South Carolina law that this federal statute cannot  
19 interfere with.

20 THE COURT: Okay. I understand the contention.

21 MS. BALLARD: And the only other thing I want to make  
22 for the record, Your Honor, is that the -- I object to the  
23 omnibus memorandum that was submitted being considered in  
24 any way because it, it includes matters outside the  
25 complaint, and a motion for judgment on the pleadings has

1 to be based on the complaint and the answer.

2 THE COURT: Well, I haven't looked it in that way, but  
3 I think I can sort through what's pertinent for ---

4 MS. BALLARD: Thank you, Your Honor.

5 THE COURT: --- these proceedings.

6 MS. BALLARD: And, and lastly, my only other point is  
7 that it is disfavored to rule on questions at this stage of  
8 the proceedings, Your Honor, without discovery having been  
9 occurred. Thank you, Your Honor.

10 THE COURT: Wait a minute, Mr. Kenney.

11 MR. KENNEY: Yes, Your Honor.

12 (A PAUSE.)

13 THE COURT: All right, Mr. Kenney, we're not going to  
14 go back and forth forever and ever, but you get one more  
15 crack at it.

16 MR. KENNEY: Thank you, Your Honor. Very briefly, I  
17 think to be clear, we're asking the court to dismiss this.  
18 Our view is this is frivolous, and we would like the court  
19 to say that, and, and you just heard why.

20 Your Honor asked about this undertaking theory. You  
21 said the undertaking is the fulcrum to address the actual  
22 malice. Ms. Ballard said yes. What Your Honor has just  
23 spent a couple of minutes discussing with Ms. Ballard is a  
24 negligence claim. It's a negligence claim, and I'd made a  
25 couple points about it.



1 First, paragraph 5 of the complaint says quote: This  
2 is not an action based on negligence. But you just had an  
3 argument based on negligence. And the second point, and I  
4 think this is what Your Honor was getting at, is if it is  
5 negligence -- let's assume it's negligence. It can't be  
6 actual malice. It just can't, and so you're here  
7 considering a negligence claim when they also concede in  
8 the complaint, or at least allege, that there's actual  
9 malice. Cannot be both.

10 And the reason they're stuck on this undertaking issue  
11 is because federal law does foreclose the issue. And I  
12 would just -- we cited it in the memo, but I just direct  
13 the court back to, specifically on the undertaking issue,  
14 I'd direct the court back to *Monsarrat v. Newman*. It's 514  
15 Federal Supplement 3rd.

16 MS. BALLARD: Say that again? I'm sorry, the cite.

17 THE COURT: *Monsarrat*. It's M-o-n ---

18 MS. BALLARD: I know the name of it.

19 THE COURT: --- s-a-r-r-a-t ---

20 MS. BALLARD: I was just asking for the number.

21 THE COURT: --- v. *Newman*.

22 MR. KENNEY: 15 -- excuse me, 514 Federal Supp 3rd.

23 MS. BALLARD: Thank you.

24 MR. KENNEY: 386. It's a 2021 case out of the  
25 District of Massachusetts, but let's just -- the reason I

1     like the case is it shows just how far Section 230 goes  
2     because what happened in that case is a neighbor on one  
3     social media forum took a defamatory statement -- I believe  
4     it was an accusation of a child predator -- copied the  
5     statement of another person, and reposted it on the, the  
6     neighborhood forum. And the court said under Section 230  
7     of the Communications Decency Act that claim is barred.  
8     And so Ms. Ballard is 100 percent incorrect that federal  
9     law cannot preempt state law. That has been the law in  
10    this circuit since at least 1997 when the Fourth Circuit  
11    decided that, laid out a very clear standard.

12           THE COURT: Well, the Fourth Circuit decided -- the  
13    case starts with a Z.

14           MR. KENNEY: *Zeran*, Your Honor.

15           THE COURT: Yeah, *Zeran*. that was the Fourth Circuit's  
16    iteration on this and, of course, *Monsarrat* is a more  
17    recent case, but it's along the lines of construing the  
18    same parts of the Communications Decency Act that the  
19    Fourth Circuit first dealt with, as you point out in the --  
20    what's the name of that?

21           MR. KENNEY: *Zeran*.

22           THE COURT: *Zeran*, yeah, *Zeran* case, right.

23           MR. KENNEY: And that's exactly right, and so this is  
24    not -- respectfully, we don't believe this is a close call,  
25    a tough call, and based on what Your Honor has heard today,

1 they've, they've conceded that they haven't pled. And they  
2 are not arguing a case based on actual malice by a public  
3 official based on false statements that were intentionally  
4 made. That's not the case they've brought.

