



1727 Hampton Street
Columbia, SC 29201

Telephone: (803) 454-6504
Fax: (803) 454-6509
www.wcsr.com

Direct Dial: 803-454-7730
Direct Fax: 803-381-9130
E-mail: Todd.Carroll@wcsr.com

May 14, 2012

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: Rocky Disabato d/b/a "Rocky D," Appellant, v.
South Carolina Association of School Administrators, Respondent, State Ex Rel Alan
Wilson, Attorney General, Intervenor
Appeal from Richland County Case No. 2011-CP-40-2044
Tracking No. 2011-198146

Dear Mr. Shearouse:

Enclosed please find the original and 15 copies of the Record on Appeal. Please file the original
and return a file stamped copy to us. Thank you.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Limited Liability Partnership

M. Todd Carroll
Attorney

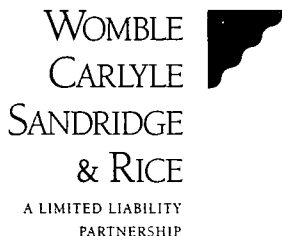
MTC/tm

cc: John M. Reagle
J. Emory Smith, Jr.

RECEIVED

MAY 14 2012

S.C. Supreme Court



1727 Hampton Street
Columbia, SC 29201

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www.wcsr.com

Direct Dial: 803-454-7730
Direct Fax: 803-381-9130
E-mail: Todd.Carroll@wcsr.com

April 12, 2012

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RECEIVED

APR 12 2012

S.C. Supreme Court

Re: Rocky Disabato d/b/a "Rocky D," Appellant, v.
South Carolina Association of School Administrators, Respondent, State Ex Rel Alan
Wilson, Attorney General, Intervenor
Appeal from Richland County Case No. 2011-CP-40-2044
Tracking No. 2011-198146

Dear Mr. Shearouse:

Enclosed please find the original and 2 copies of Reply Brief of Appellant. Please file the original and return a file stamped copy to us. Thank you.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Limited Liability Partnership

M. Todd Carroll
Attorney

MTC/tm

cc: John M. Reagle
J. Emory Smith, Jr.
Marsha Anne Ward

PROOF OF SERVICE

I, the undersigned paralegal of the law offices of Womble Carlyle Sandridge & Rice, LLP, attorneys for Appellant, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same to the following address(es):

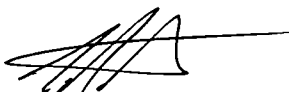
PLEADING: Reply Brief of Appellant

PARTIES SERVED: Kenneth L. Childs
 John M. Reagle
 Keith R. Powell
 The Tower at 1301 Gervais Street
 Suite 900
 Post Office Box 11367 (29211)
 Columbia, SC 29201

The Honorable Alan Wilson
Attorney General for the State of South Carolina
Robert D. Cook
Deputy Attorney General
J. Emory Smith, Jr.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211

Marsha Anne Ward
Sutherland Asbill & Brennan
999 Peachtree St., NE
Atlanta, GA 30309-3996

WOMBLE CARLYLE SANDRIDGE & RICE, LLP

By: 

Todd Mathis

Columbia, South Carolina
April 12, 2012



ALAN WILSON
ATTORNEY GENERAL

April 12, 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

Re: Disabato v. S.C. Association of School Administrators

Dear Mr. Shearouse:

Enclosed is the original initial reply brief of the State ex rel Wilson together with a Certificate of Service. As I am filing on the due date, I respectfully withdraw my request for an extension of time if the Court has not yet acted on it. Thank you for your assistance.

Respectfully submitted,

J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc : Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Marsha A. Ward, Esquire

RECEIVED
APR 12 2012
S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2011-CP-40-2044

Rocky Disabato d/b/a/ "Rocky D," Appellant,

v.

South Carolina Association of School Administrators, Respondent.

State Ex Rel Alan Wilson, Attorney General, Intervenor.

CERTIFICATE OF SERVICE

I hereby certify that I have served one copy of the Initial Reply Brief of the State ex rel Wilson upon counsel for the other parties by mailing copies to them at the addresses below via the United States Mail this April 12, 2012:

Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Womble Carlyle Sandridge & Rice, LLP
1727 Hampton St.
Columbia, SC 29210

Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Childs & Halligan, PA
P.O. Box 11367
Columbia, SC 29211

Marsha A. Ward, Esquire
100 Lakeland Dr.
Atlanta, GA 30305


J. EMORY SMITH, JR.
Assistant Deputy Attorney General

The Supreme Court of South Carolina

Rocky Disabato, d/b/a Rocky
D., Appellant,

v.

South Carolina Association of
School Administrators, Respondent.

State Ex Rel Alan Wilson,
Attorney General, Intervenor.

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2011-CP-40-02044

ORDER

For good cause having been shown, the time to serve and file the initial reply brief on behalf of all parties is hereby extended until April 13, 2012.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


CLERK

Columbia, South Carolina

April 11, 2012

cc: Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Attorney General Alan Wilson
Deputy Attorney General Robert D. Cook
Assistant Deputy Attorney General J. Emory Smith, Jr.
Marsha Anne Ward, Esquire



ALAN WILSON
ATTORNEY GENERAL

April 10, 2012

RECEIVED

APR 10 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

S.C. Supreme Court

Re: Disabato v. S.C. Association of School Administrators
Request for Extension of time

Dear Mr. Shearouse:

I respectfully request a one day extension of time to file the initial reply brief for the State ex rel Wilson in this case. Under an extension recently granted by the Court, the brief is due on April 12; however, since then, I have been scheduled for an expanded nearly all day hearing in Circuit Court that day. I may be able to finish the brief in time to file on the 12th, but this one day extension will ensure that I have enough time to finish the brief and file it.

Thank you for your consideration of this request.

Respectfully submitted,

J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc : Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Marsha A. Ward, Esquire

The Supreme Court of South Carolina

Rocky Disabato, d/b/a Rocky
D., Appellant,
v.
South Carolina Association of
School Administrators, Respondent.
State Ex Rel Alan Wilson,
Attorney General, Intervenor.

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2011-CP-40-02044

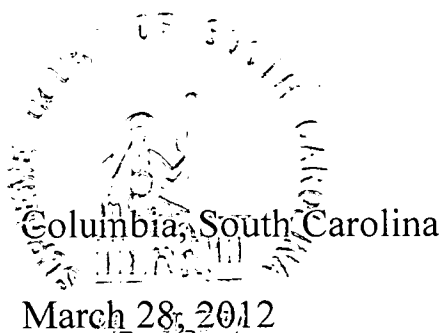
ORDER

For good cause having been shown, the time for serving and filing the Initial Reply Brief of Appellant in the above entitled matter is hereby extended until April 12, 2012.

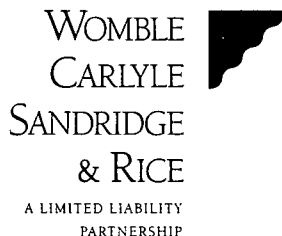
IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Frenda J. Shealy*
Chief Deputy CLERK



cc: Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Attorney General Alan Wilson
Deputy Attorney General Robert D. Cook
Assistant Deputy Attorney General J. Emory Smith, Jr.
Marsha Anne Ward, Esquire



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Direct Dial: 803-454-7730
Direct Fax: 803-381-9130
E-mail: Todd.Carroll@wcsr.com

March 27, 2012

RECEIVED

MAR 27 2012

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of South Carolina
Supreme Court Building
1231 Gervais Street
Columbia, South Carolina 29201

RE: Rocky Disaboto, d/b/a Rocky D. v. South Carolina Association of School
Administrators
Trial Court Case No. 2011-CP-40-02044

Dear Mr. Shearouse:

We received a copy of the Court's Order of March 23, 2012 extending the Attorney General's deadline for filing his initial reply brief until April 12, 2012. In order to keep all filings on the same schedule, Appellant Rocky Disaboto also respectfully requests a 14 day extension of time to serve and file his initial reply brief. The brief is currently due March 29, 2012. Under this extension, the brief would now be due April 12, 2012. Appellant has conferred with Respondent, South Carolina Association of School Administrators, who consents to this request.

Thank you for your consideration.

Sincerely,

WOMBLE CARLYLE SANDRIDGE & RICE
A Limited Liability Partnership

M. Todd Carroll
Attorney

MTC/tm

cc: John M. Reagle, Esquire

The Supreme Court of South Carolina

Rocky Disabato, d/b/a Rocky
D., Appellant,

v.

South Carolina Association of
School Administrators, Respondent.

State Ex Rel Alan Wilson,
Attorney General, Intervenor.

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2011-CP-40-02044

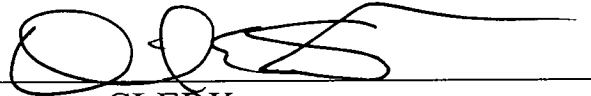
ORDER

The request for an extension to serve and file the initial reply brief on behalf of the State is granted and extended until April 12, 2012.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


CLERK

Columbia, South Carolina

March 23, 2012



ALAN WILSON
ATTORNEY GENERAL

March 22, 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

RECEIVED

MAR 22 2012

S.C. Supreme Court

Re: Disabato v. S.C. Association of School Administrators
Request for Extension of time

Dear Mr. Shearouse:

I respectfully request a 14 day extension of time to file the initial reply brief for the State ex rel Wilson in this case. I believe that the brief is currently due on March 29, 2012, ten days after service on March 19. Under this extension, the brief would be due on April 12.

I am requesting this extension due to travel during this period. I was in Richmond on March 19 and 20 for an argument at the Court of Appeals, I have a business meeting in Rock Hill for most of the day tomorrow, and I will be out of State the week of April 2 on family travel. The two week extension would carry me past these conflicting dates and allow me sufficient time to prepare the State's reply brief.

Thank you for your consideration of this request.

Respectfully submitted,


J. Emory Smith, Jr.

Assistant Deputy Attorney General

cc : Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Marsha A. Ward, Esquire

CHILDS & HALLIGAN

A PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Kenneth L. Childs
William F. Halligan
Kathryn Long Mahoney
Allen D. Smith†
Shirley M. Fawley*
John M. Reagle**
Vernie L. Williams
Thomas K. Barlow**

The Tower at 1301 Gervais Street, Suite 900, Columbia, SC 29201
Post Office Box 11367, Columbia, SC 29211-1367

Telephone (803) 254-4035
Facsimile (803) 771-4422

Allison Aiken Hanna
Keith R. Powell***
Connie P. Jackson
Kimberly Kelley Blackburn
Jasmine Rogers Drain**
Tyler R. Turner
Dwayne T. Mazyck

March 19, 2012

†Certified Specialist in Employment
and Labor Law
*Also admitted in District of Columbia
**Also admitted in North Carolina
***Also admitted in Missouri
**Also admitted in Georgia

VIA HAND DELIVERY

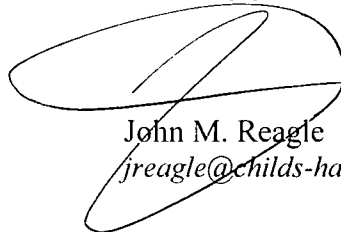
The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: Rocky Disabato d/b/a "Rocky D" v. South Carolina Association of School
Administrators
C.A. No.: 2011-CP-40-2044

Dear Mr. Shearouse:

Enclosed please find the original and two copies of Respondent's Initial Brief and Respondent's Designation of Matter to be Included in the Record on Appeal. Please file the original and return a file stamped copy to our runner. Thank you.

Sincerely yours,



John M. Reagle
jreagle@childs-halligan.net

RECEIVED

MAR 19 2012

S.C. Supreme Court

/ctt

Enclosures

c: Kevin A. Hall, Esq., Hall & Bowers, LLC
Karl S. Bowers, Jr., Esq., Hall & Bowers, LLC
M. Todd Carroll, Esq., Hall & Bowers, LLC
Marsha Ward, Esq.
J. Emory Smith, Jr., Esq., South Carolina Attorney General's Office
Kenneth L. Childs, Esq.

PROOF OF SERVICE

The undersigned Attorney of Childs & Halligan, P.A., hereby certifies that he has served the following counsel of record with the foregoing Respondent's Designation of Matter to be Included in the Record on Appeal by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 19th day of March, 2012:

Kevin Hall, Esq.
Karl S. Bowers, Jr.
M. Todd Carroll
Hall & Bowers, LLC
1727 Hampton Street
Columbia, SC 29211

RECEIVED

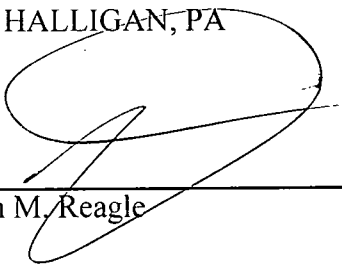
MAR 19 2012

S.C. Supreme Court

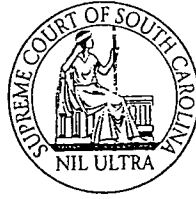
The Honorable Alan Wilson
Attorney General for the State of South Carolina
J. Emory Smith, Jr.
Assistant Deputy Attorney General
Post Office Box 111549
Columbia, SC 29211

CHILDS & HALLIGAN, PA

By:



John M. Reagle



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 24, 2012

Marsha Anne Ward, Esquire
Sutherland Asbill & Brennan
999 Peachtree St., NE
Atlanta, GA 30309-3996

Re: Disabato v. SC Assoc. of School Admin.

Dear Ms. Ward:

The following Order has been endorsed on your Motion of the Student Press Law Center and Reporters Committee for Freedom of the Press for Leave to File an Amici Curiae Brief in the above entitled case on appeal.

“Motion granted.

s/ Jean H. Toal C.J.
For the Court

February 24, 2012.”

By copy of this letter we are advising all counsel of record of the action of the Court in this matter.

Very truly yours,



CLERK

DES/dmh

Disabato v. SC Assoc. of School Admin.

Page Two

February 24, 2012

cc: Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Deputy Attorney General Robert D. Cook
Assistant Deputy Attorney General J. Emory Smith, Jr.

ORIGINAL

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ON APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS
Hon G. Thomas Cooper, Jr., Circuit Court Judge

No. 2011-CP-40-2044

RECEIVED

FEB - 8 2012

S.C. Supreme Court

Rocky Disabato, d/b/a "Rocky D," Petitioner

v.

South Carolina Association of School Administrators (SCASA), Respondent

MOTION OF
THE STUDENT PRESS LAW CENTER AND
REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS
FOR LEAVE TO FILE AN *AMICI CURIAE* BRIEF

Pursuant to Rule 213, SCACR, the Student Press Law Center ("SPLC") and Reporters Committee for Freedom of the Press ("RCFP") hereby move for leave to file an *amici curiae* brief in the above-captioned action in support of Petitioner-Appellant Rocky Disabato. This matter addresses issues of substantial concern to the SPLC and the RCFP, which (as set forth more fully in the attached proposed brief) are nonprofit organizations dedicated to advocating for the First Amendment


rights of journalists and promoting transparency in government through support of open records and open meetings laws. As advocates for the student and professional news media, the SPLC and the RCFP have a particularized interest in the issues raised by this case: (1) whether publicly funded organizations such as the SCASA can evade state disclosure laws based solely on their “corporate” status and (2) whether, as the trial court held, there is a First Amendment right for a public body to formulate public policy clandestinely that is unconstitutionally burdened by application of South Carolina’s Freedom of Information Act.

Both the RCFP and the SPLC have appeared on numerous occasions as *amicus* in the state and federal courts – including in two U.S. Supreme Court cases that are directly pertinent to this question, and that are cited in the attached proposed brief – in cases that implicate the public’s legal right of access to records produced or maintained by public bodies. *Amici* believe that their many years of experience working with journalists who depend on the robust enforcement of open-government laws to discharge their “watchdog” responsibilities will assist the Court in fully assessing the dangerous implications of the trial court’s ruling below.

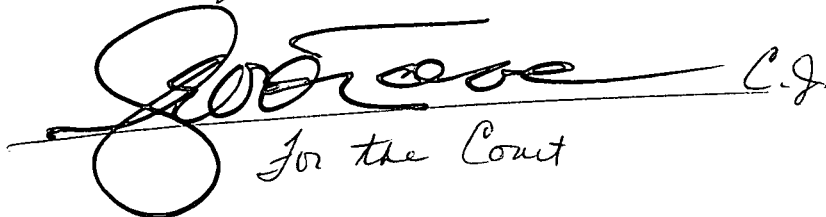
For the foregoing reasons, the SPLC and the RCFP respectfully request that this Court grant leave to present an *amici curiae* brief. A copy of the SPLC and

RCFP's proposed *amici curiae* brief is attached and is conditionally filed with this motion in accordance with Rule 213, SCACR.

Respectfully submitted,

By: 
Marsha A. Ward
100 Lakeland Dr.
Atlanta, GA 30305
mward@comcast.net
(404) 816-1845
(404) 853-8806 fax
*Counsel of record for amici
Student Press Law Center and
Reporters Committee for Freedom of the Press*
Submitted February 6, 2012

Motion granted.


for the Court
February 24, 2012

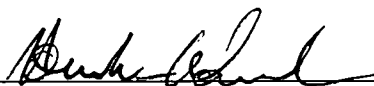
PROOF OF SERVICE

I hereby certify that on this 6th day of February, 2012, I caused to be placed in United States Mail, first-class postage paid, a true and correct copy of the foregoing *Motion of the Student Press Law Center and Reporters Committee for Freedom of the Press for Leave to File a Brief Amicus Curiae* to all parties via their counsel of record, as follows:

Childs & Halligan, P.A.
Kenneth L. Childs
John M. Reagle
Keith R. Powell
The Tower at 1301 Gervais St., Suite 900
P.O. Box 11367
Columbia, S.C. 29202-1367
Counsel for Appellee South Carolina Association of School Administrators

Hall & Bowers, LLC
Kevin A. Hall
Karl S. Bowers, Jr.
M. Todd Carroll
1727 Hampton Street
Columbia, S.C. 29201
Counsel for Appellant Rocky Disabato

The Hon. Alan Wilson
Attorney General for the State of South Carolina
Robert D. Cook, Deputy Attorney General
J. Emory Smith, Jr., Assistant Deputy Attorney General
P.O. Box 11549
Columbia, S.C. 29211
Counsel for the State of South Carolina



Marsha A. Ward



RECEIVED

FEB 15 2012

S.C. Supreme Court

ALAN WILSON
ATTORNEY GENERAL

February 15, 2012

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

Re: Disabato v. S.C. Association of School Administrators
Motion for Leave to File Amicus Brief – Student Press Law Center and Reporters
Committee, etc.

Dear Mr. Shearouse:

The State ex rel Wilson consents to the above Motion.

Thank you for your consideration of this matter.

Respectfully submitted,

J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc : Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Marsha A. Ward, Esquire

CHILDS & HALLIGAN

A PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Kenneth L. Childs
William F. Halligan
Kathryn Long Mahoney
Allen D. Smith†
Shirley M. Fawley*
John M. Reagle**
Vernie L. Williams
Thomas K. Barlow**

The Tower at 1301 Gervais Street, Suite 900, Columbia, SC 29201
Post Office Box 11367, Columbia, SC 29211-1367

Telephone (803) 254-4035
Facsimile (803) 771-4422

Allison Aiken Hanna
Keith R. Powell***
Connie P. Jackson
Kimberly Kelley Blackburn
Jasmine Rogers Drain**
Tyler R. Turner
Dwayne T. Mazyck

February 16, 2012

†Certified Specialist in Employment
and Labor Law
*Also admitted in District of Columbia
**Also admitted in North Carolina
***Also admitted in Missouri
**Also admitted in Georgia


The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: Rocky Disabato d/b/a "Rocky D" v. South Carolina Association of School
Administrators
Case Tracking No. 2011-198146

Dear Mr. Shearouse:

Enclosed please find the original and two copies of Respondent's Consent to File Amicus Brief. Please file the original and return a file stamped copy to us in the enclosed envelope. Thank you.

Sincerely yours,


John M. Reagle
jreagle@childs-halligan.net

/kfm

Enclosures

c: Kevin A. Hall, Esq., Hall & Bowers, LLC
Karl S. Bowers, Jr., Esq., Hall & Bowers, LLC
M. Todd Carroll, Esq., Hall & Bowers, LLC
Marsha Ward, Esq.
J. Emory Smith, Jr., Esq., South Carolina Attorney General's Office

S.C. SUPREME COURT
FEB 17 2012
RECEIVED

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

**APPEAL FROM COUNTY
Court of Common Pleas**

G. Thomas Cooper, Jr., Circuit Court Judge

C.A. No.: 2011-198146

Rocky Disabato D/B/A "Rocky D" Appellant(s)

v.

South Carolina Association Of School Administrators Respondent(s).