5 THE COURT: They, they have -- and Ms. Ballard is one  
6 of the cleverest lawyers I know of and one of the most  
7 studious, and she is very well aware of the Communications  
8 Decency Act and of these other cases. And *Monsarrat* is a  
9 very good one because it's very close to what we got here.  
10 It was a fight among neighbors about what somebody did  
11 that's in capacity.

12 She says that the way she avoids what otherwise is the  
13 constitutional requirement of actual malice and the  
14 provisions of federal law on this subject is that the state  
15 law survives if you undertake voluntarily a particular  
16 duty. It all comes down to the question of what did Ms.  
17 Stiles undertake when she put the language in that this  
18 material is the product of much research, or however she  
19 said. Word verification wasn't used, but Ms. Ballard says  
20 that the words that were used were an undertaking by her to  
21 check the veracity of the statements that were put on.

22 That wasn't exactly the fact pattern in *Monsarrat*.  
23 There wasn't any representation on the website that things  
24 would be checked and verified. You strictly had the  
25 federal law involved.

1           So, it all comes down to this one statement that's  
2       made on here, and I'm going to quote it specifically.

3           MS. BALLARD: From the complaint, Your Honor.

4           THE COURT: I'm quoting the complaint's quote of what  
5       was actually put ---

6           MS. BALLARD: Okay.

7           THE COURT: --- on the website.

8           MS. BALLARD: Okay.

9           THE COURT: Which is -- it all comes down to the words  
10       that were quoted in paragraph 8 of the complaint, which is  
11       Stiles represented to the public, quote, all information  
12       posted is a result of much research and analysis, unquote.  
13       It's that language that she contends by which she undertook  
14       the duty to verify the truth of the matters put on the  
15       page, the page.

16           Had that not statement -- had that statement not been  
17       made, you'd be left only with whatever the duty to verify  
18       is in federal law. And in federal law, there is a specific  
19       protection from the duty to verify by the sections that you  
20       have been arguing.

21           MR. KENNEY: Your Honor, if I could -- yes, Your  
22       Honor.

23           THE COURT: You don't need to say anything else, Mr.  
24       Kenney.

25           MR. KENNEY: Yes, Your Honor. Thank you.

1           THE COURT: I find that there is no construction under  
2       which the words put on the website by Ms. Stiles -- all  
3       information posted is a result of much research and  
4       analysis -- can be construed to have been an undertaking by  
5       Ms. Stiles to verify the truth and the accuracy of  
6       everything posted by others on this neighborhood or  
7       community website regarding Richland County School District  
8       Number 5. And because I find that there is no construction  
9       under which those -- that language was an undertaking by  
10      Ms. Stiles to verify the truth, that undertaking, that that  
11      language did not subject Ms. Stiles to a charge of actual  
12      malice for the things posted by others on the website.

13           There are very few things -- in fact, there's nothing  
14      that specifically is targeted only to Ms. Stiles as the  
15      sayer of words. This suit is about what was posted on that  
16      website or communications back and forth between community  
17      members.

18           But with respect to that website, which is where we  
19      are with respect to Ms. Stiles's responsibility, I find  
20      that the Communications Decency Act controls the  
21      obligations that she had, and it specifically protects and  
22      exempts the people who create websites from the duty to --  
23      from the liability for the accuracy or truth of things  
24      posted by others on the websites, and that is is Section --  
25      Community Decency Act -- Communications Decency Act Section

1 230 C(1) and E(3). Those two sections make it clear that  
2 publication by a manager of a website by others on that  
3 website of material cannot be attributed to the person who  
4 runs the website. And it's only if that material is  
5 attributed to Ms. Stiles that she would be liable for any  
6 action regarding defamation, libel, or slander. And  
7 because Mr. Loveless is a public figure, the constitutional  
8 requirements of *New York Times v. Sullivan* and subsequent  
9 cases as discussed by the court in South Carolina and many  
10 other opinions in which the federal constitution is  
11 construed, Ms. Stiles's protection under the constitution  
12 translates into a doctrine that is common consent, referred  
13 to as a constitutional verification, and that is a very  
14 high standard to meet. And the mere statement that  
15 information is the result of research and analysis is not  
16 an undertaking by Ms. Stiles to verify the truth of the  
17 matters posted by others.