State Ex Rel. Alan Wilson, Attorney General Intervenor

RESPONDENT'S CONSENT TO FILE AMICUS BRIEF

Respondent, South Carolina Association of School Administrators hereby notifies the Court that it does not oppose the motion of the Student Law Press Center and the Reporters Committee for Freedom of the Press to file an amicus brief in this matter. Should the Court grant the motion, as provided in Rule 213, SCACR, the Respondent does wish the Court to specify a reasonable period in which a response to the amicus brief may be filed.

RECEIVED

FEB 17 2012

S.G. SUPREME COURT

CHILDS & HALLIGAN, P.A.

By: 

~~John M. Reagle, S.C. Bar No. 14185~~

Kenneth L. Childs, S.C. Bar No. 1217

Keith R. Powell, S.C. Bar No. 69292

1301 Gervais Street, Suite 900

P.O. Box 11367

Columbia, SC 29211

(803) 254-4035

Attorneys for Respondent South Carolina

Association of School Administrator

Columbia, South Carolina
February 16, 2012

PROOF OF SERVICE

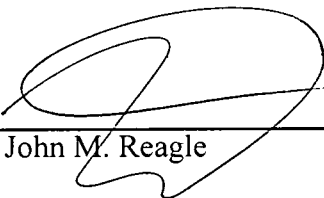
The undersigned Attorney of Childs & Halligan, P.A., hereby certifies that he has served the following counsel of record with the foregoing **Respondent's Consent to File Amicus Brief** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 16th day of February, 2012:

Kevin Hall, Esq.
Karl S. Bowers, Jr.
M. Todd Carroll
Hall & Bowers, LLC
1727 Hampton Street
Columbia, SC 29211

The Honorable Alan Wilson
Attorney General for the State of South Carolina
J. Emory Smith, Jr.
Assistant Deputy Attorney General
Post Office Box 111549
Columbia, SC 29211

Marsha A. Ward, Esq.
100 Lakeland Drive
Atlanta, GA 30305

CHILDS & HALLIGAN, PA

By: 

John M. Reagle



ALAN WILSON
ATTORNEY GENERAL

September 30, 2011

RECEIVED

SEP 30 2011

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

Re: Disabato v. S.C. Association of School Administrators

Dear Mr. Shearouse:

Enclosed for filing with your Office are the original and six copies of the Motion to Intervene of the State ex rel Wilson together with a Certificate of Service. Thank you for your assistance.

Sincerely,

J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc : Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2011-CP-40-2044

Rocky Disabato d/b/a/ "Rocky D," . . . Appellant,

v.

South Carolina Association of School Administrators, Respondent.

MOTION TO INTERVENE
OF STATE EX REL ALAN WILSON, ATTORNEY GENERAL

Alan Wilson, Attorney General moves for leave to intervene in this appeal for the State to be heard on an important constitutional issue. This appeal has been taken from an Order of the Circuit declaring that South Carolina's Freedom of Information Act, S.C. Code Ann. §30-4-10, *et seq.* (2007) unconstitutionally burdens First Amendment Rights of Respondent, South Carolina Association of School Administrators. *Disabato v. South Carolina Association of School Administrators*, 2011-CP-40-2044, the Honorable G. Thomas Cooper, filed August 15, 2011. The State and he have a strong interest in defending the constitutionality of the application of FOIA under these circumstances.

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SEP 30 2011
S.C. Supreme Court

BACKGROUND

Plaintiff / Appellant Disabato sought a declaratory judgment and injunctive relief against SCASA declaring it to be a “public body” under FOIA and requiring it to disclose requested records. SCASA moved to dismiss, and the Circuit Court granted that motion from which Disabato took this appeal. Order, p. 1.

In Circuit Court, SCASA contended that “FOIA’s definition of a “public body” cannot constitutionally embrace a corporation like SCASA, engaged in political speech or issue advocacy.” *Id.* In particular, SCASA asserted that the definition of “public body” “unconstitutionally burdens the First Amendment rights of freedom of speech and association of issue advocacy organizations like SCASA.” *Id.* For the purposes of considering the Motion to Dismiss the Circuit “Court assume[d] that SCASA is supported in part by public funds and that SCASA would fall within the FOIA’s definition of “public body” as alleged in the Complaint. *Id.* at p. 2. That definition includes “any organization, corporation, or agency supported in whole or in part by public funds or expending public funds” §30-4-20(a); *see also Weston v. Carolina Research & Dev. Found.*, 303 S.C. 398, 403, 401 S.E.2d 161, 164 (1991) (“the unambiguous language of the FOIA mandates that the receipt of support in whole or in part from public funds brings a corporation within the definition of a public body.”)

Neither the State of South Carolina nor the Office of the Attorney General was a party to this case in Circuit Court. The Attorney General seeks to intervene now on behalf of the State.

INTEREST OF THE ATTORNEY GENERAL AND THE STATE

The State and the Attorney General have a strong interest in upholding the constitutionality of FOIA's application to organizations such as SCASA that are alleged to be supported in whole or in part by public funds. As stated in *Weston, supra*, "when a block of public funds is diverted en masse from a public body to a related organization, or when the related organization undertakes the management of the expenditure of public funds, the only way that the public can determine with specificity how those funds were spent is through access to the records and affairs of the organization receiving and spending the funds." *Id.* As recognized by the Circuit Court, the Office of the Attorney General has concluded that "the FOIA contains no "de minimis" threshold that an entity must meet in order to constitute a 'public body.'" 2006 WL 1574910 (S.C.A.G. May 19, 2006).

Although the Circuit Court stated that it did not find FOIA to be unconstitutional, the Court found that the statute "unconstitutionally burdens SCASA's protected speech and associational rights." Order at p. 12. This ruling potentially eliminates the applicability of FOIA to many organizations that fall within that statute's express definition of "public body." This issue needs to be resolved, not only for the purposes of this case, but also for the application of FOIA in the future.

The Attorney General has an interest in this matter because the constitutionality of a State statute is at issue, and no State officer or agency is currently a party to this case. *Cf.* Rule 4(d)(4)(B), SCRCP (service of complaint on Attorney General when constitutionality of

statute attacked). Although SCASA has certain public duties¹, it is opposing rather than defending the applicability of FOIA to itself. “This Court has recognized that the Attorney General has broad statutory and common law authority in his capacity as the chief legal officer of the State to institute actions involving the welfare of the State and its citizens See, *Condon v. Hodges*, 349 S.C. 232, 562 S.E.2d 623 (2002); *State v. Beach*, 271 S.C. 425, 248 S.E.2d 115 (1978).” *Condon v. State*, 354 S.C. 634, 641, 583 S.E.2d 430, 434 (2003).” In this case, the Attorney General seeks to assert these interests of the State through intervention rather than by institution of a separate action.

INTERVENTION

Although the Appellate Court rules do not expressly provide for intervention, this Court has apparently previously allowed intervention by parties on appeal², and in original jurisdiction cases³. The Rules of Civil Procedure, of course, expressly provide for intervention. Rule 24, SCRPC. Certainly, under Rule 24 (a), the State has “an interest

1 See, eg, S.C. Code Ann. § 59-40-70 under which SCASA has a seat on the Charter School Advisory Committee established by the State Board of Education to review charter school applications for compliance with established standards.

2 *Sossamon v. Greater Gaffney Metro. Utilities Area*, 236 S.C. 173, 177, 113 S.E.2d 534, 536 (1960); *Cannon v. Sligh*, 170 S.C. 45, 169 S.E. 712 (1933).

3 *Sanford v. S. Carolina State Ethics Comm'n*, 385 S.C. 483, 489, 685 S.E.2d 600, 603 opinion clarified, 386 S.C. 274, 688 S.E.2d 120 (2009); *Am. Petroleum Inst. v. S. Carolina Dept. of Revenue*, 382 S.C. 572, 575, 677 S.E.2d 16, 17 (2009) *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003); *Keyserling v. Beasley*, 322 S.C. 83, 470 S.E.2d 100 (1996).

relating to the . . . transaction which is the subject of the action and . . . is so situated that the disposition of the action may as a practical matter impair or impede [its] ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.” Although both the Appellant and the Respondent have fine lawyers, Appellant is a private citizen rather than a public entity, and Respondent's position regarding FOIA is contrary to the position the State plans to take. Therefore, neither of those parties can adequately represent the State's interests. Moreover, under Rule 24(b), intervention is permitted when the applicant's claim and the main action have a question of law in common as they do here and intervention will not unduly delay or prejudice adjudication of the rights of the existing parties which will not happen here (*see, infra*). The Rules of Civil Procedure also clearly indicate that the Attorney General should be given the opportunity to be heard when a constitutional issue is raised in an action. *Cf* Rules 4((d)(4)(B), *supra*, and 24(c) (service of intervention motion on Attorney General when constitutionality of statute drawn into question.)

The State ex rel Wilson seeks to intervene rather than simply file an amicus because it gives the State the status of a party for full participation in this case and the opportunity to participate should a party to this appeal later petition for certiorari to the United States Supreme Court. *See, Condon v. State, supra* (Attorney General must be party in order to appeal). Ordinarily, amicus curiae do not deliver oral argument in a case, but the Attorney General's Office also would like the opportunity to address the constitutional issue in this case on oral argument.

ALIGNMENT AND BRIEFING

The Attorney General requests permission to file his opening and any reply briefs for the State at the same time as Appellant's brief are due. Because this case is on appeal rather than in the original jurisdiction of the Court and involves a Motion to Dismiss rather than a Record of exhibits and testimony, the Attorney General can rely on the existing pleadings and motion in the record for purposes of his participation⁴. Therefore, his intervention would not delay proceedings in this case. Although he plans to defend the constitutionality of the application of FOIA in this case and would appreciate being aligned as an Appellant, he certainly has no objection if this Court prefers to designate the State ex rel Wilson as simply an Intervenor.

⁴ Therefore, his filing a pleading under Rule 24(c) should not be necessary, and he respectfully requests leave not to file a pleading.

CONCLUSION

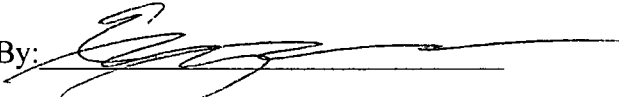
The *State ex rel Wilson* respectfully requests that this Motion to Intervene be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

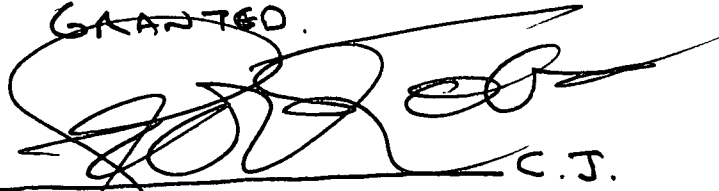
ROBERT D. COOK
Deputy Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680

By: 

ATTORNEYS FOR THE
STATE EX REL WILSON

September 30, 2011

GRANTED.

C.J.
For THE COURT
October 14, 2011

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2011-CP-40-2044

Rocky Disabato d/b/a/ "Rocky D," . . . Appellant,

v.

South Carolina Association of School Administrators, Respondent.

CERTIFICATE OF SERVICE

I hereby certify that I have served one copy of the State ex rel Wilson's Motion to Intervene upon counsel for the other parties by mailing copies to them at the addresses below via the United States Mail this September 30, 2011:

Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Hall & Bowers, LLC
1727 Hampton St.
Columbia, SC 29210

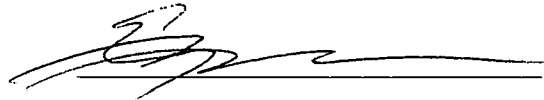
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SEP 30 2011

S.C. Supreme Court

CERTIFICATE OF SERVICE
Disabato v. SCASA
September 30, 2011
Page 2

Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Childs & Halligan, PA
P.O. Box 11367
Columbia, SC 29211

A handwritten signature in black ink, appearing to read "J. Emory Smith, Jr.", written over a horizontal line.

J. EMORY SMITH, JR.
Assistant Deputy Attorney General

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

OCT 12 2011

Case No. 2011-CP-40-2044

S.C. Supreme Court

Rocky Disabato d/b/a "Rocky D," Appellant,

v

South Carolina Association of School Administrators, Respondent

RESPONDENT'S CONSENT TO MOTION TO INTERVENE

Respondent, South Carolina Association of School Administrators hereby notifies the Court that it consents to Attorney General Wilson's Motion to Intervene in the above matter.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: _____

Kenneth L. Childs (SC Bar No. 1217)
John M. Reagle (SC Bar No. 14185)
Keith R. Powell (SC Bar No. 69292)

P.O. Box 11367
Columbia, South Carolina 29211
(803) 254-4035

Attorneys for Respondent South Carolina
Association of School Administrator

October 10, 2011
Columbia, South Carolina

PROOF OF SERVICE

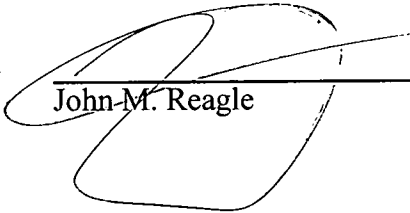
The undersigned Attorney of Childs & Halligan, P.A., hereby certifies that he has served the following counsel of record with the foregoing **Respondent's Consent Motion to Intervene** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 10th day of October, 2011:

Kevin Hall, Esq.
Karl S. Bowers, Jr.
M. Todd Carroll
Hall & Bowers, LLC
1727 Hampton Street
Columbia, SC 29211

The Honorable Alan Wilson
Attorney General for the State of South Carolina
J. Emory Smith, Jr.
Assistant Deputy Attorney General
Post Office Box 111549
Columbia, SC 29211

CHILDS & HALLIGAN, PA

By:


John M. Reagle

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2011-CP-40-2044

Rocky Disabato d/b/a "Rocky D," Appellant,

v.

South Carolina Association of School Administrators, Respondent.

APPELLANT'S CONSENT TO MOTION TO INTERVENE

Appellant Rocky Disabato hereby notifies the Court that he consents to Attorney General
Wilson's Motion to Intervene in the above matter.

Respectfully submitted,

HALL & BOWERS, LLC

By: Butch Bowers
Kevin A. Hall (SC Bar No. 015063)
Karl S. Bowers, Jr. (SC Bar No. 16141)
M. Todd Carroll (SC Bar No. 74000)
1727 Hampton Street
Columbia, SC 29201
(803) 464-6504

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OCT 04 2011

S.C. SUPREME COURT

Attorneys for Appellant Rocky Disabato

Columbia, South Carolina
October 3, 2011

PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Hall & Bowers, LLC, attorneys for Appellant, do hereby certify that I have served the below party in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same, postage prepaid, to the following address(es):

Pleading: Appellant's Consent to Motion to Intervene

Party Served: Kenneth L. Childs
John M. Reagle
Keith R. Powell
The Tower at 1301 Gervais Street
Suite 900
Post Office Box 11367 (29211)
Columbia, SC 29201

The Honorable Alan Wilson
Attorney General for the State of South Carolina
Robert D. Cook
Deputy Attorney General
J. Emory Smith, Jr.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211

HALL & BOWERS, LLC

By: Butch Bowers

Kevin A. Hall
Karl S. Bowers, Jr.
M. Todd Carroll

Attorneys for Appellant Rocky Disabato

Columbia, South Carolina
October 3, 2011



HALL & BOWERS, LLC
ATTORNEYS AT LAW

1727 Hampton Street | Columbia, SC 29201

803.454.6504 tel

803.454.6509 fax

hallbowers.com

October 6, 2011

KEVIN A. HALL
kevin.hall@hallbowers.com

KARL S. (BUTCH) BOWERS, JR.
butch.bowers@hallbowers.com

M. TODD CARROLL
todd.carroll@hallbowers.com

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201

John M. Reagle, Esquire
Childs & Halligan, P.A.
1301 Gervais Street, Suite 900
Columbia, SC 29201

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OCT 11 2011

S.C. SUPREME COURT

Re: Rocky Disabato d/b/a "Rocky D," Appellant, v.
South Carolina Association of School Administrators, Respondent
Appeal from Richland County, Case No. 2011-CP-40-2044
Tracking No. 2011-198146

Everyone:

Please find enclosed a copy of an email recently received from Anne Meyer, court reporter for Judge Jefferson, regarding the above captioned matter. Thank you.

Sincerely,

M. Todd Carroll

MTC/dj
Enclosure

RECEIVED

OCT 12 2011

S.C. SUPREME COURT

CHILDS & HALLIGAN

A PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Kenneth L. Childs
William F. Halligan
Kathryn Long Mahoney
Allen D. Smith†
Shirley M. Fawley*
John M. Reagle**
Vernie L. Williams
Thomas K. Barlow**

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Allison Aiken Hanna
Keith R. Powell***
Connie P. Jackson
Kimberly Kelley Blackburn
Jasmine Rogers Drain**
Tyler R. Turner
Dwayne T. Mazyck

February 16, 2012

†Certified Specialist in Employment
and Labor Law
*Also admitted in District of Columbia
**Also admitted in North Carolina
***Also admitted in Missouri
**Also admitted in Georgia

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: Rocky Disabato d/b/a "Rocky D" v. South Carolina Association of School
Administrators
Case Tracking No. 2011-198146

Dear Mr. Shearouse:

Enclosed please find the original and two copies of Respondent's Consent to File Amicus Brief. Please file the original and return a file stamped copy to us in the enclosed envelope. Thank you.

Sincerely yours,


John M. Reagle
jreagle@childs/halligan.net

/kfm

Enclosures

c: Kevin A. Hall, Esq., Hall & Bowers, LLC
Karl S. Bowers, Jr., Esq., Hall & Bowers, LLC
M. Todd Carroll, Esq., Hall & Bowers, LLC
Marsha Ward, Esq.
J. Emory Smith, Jr., Esq., South Carolina Attorney General's Office

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

**APPEAL FROM COUNTY
Court of Common Pleas**

G. Thomas Cooper, Jr., Circuit Court Judge

C.A. No.: 2011-198146

Rocky Disabato D/B/A "Rocky D" Appellant(s)

v.

South Carolina Association Of School Administrators Respondent(s).

State Ex Rel. Alan Wilson, Attorney General Intervenor

RESPONDENT'S CONSENT TO FILE AMICUS BRIEF

Respondent, South Carolina Association of School Administrators hereby notifies the Court that it does not oppose the motion of the Student Law Press Center and the Reporters Committee for Freedom of the Press to file an amicus brief in this matter. Should the Court grant the motion, as provided in Rule 213, SCACR, the Respondent does wish the Court to specify a reasonable period in which a response to the amicus brief may be filed.

CHILDS & HALLIGAN, P.A.

By: 

~~John M. Reagle~~, S.C. Bar No. 14185

Kenneth L. Childs, S.C. Bar No. 1217

Keith R. Powell, S.C. Bar No. 69292

1301 Gervais Street, Suite 900

P.O. Box 11367

Columbia, SC 29211

(803) 254-4035

Attorneys for Respondent South Carolina

Association of School Administrator

Columbia, South Carolina
February 16, 2012

PROOF OF SERVICE

The undersigned Attorney of Childs & Halligan, P.A., hereby certifies that he has served the following counsel of record with the foregoing **Respondent's Consent to File Amicus Brief** by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 16th day of February, 2012:

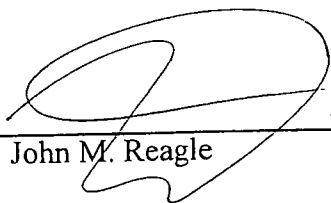
Kevin Hall, Esq.
Karl S. Bowers, Jr.
M. Todd Carroll
Hall & Bowers, LLC
1727 Hampton Street
Columbia, SC 29211

The Honorable Alan Wilson
Attorney General for the State of South Carolina
J. Emory Smith, Jr.
Assistant Deputy Attorney General
Post Office Box 111549
Columbia, SC 29211

Marsha A. Ward, Esq.
100 Lakeland Drive
Atlanta, GA 30305

CHILDS & HALLIGAN, PA

By:



John M. Reagle



1727 Hampton Street
Columbia, SC 29201

Telephone: (803) 454-6504
Fax: (803) 454-6509
www.wcsr.com

E-mail: Butch.Bowers@wcsr.com

February 13, 2012

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: Rocky Disabato d/b/a "Rocky D," Appellant, v.
South Carolina Association of School Administrators, Respondent
Appeal from Richland County Case No. 2011-CP-40-2044
Tracking No. 2011-198146

Dear Mr. Shearouse:

Enclosed please find the original and two copies of Appellant's Consent to File Amici Brief.
Please file the original and return a file stamped copy to us in the enclosed envelope. Thank you.

Sincerely,

A handwritten signature in black ink that reads "Butch Bowers/dj".

Butch Bowers

KSB/dj
Enclosures

cc: John M. Reagle, Esquire
Marsha A. Ward, Esquire

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FEB 15 2012
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

G. Thomas Cooper, Jr., Circuit Court Judge

Case No. 2011-CP-40-2044

Rocky Disabato d/b/a "Rocky D," Appellant,
v.
South Carolina Association of School Administrators, Respondent.