18 Mr. Kenney, that is -- and, Ms. Ballard -- that is my  
19 ruling on the subject. We probably ought to have a written  
20 order about this matter, and it ought to be looked at  
21 carefully, and Ms. Ballard ought to be completely involved  
22 in the order, whether I end up agreeing with what you  
23 write, Mr. Kenney, or what Ms. Ballard writes. But I'll  
24 give you two weeks to develop a proposed order and share  
25 with Ms. Ballard. And I will give Ms. Ballard one week

1 from the receipt of that to share her comments with you and  
2 with the court.

3 You will send your draft to Ms. Ballard and to the  
4 court, and the way you do that is ZPoswal, who is my law  
5 clerk, P-o-s-w-a-l, @sccourts.org, as well as to myself,  
6 JToal@sccourts.org. If you'll send that draft within two  
7 weeks to me, and from the time that Ms. Ballard receives  
8 it, she will have a week to send back to you and to me her  
9 comments, her redrafts, or whatever she feels about the  
10 thing. And then I will take those documents and decide how  
11 to proceed.

12 I always have had hard time with my beloved law  
13 clerk's email address. It is CPoswal, not Z. Her Ebu  
14 name, which is very beautiful and comments on her beauty  
15 and goodness as a person, starts with C, and the last five  
16 letters of it a Zitel, which is what all of us call her,  
17 but you should say CPoswal, and that will bring up her  
18 email.

19 Now before I close it out, any other questions,  
20 comments, anything ---

21 MS. BALLARD: Yes, Your Honor.

22 THE COURT: I turn to you, Ms. Ballard.

23 MS. BALLARD: For the record, Your Honor.

24 THE COURT: Sure.

25 MS. BALLARD: I'm not disputing what Your Honor has

1 ruled.

2 THE COURT: Understood. Understood.

3 MS. BALLARD: But for the record, what we referred to  
4 earlier as the watermelon case.

5 THE COURT: Yes. That's *Garrard*, G-a-r-r-a-r-d.

6 MS. BALLARD: Right.

7 THE COURT: Or *Garrard*.

8 MS. BALLARD: In the watermelon case, this court  
9 talked about a person who voluntarily injects himself into  
10 a particular public controversy and, therefore:

11 Becomes a public figure for a limited range of  
12 issues. Assumes special prominence in the  
13 resolution of public questions.

14 And we think that that also factors into the analysis  
15 of Ms. Stiles's actual malice.

16 THE COURT: That's a good point. You say she became a  
17 public person ---

18 MS. BALLARD: Yes.

19 THE COURT: --- by undertaking this duty with respect  
20 to ---

21 MS. BALLARD: She did.

22 THE COURT: --- the matters on the Deep Dive ---

23 MS. BALLARD: She did.

24 THE COURT: --- website.

25 MS. BALLARD: And, and that actually is a quote from,



1 I think, Gertz 2 -- oh, I'm sorry, Holtz -- *Holtzscheiter*  
2 2.

3 THE COURT: *Holtzscheiter*.

4 MS. BALLARD: Right. So, that is written by you.

5 THE COURT: Yes.

6 MS. BALLARD: In determining whether a claimant  
7 is a private or public figure, the court must  
8 focus on the nature and extent of an individual's  
9 participation in the public controversy giving  
10 rise to the defamation.

11 THE COURT: Sure.

12 MS. BALLARD: And that's why I believe that because  
13 she did voluntarily inject herself, it changes the nature  
14 of her obligations.

15 THE COURT: Sure.

16 MS. BALLARD: As well as the voluntary undertaking.

17 THE COURT: I understand. I think that's a very  
18 interesting point. As I see it, along comes the  
19 Communications Decency Act and puts some restraints around  
20 state law undertakings of that type.

21 MS. BALLARD: Right.

22 THE COURT: It's a good argument, and it's certainly  
23 one that you ought to include in your commentary. We  
24 didn't quite go that way in our talk today, but the floor  
25 is still open for that kind of discussion, and ---

1 MS. BALLARD: I just wanted to ---

2 THE COURT: --- I appreciate that.

3 MS. BALLARD: --- make sure that was preserved. Thank  
4 you.

5 THE COURT: And I will take a look at that.

6 MS. BALLARD: Thank you very much. I appreciate that.

7 THE COURT: Yes, ma'am.

8 MR. KENNEY: Your Honor, on the motion to compel,  
9 motion to compel, would you like a proposed order and if  
10 so, within what time?