APPELLANT'S CONSENT TO FILE AMICI BRIEF

Appellant Rocky Disabato hereby notifies the Court of his consent to the motion of the Student Law Press Center and the Reporters Committee for Freedom of the Press to file an amici

RECEIVED
Brief in this matter.

FEB 15 2012

S.C. SUPREME COURT

WOMBLE CARLYLE SANDRIDGE & RICE

By: Butch Bowers
Kevin A. Hall (SC Bar No. 15063)
Karl S. Bowers, Jr. (SC Bar No. 16141)
M. Todd Carroll (SC Bar No. 74000)
1727 Hampton Street
Columbia, South Carolina 29201
(803) 454-6504

Attorneys for Appellant Rocky Disabato

Columbia, South Carolina
February 13, 2012



February 9, 2012

Clerk of Court
Supreme Court of South Carolina
P.O. Box 11330
Columbia, SC 29211

Re: Filing fee for SPLC's *amicus curiae* brief in Case No. 2011-CP-40-2044

To Whom It May Concern:

Thank you for the reminder about the \$25.00 filing fee—the check is enclosed. If anything else is required, we will send it right away.

Thank you again,

Frank D. LoMonte
Executive Director, Student Press Law Center

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FEB 19 2012

S.C. SUPREME COURT

The Supreme Court of South Carolina

Rocky Disabato, d/b/a Rocky
D., Appellant,

v.

South Carolina Association of
School Administrators, Respondent.

State Ex Rel Alan Wilson,
Attorney General, Intervenor.

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2011-CP-40-02044

ORDER

For good cause having been shown, the time for serving and filing the Initial Brief of Respondent and Designation of Matter in the above entitled matter is hereby extended until March 19, 2012.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Trenda J. Shealy*
CLERK

Chief Deputy

Columbia, South Carolina

February 13, 2012

cc: Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Deputy Attorney General Robert D. Cook
Assistant Deputy Attorney General J. Emory Smith, Jr.

CHILDS & HALLIGAN

A PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Kenneth L. Childs
William F. Halligan
Kathryn Long Mahoney
Allen D. Smith†
Shirley M. Fawley*
John M. Reagle**
Vernie L. Williams
Thomas K. Barlow**

The Tower at 1301 Gervais Street, Suite 900, Columbia, SC 29201
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Connie P. Jackson
Kimberly Kelley Blackburn
Jasmine Rogers Drain**
Tyler R. Turner
Dwayne T. Mazyck

February 10, 2012

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FEB 10 2012

S.C. Supreme Court

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk, SC Supreme Court
1231 Gervais Street
Columbia, SC 29201

†Certified Specialist in Employment
and Labor Law

*Also admitted in District of Columbia

**Also admitted in North Carolina

***Also admitted in Missouri

**Also admitted in Georgia

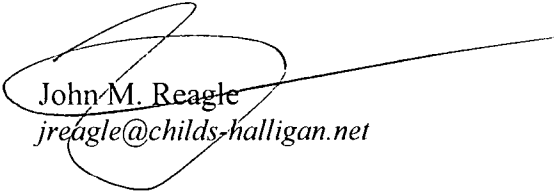
Re: APPEAL - Rocky Disabato d/b/a "Rocky D" v. South Carolina
Association of School Administrators
Case Tracking No. 2011-198146

Dear Mr. Shearouse:

I respectfully request a 30-day extension of time for the South Carolina Association of School Administrators ("SCASA") to file its initial brief and designation of matter for the record in this appeal. My understanding is that SCASA's brief and designation would be due on February 16, 2012. Under this proposed extension, the brief and designation would be due on March 19, 2012. The reason for this request is other Court deadlines that are scheduled around the current due date, and a recent expedited Federal District Court trial. Opposing counsel has graciously consented to our request.

Thank you for your consideration of this request.

Sincerely yours,


John M. Reagle
jreagle@childs-halligan.net

/ctt

cc: Karl S. Bowers, Jr., Esq., Hall & Bowers, LLC
M. Todd Carroll, Esq., Hall & Bowers, LLC
J. Emory Smith, Jr., Esq., South Carolina Attorney General's Office



February 6, 2012

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FEB - 8 2012

Supreme Court of South Carolina
Clerk's Office, Civil Filings Desk
Supreme Court Building
1231 Gervais Street
Columbia, S.C. 29201

S.C. Supreme Court
pm 2-6-12 LA

RE: Disabato v. South Carolina Ass'n of School Admin'rs, No. 2011-CP-40-2044

Dear Civil Appeals Clerk,

Please find enclosed for filing with the Court an original and fourteen (14) copies of the *Motion of the Student Press Law Center and Reporters Committee for Freedom of the Press for Leave to File an Amicus Curiae Brief*, and of the brief itself. The motion and brief are being served on all parties by mail today, as shown in the attached Certificate of Service.

Please contact me by phone at 703-807-1904, ext. 121, if there are any issues regarding the filing.

Sincerely,

Frank D. LoMonte, Esq.
Executive Director
Student Press Law Center

cc: All Counsel of Record

Todd Carroll

From: Meyer, Anne B. [AMeyer@sccourts.org]
Sent: Monday, October 03, 2011 12:30 PM
To: Todd Carroll
Subject: Disabato v South Carolina Association of School Administrators

Dear Mr. Carroll,

This letter is to inform you that I have received your request to produce the transcript of the hearing from January 18, 2011 that was held in front of Judge Jefferson in the above referenced case.

I anticipate the transcript will be approximately 35 pages at a cost of \$113.75 plus \$4.95 postage for a total of \$118.70.

I anticipate the transcript will take me approximately 30 more days to complete.

Upon completion of the transcript, I will mail it to Hall Bowers LLC, 1727 Hampton Street, Columbia, SC 292101.

If you have any questions, please feel free to email me.

Sincerely,

Anne Bouley Meyer

Bouley Meyer Court Reporter LLC

P.O. Box 12093

Charleston, SC 29422

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OCT 12 2011

S.C. SUPREME COURT

HALL BOWERS

HALL & BOWERS, LLC
ATTORNEYS AT LAW

1727 Hampton Street | Columbia, SC 29201

803.454.6504 tel

803.454.6509 fax

hallbowers.com

January 17, 2012

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: Rocky Disabato d/b/a "Rocky D," Appellant, v.
South Carolina Association of School Administrators, Respondent
Appeal from Richland County Case No. 2011-CP-40-2044
Tracking No. 2011-198146

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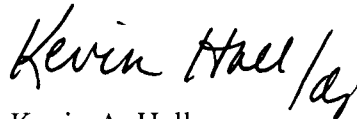
JAN 17 2012

S.C. Supreme Court

Dear Mr. Shearouse:

Enclosed please find the originals and two copies each of the Brief of Appellant and Appellant's Designation of Matter to be Included in the Record on Appeal. Please file the originals and return file stamped copies to us via our courier. Thank you.

Sincerely,



Kevin A. Hall

KAH/dj

cc: John M. Reagle, Esquire
J. Emory Smith, Jr., Esquire

PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Hall & Bowers, LLC, attorneys for Appellant, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same to the following address(es):

PLEADING: Appellant's Designation of Matter to be Included in the Record on Appeal

PARTIES SERVED: Kenneth L. Childs
John M. Reagle
Keith R. Powell
The Tower at 1301 Gervais Street
Suite 900
Post Office Box 11367 (29211)
Columbia, SC 29201

The Honorable Alan Wilson
Attorney General for the State of South Carolina
Robert D. Cook
Deputy Attorney General
J. Emory Smith, Jr.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211

HALL & BOWERS, LLC

By: 

Kevin A. Hall
Karl S. Bowers, Jr.
M. Todd Carroll

Attorneys for Appellant Rocky Disabato

Columbia, South Carolina
January 17, 2012



ALAN WILSON
ATTORNEY GENERAL

January 17, 2012

RECEIVED

JAN 17 2012

S.C. Supreme Court

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

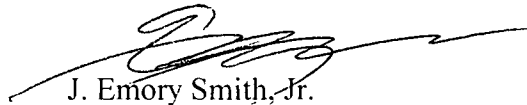
Re: Disabato v. S.C. Association of School Administrators
Extension Request

Dear Mr. Shearouse:

Enclosed for filing with your Office are the original Initial Brief of the State ex rel Wilson and Designation of Matter for Record including the Rule 209, SCACR statement, together with a Certificate of Service.

Thank you for your assistance.

Respectfully submitted,



J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc : Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

JAN 17 2012

S.C. Supreme Court

Case No. 2011-CP-40-2044

Rocky Disabato d/b/a/ "Rocky D," . . . Appellant,

v.

South Carolina Association of School Administrators, Respondent.

State Ex Rel Alan Wilson, Attorney General, Intervenor.

CERTIFICATE OF SERVICE

I hereby certify that I have served one copy of the Initial Brief and Designation of the State ex rel Wilson upon counsel for the other parties by mailing copies to them at the addresses below via the United States Mail this January 17, 2012:

Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Hall & Bowers, LLC
1727 Hampton St.
Columbia, SC 29210

Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Childs & Halligan, PA
P.O. Box 11367
Columbia, SC 29211



J. EMORY SMITH, JR.
Assistant Deputy Attorney General

The Supreme Court of South Carolina

Rocky Disabato, d/b/a Rocky
D., Appellant,

v.

South Carolina Association of
School Administrators, Respondent.

State Ex Rel Alan Wilson,
Attorney General, Intervenor.

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2011-CP-40-02044

ORDER

For good cause having been shown, the time for serving and filing the appellant's Initial Brief and Designation of Matter in the above entitled matter is hereby extended until January 16, 2012.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY *Lorenda J. Stealy*
Chief Deputy CLERK

Columbia, South Carolina

December 13, 2011

cc: Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Attorney General Alan Wilson
Deputy Attorney General Robert D. Cook
Assistant Deputy Attorney General J. Emory Smith, Jr.



HALL & BOWERS, LLC
ATTORNEYS AT LAW

1727 Hampton Street | Columbia, SC 29201

803.454.6504 tel

803.454.6509 fax

hallbowers.com

December 9, 2011

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

KEVIN A. HALL
kevin.hall@hallbowers.com
KARL S. (BUTCH) BOWERS, JR.
butch.bowers@hallbowers.com
M. TODD CARROLL
todd.carroll@hallbowers.com

Re: Rocky Disabato d/b/a "Rocky D," Appellant, v.
South Carolina Association of School Administrators, Respondent
Appeal from Richland County Case No. 2011-CP-40-2044
Tracking No. 2011-198146

Dear Mr. Shearouse:

We represent Mr. Disabato, the appellant, in the above-referenced case. We are in receipt of the Court's order granting the Office of the Attorney General's request for an extension of the deadline to file its opening brief and designation of matter in this case. In order to maintain uniformity of briefing deadlines, we respectfully request that our deadline for filing an opening brief and designation of matter also be extended until January 16, 2012. We have contacted counsel for all parties, and they all consent to this request.