11 THE COURT: Why don't you just use the same framework  
12 we're using for this?

13 MR. KENNEY: Thank you, Your Honor.

14 THE COURT: Very good. Now, is there anything else to  
15 come before us before I close these proceedings out?

16 MS. BALLARD: Your Honor, it seems to me that the  
17 motion to compel ought to be held in abeyance if you're ---

18 THE COURT: Well, it's true that ---

19 MS. BALLARD: You're throwing my case out, so I have  
20 to move for reconsideration and appeal.

21 THE COURT: Well, I have no doubt but what all this  
22 matter is going to find its way up the chain.

23 MS. BALLARD: Right.

24 THE COURT: So, my feeling is, my complete activity  
25 here ought to go on and be dealt with and be in record.

1 MS. BALLARD: That's fair.

2 THE COURT: Because if they reverse on my  
3 determination that the case cannot proceed ---

4 MS. BALLARD: Right.

5 THE COURT: --- then I think the rest of these rulings  
6 would still be valid. So, that's, that's why I say let's  
7 just go ahead and get it all there so it's a package. And  
8 if they reverse, which they may very well do.

9 MS. BALLARD: I, I, I agree with you, Your Honor.

10 THE COURT: All right, this is uncharted territory to  
11 some extent.

12 MS. BALLARD: It is a lot of uncharted territory.

13 THE COURT: Exactly, and you ---

14 MS. BALLARD: That's why we ---

15 THE COURT: --- you have raised ---

16 MS. BALLARD: --- so carefully drafted it.

17 THE COURT: --- a very interesting way of looking at  
18 what the Communication Decency Act still allows with  
19 respect to state law.

20 MS. BALLARD: Yes, Your Honor.

21 THE COURT: And I think have done that very  
22 effectively.

23 MS. BALLARD: Thank you. I appreciate that. I love  
24 bringing novel questions to the court.

25 THE COURT: I know. I know.

1 MR. KENNEY: Thank you, Your Honor.

2 THE COURT: Thank you very much.

3 --- END OF TRANSCRIPT OF RECORD ---

**CERTIFICATE**

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED  
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH  
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO  
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE  
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE  
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING  
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE  
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON  
THE 2ND DAY OF DECEMBER, 2022.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/Elizabeth B. Harris, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

MAY 4TH, 2023

|                         |   |                                      |
|-------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF COMMON PLEAS         |
| COUNTY OF RICHLAND      | ) | FIFTH JUDICIAL CIRCUIT               |
| Kenneth B. Loveless,    | ) | Civil Action No.: 2022-CP-40-01364   |
|                         | ) |                                      |
| Plaintiff               | ) |                                      |
| vs.                     | ) |                                      |
|                         | ) | <b>SUPPLEMENT NO. 3</b>              |
| Lesley Ann Stiles a/k/a | ) | <b>PLAINTIFF'S RESPONSE TO FIRST</b> |
| Leslie Lou Stiles,      | ) | <b>SET OF INTERROGATORIES</b>        |
|                         | ) |                                      |
| Defendant               | ) |                                      |

**TO: CHRISTOPHER KENNEY, ESQUIRE, ATTORNEY FOR DEFENDANT**

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.

**SUPPLEMENTAL RESPONSE NO. 3: Plaintiff provides the following legal authority in support of his position that an expression of opinion that conveys a false and defamatory statement of fact can still be actionable:**

- *Erickson v. Jones Street Publishers*, 368 S.C. 444, 629 S.E. 2d 653 (2006)
  - *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40 (1974).
  - *Milkovich v. Lorain Journal Co.*, 110 S.Ct. 2965, 2705-2706 (U.S. 1990)
  - *Garrard v. Jones Street Publishers, LLC*, 2016-00225 (S.C. App. Nov. 6, 2019)
7. Identify by name, date, and statement the "private Facebook groups" to which you are referring in Paragraph No. 7 of the Complaint.

**SUPPLEMENTAL RESPONSE NO. 3: See Response to Interrogatory No. 15 for a list of specific statements. The private Facebook groups where these defamatory comments and statement were posted are:**

- Deep Dive – Facebook group for which Defendant was administrator
- OneD5 – Facebook page started by Kevin Scully

- Explore Lexington Richland District 5 BOT
  - Learn About Lex/Rich D5
  - Citizens of the Town of Irmo and Surrounding Friends
  - Primary Stakeholders of LexRich5
  - D5 Dumpster Fire
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.

**SUPPLEMENTAL RESPONSE NO. 3: Stiles is legally responsible for all posts made on any Facebook page for which she serves as administrator. Stiles personally has posted the following, the dates of all of her posts are not within the knowledge or control of Plaintiff or his counsel and she has refused to produce copies of her page:**

- “Dr. Ross is only working part time for full price.”
- Leslie Anne shared a link: “LR5 school board member sues constituent for criticizing him on Facebook.” On or about 3.17.2022
- “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.” On or about April 13, 2022.
- “This lawsuit is a bully tactic designed to shut me up and scare other parents from participating in our school district.” On or about April 13, 2022.
- “I believe the hypocrisy with the censure also must be mentioned. Mr. Loveless had an AG opinion requiring his recusal from certain matters and he refused for a length of time. . . Trustee Gardner has

broken many of the same board policies with her actions . . . “ On or about March 2, 2022

- “I didn’t know he was a reader. . . There was an Ethics Commission opinion that he should recuse himself from certain discussion and voting.” On or about March 2, 2022
- “Chair Hammond, Ms Hines and Mr. Hogan were present, participated in discussions and voted to dismiss Dr. Melton. Please do not be fooled into thinking that they were in any way passive bystanders to this event. That is untrue. They now realize how this is impacting the district and are trying to walk back this PR disaster (from their point of view) – they were fully invested in this decision.”  
On or about June 16, 2021
- “. . . it is a tax advantage to Akil and this is all about money. You cannot seriously say this saves D5 money. We are paying a contract buyout (226k) for an unbelievably talented Dr Melton and then to top it off we are now paying a foundation 175k plus monthly stipend of 1200\$/month. This does not in any way shaper or form save D5 money. This ridiculous board has cost this district money. And Dr Ross is an astute business man and took advantage of this situation offered by a Board who is blinded by the opportunity to control school operations. . . It’s clear who will be in charge and it isn’t Dr Ross.”  
Date not currently known information in possession of defendant, who violated discovery by refusing to disclose. . Grammatical and



punction errors in original.

- **“Will LR5 sue their critics in ongoing staffing drama. The school board will let them.” On or about August 24, 2021.**
- **“Interesting that the Board again acts without transparency. . . Ross was given a 3 y ear contract,, through 2025. Also, although inexperienced at the district office level – it appears (bc the specifics were not given) Ross may be paid more than Dr Melton.” January 10, 2022. Punctuation errors in original.**
- **“Trustee Loveless owns a company that is a subcontractor for the vendor that has been hired by D5 to build PWES. This represents an economic interest with the vendor, which is a potential conflict of interest. Because Mr. Loveless is a public official he has an ethical duty to recuse himself from any attempt to influence decisions of the D5 Board of Trustees or D5 Admin related to that vendor.” February 25, 2021**
- **“Unfortunately, it is true that Trustee Loveless did not comply with this opinion from the SC Ethics Commission. . . . The SC Ethics Opinion also clearly states that Mr. Loveless must be recuse himself . . . “ Date not presently known information in possession of defendant, who violated discovery by refusing to disclose.**
- **“Mr. Loveless violated his ethical duties by trying to influence D5 Board and Dr. Melton numerous times from his March 24, 2020 letter to Dr. Melton, to his statements in the September 14, 2020 Board**

meeting, and the numerous emails he has sent to Dr. Melton and D5 Admin about the PWES project. . . the fact is as a public official Mr. Loveless has an ethical duty to recuse himself. And that duty began March 2020.” Date not presently known, information in possession of defendant, who violated discovery by refusing to disclose.

- “The SC Ethics Opinion also clearly states that Mr. Loveless must be recuse himself from any votes, deliberations, and other actions on the matter. It 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. In fact, Mr. Loveless has continued to knowingly violate the opinion and has made little attempt to even appear to comply with the direction publicly (finally submitting a written recusal in Feb 2021). However, in every public board meeting since the opinion was issued Mr. Loveless has continued to deliberate, discuss, attempt to influence, and make accusations regarding the construction of PWES. . .” Date not presently known, information in possession of defendant, who violated discovery by refusing to disclose.
- Discovery will likely reveal more.

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

**SUPPLEMENTAL RESPONSE NO. 3:** Plaintiff maintains that Stiles violated Facebook Community Standards regarding bullying and harassment, which prohibits targeting private individuals or limited scope public figures with “Pages or Groups

created to attack through...expressions of contempt or disgust,” and “attacks through Pages or Groups [regarding] negative character or ability claims.” The Facebook Community Standards can be found here: <https://transparency.fb.com/policies/community-standards/bullying-harassment/>.

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.

**SUPPLEMENTAL RESPONSE NO. 3:**        See Response to Interrogatory 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.