Thank you for your help. If we can provide the Court with any additional materials or information, please do not hesitate to call on us.

Sincerely,

Todd Carroll /dj
M. Todd Carroll

MTC/dj

cc: John M. Reagle, Esquire
J. Emory Smith, Jr., Esquire

RECEIVED
DEC 10 2011
S.C. SUPREME COURT

The Supreme Court of South Carolina

Rocky Disabato, d/b/a Rocky
D., Appellant,

v.

South Carolina Association of
School Administrators, Respondent.

State Ex Rel Alan Wilson,
Attorney General, Intervenor.

The Honorable G. Thomas Cooper, Jr.
Richland County
Trial Court Case No. 2011-CP-40-02044

ORDER

The request for an extension to serve and file the State's (Intervenor) initial brief and designation of matter is granted and extended until January 16, 2012.

IT IS SO ORDERED.

JEAN H. TOAL, CHIEF JUSTICE

BY


CLERK


Columbia, South Carolina

December 1, 2011

cc: Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire
Attorney General Alan Wilson
Deputy Attorney General Robert D. Cook
Assistant Deputy Attorney General J. Emory Smith, Jr.



ALAN WILSON
ATTORNEY GENERAL

November 29, 2011

The Honorable Daniel E. Shearouse
Clerk, Supreme Court of
South Carolina
HAND DELIVERY

RECEIVED

NOV 29 2011

S.C. Supreme Court

Re: Disabato v. S.C. Association of School Administrators
Extension Request

Dear Mr. Shearouse:

I respectfully request a 30 day extension of time for the State ex rel Wilson to file its initial brief and designation of matter for the record in this appeal. My understanding is that the State's brief and designation would be due on December 15, 2011. Under this proposed extension, the brief and designation would be due on January 16, 2012. The reason for this request is other Court deadlines that I have around the current due date including a major Federal District Court argument on December 19.

Thank you for your consideration of this request.

Respectfully submitted,

J. Emory Smith, Jr.
Assistant Deputy Attorney General

cc : Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire



HALL & BOWERS, LLC
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803.454.6509 fax

hallbowers.com

November 18, 2011

KEVIN A. HALL
kevin.hall@hallbowers.com

KARL S. (BUTCH) BOWERS, JR.
butch.bowers@hallbowers.com

M. TODD CARROLL
todd.carroll@hallbowers.com

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RECEIVED
NOV 21 2011
S.C. SUPREME COURT

South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201

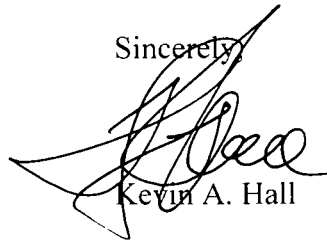
John M. Reagle, Esquire
Childs & Halligan, P.A.
1301 Gervais Street, Suite 900
Columbia, SC 29201

Re: Rocky Disabato d/b/a "Rocky D," Appellant, v.
South Carolina Association of School Administrators, Respondent
Appeal from Richland County, Case No. 2011-CP-40-2044
Tracking No. 2011-198146

Everyone:

Please find enclosed copies of emails recently received from Anne Meyer, court reporter for Judge Jefferson, and Karen Ambroziak, court reporter for Judge Cooper, regarding the above captioned matter. Thank you.

Sincerely,



Kevin A. Hall

KAH/dj
Enclosure

Debbie Johnson

From: Ambroziak, Karen [kambroziak@sccourts.org]
Sent: Wednesday, November 09, 2011 2:43 PM
To: Debbie Johnson
Cc: Todd Carroll
Subject: RE: Disabato v SC Association of School Administrators (2011-CP-40-2044; 2009-CP-10-7593)

Ms. Johnson,

The South Carolina Court Reporter Manual which I am to follow states: "The date such advance payment is received will be considered the transcript request date." I received payment on 9/17. The transcript is due on 11/17 with extensions of time being granted, if necessary. Because I have been assigned in court, have trials ahead of this request and other requests, and I was not provided with a copy of all documents being read during the hearing and cases cited into the record, it will take longer to complete the transcripts. One hearing is complete and is being proofread and researched for the spellings and case citings to the extent I am able to find them using Google. The second hearing I am working on. Because this will also have to be proofread and researched for spellings of cases cited and I am assigned in court, I anticipate at least one extension will be requested.

Karen Ambroziak
Court Reporter for the Honorable G. Thomas Cooper, Jr.

From: Debbie Johnson [debbie.johnson@hallbowers.com]
Sent: Wednesday, November 09, 2011 2:05 PM
To: Ambroziak, Karen
Cc: Todd Carroll
Subject: Disabato v SC Association of School Administrators (2011-CP-40-2044; 2009-CP-10-7593)

Ms. Ambroziak, on September 1st, we requested transcripts of hearings from April 18 and July 26 that were held in front of Judge Cooper in the above referenced cases. Based on our reading of the Appellate Court Rules, it appears that the deadline for receiving the transcripts has passed. We were wondering if you have completed them and, if not, if you could provide us with an estimate as to when they will be completed. Thank you very much for your help.

Debbie Johnson (Office Manager)
Hall & Bowers
1727 Hampton Street
Columbia, SC 29201
803-454-6504

RECEIVED

NOV 21 2011

S.C. SUPREME COURT

Debbie Johnson

From: Ambroziak, Karen [kambroziak@sccourts.org]
Sent: Saturday, November 12, 2011 5:39 PM
To: Debbie Johnson
Cc: Todd Carroll
Subject: RE: Disabato v SC Association of School Administrators (2011-CP-40-2044; 2009-CP-10-7593)

The transcripts came back from my proofreader more quickly than I expected they would. They will be placed in the mail on Monday. There is a check for the overage, \$20.00, enclosed. You should receive them shortly.

Karen Ambroziak
Court Reporter for the Honorable G. Thomas Cooper, Jr.

From: Debbie Johnson [debbie.johnson@hallbowers.com]
Sent: Wednesday, November 09, 2011 2:05 PM
To: Ambroziak, Karen
Cc: Todd Carroll
Subject: Disabato v SC Association of School Administrators (2011-CP-40-2044; 2009-CP-10-7593)

Ms. Ambroziak, on September 1st, we requested transcripts of hearings from April 18 and July 26 that were held in front of Judge Cooper in the above referenced cases. Based on our reading of the Appellate Court Rules, it appears that the deadline for receiving the transcripts has passed. We were wondering if you have completed them and, if not, if you could provide us with an estimate as to when they will be completed. Thank you very much for your help.

Debbie Johnson (Office Manager)
Hall & Bowers
1727 Hampton Street
Columbia, SC 29201
803-454-6504

Debbie Johnson

From: Meyer, Anne B. [AMeyer@sccourts.org]
Sent: Wednesday, November 09, 2011 3:36 PM
To: Debbie Johnson
Subject: RE: Disabato v SC Association of School Administrators

Dear Ms. Johnson,

I mailed that via USPS priority mail for you on Monday evening after court. I anticipate you should have it today or tomorrow. I am happy to email you a PDF version of the transcript so that you can have that right away. I am sorry for the inconvenience. Please let me know if you wish me to email it to you.

Thank you,

Anne Meyer

From: Debbie Johnson [debbie.johnson@hallbowers.com]
Sent: Wednesday, November 09, 2011 2:00 PM
To: Meyer, Anne B.
Cc: Todd Carroll
Subject: Disabato v SC Association of School Administrators

Ms. Meyer, on September 1st, we requested a transcript of the hearing from January 18 that was held in front of Judge Jefferson in the above referenced case. Based on our reading of the Appellate Court Rules, it appears that the deadline for receiving the transcript has passed. We were wondering if you have completed it and, if not, if you could provide us with an estimate as to when it will be completed. Thank you very much for your help.

Debbie Johnson (Office Manager)
Hall & Bowers
1727 Hampton Street
Columbia, SC 29201
803-454-6504



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S.C. SUPREME COURT

NOV 18 2011

KEVIN A. HALL
kevin.hall@hallbowers.com

KARL S. (BUTCH) BOWERS, JR.
butch.bowers@hallbowers.com

RECEIVED

M. TODD CARROLL
todd.carroll@hallbowers.com

RECEIVED

NOV 18 2011

S.C. SUPREME COURT

November 16, 2011

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: Rocky Disabato d/b/a "Rocky D," Appellant, v.
South Carolina Association of School Administrators, Respondent
Appeal from Richland County Case No. 2011-CP-40-2044
Tracking No. 2011-198146

Dear Mr. Shearouse:

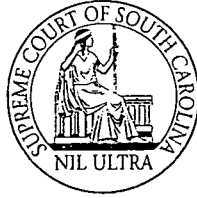
Please be advised that all transcripts requested in the captioned matter were received on November 15, 2011. Thank you.

Sincerely,

M. Todd Carroll

MTC/dj
Enclosures

cc: John M. Reagle, Esquire
J. Emory Smith, Jr., Esquire



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

October 14, 2011

Attorney General Alan Wilson
Deputy Attorney General Robert D. Cook
Assistant Deputy Attorney General J. Emory Smith, Jr.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Re: Disabato v. SC Association of School Administrators

Dear Counsel:

The following Order has been endorsed on your Motion to Intervene of State Ex Rel Alan Wilson, Attorney General in the above entitled case on appeal.

“Granted.

s/ Jean H. Toal C.J.
For the Court

October 14, 2011.”

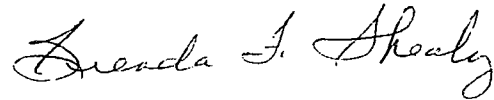
By copy of this letter we are advising all counsel of record of the action of the Court in this matter.

Disabato v. SC Association of School Administrators

Page Two

October 14, 2011

Very truly yours,

A handwritten signature in cursive script that reads "Brenda J. Shealy".