**SUPPLEMENTAL RESPONSE NO. 3:**

*Fickling v. City of Charleston*, 372 S.C. 597, 643 S.E.1d 110 (Ct.App. 2007)

*Wright v. PRG Real Estate Management Inc.*, 413 S.C. 276, 775 S.E.2d 399 (Ct.App. 2015); *rev'd and remand* 426 S.C. 202, 826 S.E.2d 285 (2019)

*Johnson v. Robert E. Lee Academy Inc.*, 401 S.C. 500, 737 S.E.2d 512 (Ct.App. 2012)

*Vaughan v. Town of Lyman*, 370 S.C. 436, 635 S.E.2d 631 (2006)

*R. J. Hendricks v. Clemson University*, 353 S.C. 449, 578 S.E.2d 711 (2003)

*Doe v. Wal-mart Stores Inc.*, 393 S.C. 240, 711 S.E.2d 908 (2011)

*Doe v. Citadel*, 421 S.C. 140, 805 S.E.2d 578 (Ct.App. 2017)

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.

**SUPPLEMENTAL RESPONSE NO. 3:**        Plaintiff is informed and believes that

Defendant was the administrator for the Deep Dive Facebook group where many of the defamatory statements and comments about Plaintiff were posted. As the administrator of the Deep Dive Facebook Group, Defendant assumed responsibility for the content posted and shared in the Facebook Group. Defendant posted and published her own defamatory statements as well as publishing, ratifying, and/or endorsing defamatory comments and statements made by third parties. Defendant's ratification and/or endorsement of these statements are evidenced by her failure to remove or delete posts and comments or remove and ban people who also posted defamatory statements to the Deep Dive page, which was within her duties as administrator of the Facebook group. She also assisted Leslie Stiles in reviewing documentation that was filed with the State Ethics Commission.

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.

**SUPPLEMENTAL RESPONSE NO. 3:** Plaintiff is not certain it is possible to find all of the statements that are responsive to this request without having complete access to the Facebook page administered by Stiles. However, Plaintiff provides the following list of statements available to him that were posted on the Deep Dive Facebook group, which is not an exhaustive list of all statements that Stiles republished, ratified, or endorsed. Once Plaintiff complies with discovery, this will be supplemented:

- **Kevin Scully** (date and time unknown):
  - “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 TRUTHH. They're not used to that. They'll stumble and bumble themselves into a perjury charge within the first ten minutes.”
- **Kevin Scully** (date and time unknown):
  - “Nothing is out of the question with corrupt Ken Loveless. He's already proven to

lie and ignore ethics guidelines.”

- **Kevin Scully** (date and time unknown):
  - “Also, 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.”
- **Kevin Scully** (date and time unknown):
  - Crooked Ken is an unethical hypocrite and a liar. We can do better. Vote him out in November. #censurethis”
- **Kevin Scully** (date and time unknown):
  - “What do you get when you elect the dumbest people in the district to be in charge of education? This. You get this. Such a mockery of the entire education institution. We only have ourselves to blame. Let’s own it, admit it and then up together to change it. We have to REPLACE Loveless, Gardner and Hammond in the upcoming election. How many times do we have to endure and witness this circus act? If you’re tired of these incompetent imbeciles embarrassing our district and wasting our time and money, then vote against them and whoever they endorse. Let’s vote COMMON SENSE and PRIDE back onto our board!!!!”
- **Kevin Scully** (date and time unknown):
  - [responding to Brandi Jo] “Wow, he is a loser.”
- **Brandi Jo** (date and time unknown):
  - [responding to Kevin Scully] “he might be, but it sure is fun to mess with him sometimes.”
- **Kristen Bayles Batchelor** (date and time unknown):
  - “As far as I’m aware, he’s the only one with an ethics violation although Hammond has to appear before the Ethics Commission in April to address 15 possible violations. I’m not sure what about my statement he found to be a ‘veiled threat.’ But as Ms. Hines pointed out, anyone who speaks up is bullied so this is par for the course.”
- **Kristen Bayles Batchelor** (date and time unknown):
  - “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.”
- **Laurene Cox Mensch** (date and time unknown):
  - “And how long did it take him to actually recuse himself after receiving the opinion from the Ethics Commission? MONTHS! Seems like censurable behavior to me.”
- **Kevin Scully** (date and time unknown):
  - “Crooked Ken strikes again!!!”
- **Kevin Scully** (date and time unknown):
  - “Remember, this is happening under Loveless, Hammond, Gardner, Huddle,

Hogan and Hines. When you elect incompetent people, not only are these types of problems more likely, but we are even less prepared to resolve.”

- **Kim Imbracsio Benson** (date and time unknown):
  - “The behavior we’ve witnessed during board meetings and in personal communications from these Trustees is a departure from their previous good works. Sadly, politics can do that to people. I’m glad you didn’t hold up Mr. Loveless as an example, what with his ethics violations and all.”
- **Kevin Scully** (date and time unknown):
  - “But then again, with Ken on the board, you HAVE to always be concerned about ethics.”
- **Kevin Scully** (date and time unknown):
  - “The board seems to be more concerned with settling personal vendettas than taking care of our district. Matt Hogan once told me that his family even vacations with Dr. Hefner’s family. That shows what a sellout (and terrible decision maker) he is. But these are the people who break bread with Kim Murphy. Should we really be surprised?”
- **Kevin Scully** (October 24, 2021; time unknown):
  - “No surprise. Be it Ken’s ethics violations, waffle house quorums or other FOIA violations, this board isn’t much for following rules.”
- **Michelle Carpenter** (date and time unknown):
  - “They are all crooked as a creek! The power they think they have gone to their head! It was the email that Ken Loveless sent Mrs. Melton ‘you have been warned’ like really bring it old dude! That made me angry and this lawyer so icky!”
- **Jackie Linder** (date and time unknown):
  - “So much \$\$ that needs to be going to our schools is now going to be used to try to cover for the unprofessional actions of this board.”

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

**SUPPLEMENTAL RESPONSE NO. 3:           Plaintiff’s smartphone is identified as Samsung Galaxy S9, SM-G965U. Plaintiff does not own a tablet or laptop.**

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.

**SUPPLEMENTAL RESPONSE NO. 3:**

**Plaintiff individually has been a party to five (5) other lawsuits. Plaintiff’s company,**

**ROA 000914**

**Loveless Commercial Contracting, has been a party to numerous lawsuits mostly involving contract disputes.**

- 1. Kenneth B. Loveless v. Thomas Paine Askey, Case No. 93-CP-40-03819. Personal injury. Settled.**
- 2. Kenneth B. Loveless v. Fred J. Frank and Macco Contracting, Case No. 86-CP-40-5280. Contract dispute. Settled.**
- 3. Kenneth B. Loveless v. Kevin Scully, Case No. 2022-CP-40-01307, pending.**
- 4. Kenneth B. Loveless v. William T. Butler and Sprint Inc., Case No. 2013-CP-32-00241. Claim for false imprisonment, malicious prosecution, negligence, slander and abuse of process. After Defendant's motion for summary judgment was denied, case settled.**
- 5. Domestic action, divorced, awarded custody of two minor children. Plaintiff declines to provide specifics as an unreasonable invasion of privacy.**
- 6. Mark Tuberville v. Michelin North America, Inc., and Loveless Commercial Contracting, Inc., Case No. 2010-CP-40-1175. Premise liability and personal injury. Venue transferred to Lexington County. Dismissed after settlement.**
- 7. Joseph Weeks b/d/a Weeks Painting and Construction Company v. Loveless Commercial Contracting and the South Carolina Department of Highways and Public Transportation, Case No. 88CP405928. Contract dispute. Action dismissed pursuant to Rule 40(j), SCRCF.**
- 8. Loveless Commercial Contracting, Inc. v. Phoenix Contract Glass, LLC, ROA 000915**

**Case No. 00CP4004980. Contract dispute. Settled after mediation.**

- 9. Loveless Commercial Contracting, Inc. v. Centex Construction Company, Inc. and Reliance Insurance Company, Case No. 02-CP-40-777R. Breach of construction contract claim. Dismissed pursuant to stipulation of dismissal.**
- 10. Loveless Commercial Contracting v. H&E Equipment Service, Inc., Case No. 2016CV4010402070.**
- 11. Loveless Commercial Contracting, Inc. v. Colonial 21, LLC, et al, Case No. 2008-CP-40-6857. Foreclosure action. Dismissed following arbitration.**
- 12. Branch Banking and Trust Company v. Colonial 21, LLC, James W. Derrick, Jr., and Loveless Commercial Contracting, Inc, Case No. 2009-CP-40-633. Foreclosure. Judgement in favor of Plaintiff.**
- 13. William A. Stroud v. Memco Solutions, Inc., Loveless Commercial Contracting, Inc., et al, Case No. 2015-CP-40-05754. Personal injury. Settled.**
- 14. ADESSO Homeowners' Association et al, v. Holder Properties, Inc., ADESSO/Columbia, LLC, Loveless Commercial Contracting, Inc. et al, Case No. 2016-CP-40-00844. Contract dispute. Removed to federal court, Case No. 3:16-cv-710-JFA.**
- 15. Loveless Commercial Contracting, Inc. v. Kevin J. Quinn, Melissa K. Quinn and Cartercon, LLC, Case No. 2016-CP-40-3586. Unfair trade practices action. Dismissed pursuant to stipulation of dismissal.**
- 16. Dominion Carolina Gas Transmission, LLC v. 0.945 Acres, in Richland ROA 000916**



County, South Carolina located on Parcel R39100-02-02; Willie Patterson, Loveless Commercial Contracting, Inc. et al, Case No. 2016-LP-40-00929. Lis Pendens. Pending.