CHIEF DEPUTY CLERK

BFS/dmh

cc: Attorney General Alan Wilson
Deputy Attorney General Robert D. Cook
Assistant Deputy Attorney General J. Emory Smith, Jr.
Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire

CHILDS & HALLIGAN

A PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

Kenneth L. Childs
William F. Halligan
Kathryn Long Mahoney
Allen D. Smith†
Shirley M. Fawley*
John M. Reagle**
Vernie L. Williams
Thomas K. Barlow**

The Tower at 1301 Gervais Street, Suite 900, Columbia, SC 29201
Post Office Box 11367, Columbia, SC 29211-1367

Telephone (803) 254-4035
Facsimile (803) 771-4422

Allison Aiken Hanna
Keith R. Powell***
Connie P. Jackson
Kimberly Kelley Blackburn
Jasmine Rogers Drain**
Tyler R. Turner
Dwayne T. Mazyck

October 10, 2011

†Certified Specialist in Employment
and Labor Law
*Also admitted in District of Columbia
**Also admitted in North Carolina
***Also admitted in Missouri
**Also admitted in Georgia

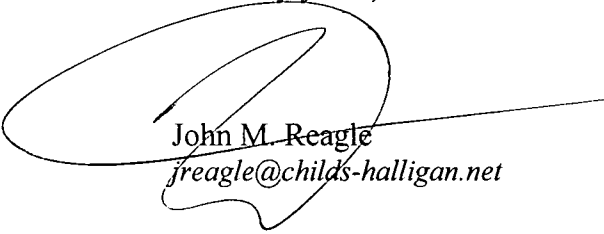
Daniel E. Shearouse
Clerk of the Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

Re: APPEAL - Rocky Disabato d/b/a "Rocky D" v. South Carolina
Association of School Administrators
Case Tracking No. 2011-198146

Dear Mr. Shearouse:

Enclosed for filing are the original and six (6) copies of Respondent's Consent to Motion to Intervene to be filed in the captioned matter. Please return a file stamped copy to us in the enclosed envelope. Thank you.

Sincerely yours,


John M. Reagle

jreagle@childs-halligan.net

/ctt

Enclosures

c: M. Todd Carroll
J. Emory Smith, Jr., Esquire

RECEIVED

OCT 12 2011

S.C. Supreme Court

HALL BOWERS

HALL & BOWERS, LLC
ATTORNEYS AT LAW

1727 Hampton Street | Columbia, SC 29201

803.454.6504 tel

803.454.6509 fax

hallbowers.com

October 3, 2011

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

KEVIN A. HALL
kevin.hall@hallbowers.com
KARL S. (BUTCH) BOWERS, JR.
butch.bowers@hallbowers.com
M. TODD CARROLL
todd.carroll@hallbowers.com

Re: Rocky Disabato d/b/a "Rocky D," Appellant, v.
South Carolina Association of School Administrators, Respondent
Appeal from Richland County Case No. 2011-CP-40-2044
Tracking No. 2011-198146

Dear Mr. Shearouse:

Enclosed for filing is Appellant's Consent to Motion to Intervene to be filed in the captioned matter. Please return a file stamped copy to us in the enclosed envelope. Thank you.

Sincerely,



M. Todd Carroll

MTC/dj
Enclosures

cc: John M. Reagle, Esquire
J. Emory Smith, Jr., Esquire

RECEIVED
OCT 04 2011
S.C. SUPREME COURT



HALL & BOWERS, LLC
ATTORNEYS AT LAW

1727 Hampton Street | Columbia, SC 29201

803.454.6504 tel

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September 23, 2011

KEVIN A. HALL

kevin.hall@hallbowers.com

KARL S. (BUTCH) BOWERS, JR.

butch.bowers@hallbowers.com

M. TODD CARROLL

todd.carroll@hallbowers.com

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

RECEIVED

SEP 26 2011

S.C. Supreme Court

South Carolina Court Administration
1015 Sumter Street, Suite 200
Columbia, SC 29201

John M. Reagle, Esquire
Childs & Halligan, P.A.
1301 Gervais Street, Suite 900
Columbia, South Carolina 29201

Re: Rocky Disabato d/b/a "Rocky D," Appellant, v.
South Carolina Association of School Administrators, Respondent
Appeal from Richland County Case No. 2011-CP-40-2044
Tracking No. 2011-198146

Everyone:

Please find enclosed a copy of an email recently received from Karen Ambroziak, court reporter for Judge Cooper, regarding the above captioned matter. Thank you.

Sincerely,

M. Todd Carroll

MTC/dj
Enclosure

Todd Carroll

From: Ambroziak, Karen [kambroziak@sccourts.org]
Sent: Sunday, September 18, 2011 12:07 PM
To: Todd Carroll
Subject: Disabato V SCASA transcript

Hi Mr. Carroll,

I wanted to let you know I received payment toward the transcripts you have requested. I will begin preparing them as soon as possible. I have other requests ahead of yours which I am required to prepare first, as Court Administration requires.

Karen Ambroziak
Court Reporter for the Honorable G. Thomas Cooper, Jr.



HALL & BOWERS, LLC
ATTORNEYS AT LAW

1727 Hampton Street | Columbia, SC 29201

803.454.6504 tel

803.454.6509 fax

hallbowers.com

RECEIVED

SEP 15 2011

S.C. SUPREME COURT

September 13, 2011

Karen Ambroziak
1083 Langford Road
Blythewood, SC 29016

KEVIN A. HALL
kevin.hall@hallbowers.com
KARL S. (BUTCH) BOWERS, JR.
butch.bowers@hallbowers.com
M. TODD CARROLL
todd.carroll@hallbowers.com

Re: Disabato v. South Carolina Association of School Administrators
Case No. 2011-CP-40-2044 (Richland County)
Case No. 2009-CP-10-7593 (Charleston County)

Dear Ms. Ambroziak:

The parties in the above-referenced case held two hearings before The Honorable G. Thomas Cooper, Jr., Circuit Court Judge, in Richland County. The dates and substance of these hearings were as follows:

1. April 18, 2011, on Mr. Disabato's motion to compel discovery responses and SCASA's motion for a protective order; and
2. July 26, 2011, on SCASA's motion to dismiss.

At the time of these hearings, the case number was 2011-CP-40-2044. Our records indicate that you were the court reporter for both of these hearings.

At your request in correspondence dated September 12, 2011, we are enclosing a check in the amount of \$275 to be applied toward the cost of producing the transcripts of these hearings. Thank you.

Sincerely,

M. Todd Carroll

cc: The Honorable Daniel E. Shearouse
Office of Court Administration
John M. Reagle, Esq.

Karen Ambroziak
1083 Langford Road
Blythewood, SC 29016

September 12, 2012

Hall & Bowers, LLC
1727 Hampton Street
Columbia, SC 29201

Re: Disabato vs. SCASA hearings: 4/18/11; 7/26/11

Dear Mr. Carroll:

I have received your letter requesting the above-referenced transcripts of record. Transcripts cost \$3.25 per page plus actual postage fees. I am estimating these transcripts to be approximately 85 pages in length. The actual number of pages is unknown until completion, so that is my best estimate at this time.

I am respectfully requesting an advance payment of \$275 toward the cost of producing these transcripts. Please make the check payable to me, Karen Ambroziak. Please reference the case name, dates of hearing, county and judge along with your payment to ensure that payment is properly credited and to avoid confusion.

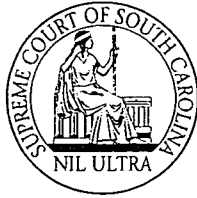
I am given 60 days to complete the transcript of record. Extensions of time may be granted, if necessary. My time does not commence until receipt of funds in the full amount requested. Any unused funds will be returned to you along with the transcript of record, less actual postage fees. If there is a shortage of funds, you will need to send the additional funds before receiving the transcript of record or receive only as many pages as previously paid funds will cover with postage.

If you do not wish to order this transcript, no further contact is necessary.

Sincerely,


Karen Ambroziak
Circuit Court Reporter

CC: Desiree Allen



The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

September 2, 2011

Kevin A. Hall, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Hall & Bowers, LLC
1727 Hampton Street
Columbia, SC 29201

Re: Disabato v. SC Association of School Administrators
Case Tracking No. 2011-198146

Dear Counsel:

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

Daniel E. Shearouse
65

CLERK

DES/dmh

Enclosure

Disabato v. SC Association of School Administrators

Page Two

September 2, 2011

cc: Kenneth L. Childs, Esquire
John M. Reagle, Esquire
Keith R. Powell, Esquire



HALL & BOWERS, LLC
ATTORNEYS AT LAW

1727 Hampton Street | Columbia, SC 29201

803.454.6504 tel

803.454.6509 fax

hallbowers.com

September 1, 2011

Karen Ambroziak
1083 Langford Road
Blythewood, SC 29016

KEVIN A. HALL
kevin.hall@hallbowers.com
KARL S. (BUTCH) BOWERS, JR.
butch.bowers@hallbowers.com
M. TODD CARROLL
todd.carroll@hallbowers.com

Re: Disabato v. South Carolina Association of School Administrators
Case No. 2011-CP-40-2044 (Richland County)
Case No. 2009-CP-10-7593 (Charleston County)

RECEIVED

SEP - 1 2011

Dear Ms. Ambroziak:

S.C. Supreme Court

The parties in the above-referenced case held two hearings before The Honorable G. Thomas Cooper, Jr., Circuit Court Judge, in Richland County. The dates and substance of these hearings were as follows:

1. April 18, 2011, on Mr. Disabato's motion to compel discovery responses and SCASA's motion for a protective order; and
2. July 26, 2011, on SCASA's motion to dismiss.

At the time of these hearings, the case number was 2011-CP-40-2044. Our records indicate that you were the court reporter for both of these hearings.

We request that you provide us with a copy of the transcripts of these hearings. Please transcribe the entirety of both hearings. We agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Thank you for your assistance with this. If we can provide you with any additional information, please do not hesitate to call on us.

Sincerely,

M. Todd Carroll

cc: The Honorable Daniel E. Shearouse
Office of Court Administration
John M. Reagle, Esq.



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September 1, 2011

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M. TODD CARROLL
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Re: Disabato v. South Carolina Association of School Administrators
Case No. 2011-CP-40-2044 (Richland County)
Case No. 2009-CP-10-7593 (Charleston County)

RECEIVED

SEP -1 2011

Dear Ms. Meyer:

S.C. Supreme Court

On January 18, 2011, the parties held a hearing on a motion to dismiss/change venue before The Honorable Deadra L. Jefferson, Circuit Court Judge, in Charleston County in the above-referenced case. At the time of that hearing, the case number was 2009-CP-10-7593. Our records indicate that you were the court reporter for that hearing.