17. Loveless Commercial Contracting, Inc. v. Britton's, Inc., Case No. 89-CP-40-0890. Action for bond on mechanic's lien. Settled.

18. Loveless Commercial Contracting, Inc. v. D S Associates, Case No. 89CP4000891. Foreclosure action. Judgment in favor of Plaintiff.

19. Loveless Commercial Contracting, Inc. v. National Truck Wash, Inc., Case No. 90CP4004532. Foreclosure of mechanic's lien. Dismissed following settlement.

20. Michael T. Simmons d/b/a Simmons Plumbing Company v. Loveless Commercial Contracting, Inc., and United States Fidelity and Guaranty Company, Case No. 91CP402747. Breach of contract claim. Settled.

21. Columbia Glass, Inc., v. Loveless Commercial Contracting, Inc., Case No. 92CP4003751. Breach of contract claim. Settled.

22. Loveless Commercial Contracting, Inc. v. Kline Iron & Steel Co., Inc., Case No. 94CP4003533. Breach of contract claim. Settled.

23. Loveless Commercial Contracting, Inc. v. Mark P. Marshall, Case No. 2016CV321062241. Default judgment.

24. Designbuild Mechanical Corporation v. Loveless Commercial Contracting, Inc. et al, Case No. 2020LP3200119. Lis Pendens. Pending.

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.

**SUPPLEMENTAL RESPONSE NO. 3: Plaintiff's campaigns have employed political consultants, who may have paid fees for Facebook pages, but this information is not in the immediate control of Plaintiff.**

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.

**SUPPLEMENTAL RESPONSE NO. 3: See answer to No. 28.**

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.

**SUPPLEMENTAL RESPONSE NO. 3: Plaintiff lacks sufficient knowledge or facts to respond to this Interrogatory completely. However, Plaintiff is aware that Ms. Ballard had meetings with multiple prospective clients in 2021, but 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 response more fully to this request.**

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 3, 2022

I, Beth Cogan, an employee of the Ballard & Watson  
Attorneys at Law certify that I have this date served a copy  
of 3<sup>rd</sup> Supplemental Response to RO65 on all  
counsel of record and *Pro Se* parties by electronic mail.  
Date: 5/3/23 Signed: Beth K Cogan

# CHRIS KENNEY LAW

Christopher P. Kenney  
Phone: 803.546.3695  
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808 Lady Street, Suite D7  
Post Office Box 1377 (29202)  
Columbia, South Carolina 29201

May 8, 2023  
*VIA EMAIL & E-FILING*

Chief Justice (Ret.) Jean Hoefer Toal  
Richland County Judicial Center  
1701 Main Street  
Columbia, South Carolina 29201  
[cposwal@sccourts.org](mailto:cposwal@sccourts.org)

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

Dear Chief Justice Toal:

I am writing concerning the Order on the Rule to Show Cause (filed April 25, 2023) to inform the Court that the Defendant has received verified, supplemental interrogatory responses and supplemental Cellebrite reports in Excel format from the Plaintiff that I believe resolves Defendant's motion for a rule to show cause.

Thank you for Your Honor's assistance with the matter and please do not hesitate to contact me with any questions.

With warm regards, I am

Sincerely,



Christopher P. Kenney

CPK:  
cc: Counsel of Record

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WWW.CHRISKENNEY.LAW

ROA 000920

ELECTRONICALLY FILED - 2023 May 08 11:13 AM - RICHLAND - COMMON PLEAS - CASE#2022CP4001364

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**Dec 15 2023**

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM RICHLAND COUNTY  
THE HONORABLE JEAN HOEFER TOAL

---

Appellate Case No. 2023-000145

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Kenneth B. Loveless, .....Appellant,

v.

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

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**CERTIFICATE OF COUNSEL**

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

Respectfully submitted,

s/ Harvey M. Watson III

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 APPELLANT

November 27, 2023