We request that you provide us with a copy of the transcript of that hearing. Please transcribe the entire hearing. We agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

Thank you for your assistance with this. If we can provide you with any additional information, please do not hesitate to call on us.

Sincerely,

M. Todd Carroll

cc: The Honorable Daniel E. Shearouse
Office of Court Administration
John M. Reagle, Esq.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

G. Thomas Cooper, Jr., Circuit Court Judge

SEP -1 2011

S.C. Supreme Court

Case No. 2011-CP-40-2044

Rocky Disabato d/b/a "Rocky D," Appellant,

v.

South Carolina Association of School Administrators, Respondent.

NOTICE OF APPEAL

Appellant Rocky Disabato appeals the Order Granting Defendant's Motion to Dismiss that was issued by the Honorable G. Thomas Cooper, Jr., Circuit Court Judge. This order was dated August 10, 2011; filed on August 15, 2011; and received by Mr. Disabato on August 17, 2011. Appellant also appeals the circuit court's interlocutory order of March 14, 2011, which was issued by the Honorable Deadra L. Jefferson and transferred venue of this dispute from Charleston County to Richland County (Charleston County Case No. 2009-CP-10-7593). Copies of both orders are attached.

Because Judge Cooper's final order holds that the South Carolina Freedom of Information Act is unconstitutional, purportedly on an "as applied" basis, Mr. Disabato files the Notice of Appeal with this Court pursuant to Rule 203(d)(1)(A)(ii), SCACR.

HALL & BOWERS, LLC

By: _____

Kevin A. Hall
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Attorneys for Appellant Rocky Disabato

Columbia, South Carolina
September 1, 2011

Other Counsel of Record:

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Attorneys for Respondent South
Carolina Association of School
Administrators

PROOF OF SERVICE

I, the undersigned Attorney of the law offices of Hall & Bowers, LLC, attorneys for Appellant, do hereby certify that I have served the below party in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same, postage prepaid, to the following address(es):

RECEIVED

SEP -1 2011

Pleading: Notice of Appeal

Party Served: Kenneth L. Childs
John M. Reagle
Keith R. Powell
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S.C. Supreme Court

Counsel for Respondent South Carolina Association of School Administrators

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Attorneys for Appellant Rocky Disabato

Columbia, South Carolina
September 1, 2011

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

JUDGMENT IN A CIVIL CASE

CASE NO: 2011CP4002044

Rocky Disabato

vs.

South Carolina Assn of School Administrators

Plaintiff

Defendant

CHECK ONE:

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

RICHLAND COUNTY
 CLERK OF COURT
 2011 AUG 5 AM 9:58
 JEANETTE W. ARBRIDE
 S.C.P.C. & D.S.

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;

Statement of Judgment by the Court:

Dated at Columbia, South Carolina, this _____ day of _____, 2011.

PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 15 August 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Kevin A Hall
M Todd Carroll

ATTORNEY(S) FOR THE PLAINTIFF(S)

John Marshall Reagle
Keith Robert Powell

ATTORNEY(S) FOR THE DEFENDANT(S)

Jeanette W. Arbride

Clerk of Court

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Rocky Disabato d/b/a "Rocky D",)
)
 Plaintiff,)
)
 v.)
)
 South Carolina Association of School)
 Administrators,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 C/A No. 2011-CP-40-02044

**ORDER GRANTING DEFENDANT'S
 MOTION TO DISMISS**

RICHLAND COUNTY
 FILED
 2011 AUG 15 AM 9:55
 JEANETTE W. McBRIDE
 CLERK, S.C.S.

This matter is before the Court on Defendant South Carolina Association of School Administrators' ("SCASA") Motion to Dismiss pursuant to Rule 12(b)(6), SCRPC. Plaintiff, Rocky Disabato ("Rocky D"), seeks a declaratory judgment and injunctive relief against SCASA both declaring SCASA to be a "public body" under the South Carolina Freedom of Information Act ("FOIA"), S.C. Code Ann. § 30-4-10, et seq., and requiring SCASA to disclose requested records. In its Motion to Dismiss, SCASA contends that Rocky D's claim must fail as a matter of law because the FOIA's definition of a "public body" cannot constitutionally embrace a corporation, like SCASA, engaged in political speech or issue advocacy. In other words, SCASA asserts that the FOIA's definition of "public body"—to which the FOIA's broad open meeting and records disclosure requirements apply—unconstitutionally burdens the First Amendment rights of freedom of speech and association of issue advocacy organizations like SCASA.

For the reasons stated herein, SCASA cannot constitutionally be subject to the requirements of a "public body" under the FOIA.

I. INTRODUCTION

Because SCASA has moved to dismiss Rocky D's FOIA claim, this Court must accept the well-pleaded allegations of the Complaint as true. *Gressette v. S.C. Elec. & Gas Co.*, 370

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S.C. 377, 378-79, 635 S.E.2d 538, 538 (2006). Consequently, for purposes of this motion, this Court assumes that SCASA is supported in part by public funds and that SCASA would fall within the FOIA's definition of "public body," as alleged in the Complaint. This Court further assumes, from the following allegations set forth in the Complaint, that SCASA is a corporation engaging in political speech and issue advocacy:

- "Plaintiff requested . . . records of SCASA that relate to its collusive efforts with the State Department of Education and others regarding the debate about the federal stimulus funds in the American Recovery and Reinvestment Act of 2009." (Compl. ¶ 1)
- "SCASA is a corporate entity organized under the laws of the state of South Carolina..." (Compl. ¶ 3)
- "SCASA describes itself as 'the leading force for public education' in South Carolina." (Compl. ¶ 6)
- "The mission of SCASA, a united alliance of diverse school leaders and the leading force for public education in our state, is to advocate for a superior education for citizens of South Carolina by influencing education legislation and policy..." (Compl. ¶ 6, Exhibit A)

These assumptions are consistent with the Court's order of March 14, 2011, in which the Court determined as a matter of law that:

SCASA does not have a duty to exercise any sovereign power of the State. SCASA was not created by the legislature. There are no legal qualifications for membership in SCASA or for SCASA's existence, other than those generally set forth in S.C. Code Ann. §§ 33-31-101 to -1708 respecting any non-profit corporation's existence. [footnote omitted] SCASA has no duties it must fulfill by legislative act, it has no tenure, it receives no salary, it posts no bond, it takes no oath of office, and it is not a representative of the sovereign or State.

(Order, p. 7.)



II. ANALYSIS

A. The FOIA.

The purpose of the FOIA is set forth in the statute:

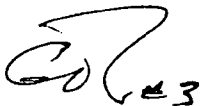
[I]t is vital in a democratic society that *public* business be performed in an open and public manner so that citizens shall be advised of the *performance of public officials* and of the decisions that are reached *in public activity* and in the formulation of public policy.

S.C. Code Ann. § 30-4-15 (emphases added).

In an effort to fulfill its purpose, the FOIA states numerous requirements for public bodies. For example, the FOIA mandates that "[a]ny person has a right to inspect or copy any public record of a public body, except as otherwise provided by § 30-4-40, in accordance with reasonable rules concerning time and place of access." S.C. Code Ann. § 30-4-30(a). The FOIA also requires that "[e]very meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter." S.C. Code Ann. § 30-4-60. The term "meeting" is broadly defined as "the convening of a quorum of the constituent membership of a public body, whether corporal or by means of electronic equipment, to discuss or act upon a matter over which the public body has supervision, control, jurisdiction or advisory power." S.C. Code Ann. § 30-4-20(d). Further, any person in attendance at a meeting of a public body may tape record or video record the meeting. S.C. Code Ann. § 30-4-90(c).

Moreover, ancillary to its open meeting requirements, the FOIA mandates that a public body give written public notice of its meetings. S.C. Code Ann § 30-4-80. The method, timing, and content of the written notice are dictated in detail by the FOIA. S.C. Code Ann. § 30-4-80. Additionally, the FOIA requires a public body to create and maintain written minutes of its meetings. S.C. Code Ann. § 30-4-90. The content of the written minutes is also dictated by statute. S.C. Code Ann. § 30-4-90(a).

Under the FOIA, these extensive record disclosure and open meeting requirements apply



to any "public body." The FOIA defines a "public body" as "any organization, corporation, or agency supported in whole or in part by public funds or expending public funds. . . ." S.C. Code Ann. § 30-4-20(a). The South Carolina Supreme Court has further explained this definition of "public body":

[T]he unambiguous language of the FOIA mandates that the receipt of support in whole or in part from public funds brings a corporation within the definition of a public body. The common law concept of "public" versus "private" corporations is inconsistent with the FOIA's definition of "public body" and thus cannot be superimposed on the FOIA.

Weston v. Carolina Research & Dev. Found., 303 S.C. 398, 403, 401 SE.2d 161, 164 (1991). Relying on *Weston*, the South Carolina Attorney General formally opined that there is no "de minimus" public funds exception to the FOIA's definition of "public body." Op. S.C. Att'y Gen., 2006 WL 1574910 (May 19, 2006).

To enforce its requirements, the FOIA authorizes any citizen of the state to bring an action for a declaratory judgment and injunctive relief against a public body. S.C. Code Ann. § 30-4-100; *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 327-28, 701 S.E.2d 39, 47-48 (Ct. App. 2010). Further, the FOIA authorizes a court to award reasonable attorneys' fees and other costs of litigation to a prevailing plaintiff. S.C. Code Ann. § 30-4-100. The FOIA also provides that any person or group of persons who willfully violate the FOIA's provisions shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined or imprisoned. S.C. Code Ann. § 30-4-110.

B. Standard Of Review.

In ruling on a First Amendment challenge to a statute, it is the Court's "unflagging obligation to apply constitutional standards to State legislative enactments." *N.C. Right to Life, Inc. v. Leake*, 525 F.3d 274, 277 (4th Cir. 2008). "[A] significant impairment of First Amendment rights must survive exacting scrutiny." *Elrod v. Burns*, 427 U.S. 347, 362 (1976). Exacting scrutiny "is necessary even if any deterrent effect on the exercise of First Amendment

rights arises, not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct" *Buckley v. Valeo*, 424 U.S. 1, 65 (1976). The government interest advanced for impairing First Amendment rights must be one of vital importance, and the State must choose the least restrictive means to achieve its vital interest. *Elrod*, 427 U.S. 362-63.

C. Applying the FOIA

1. The FOIA burdens SCASA's issue advocacy and political speech.

SCASA engages in core political speech and issue advocacy. For example, SCASA was directly involved in the debate about Federal Stimulus Funds in the American Recovery and Reimbursement Act of 2009. *See Edwards v. State of S.C.*, 383 S.C. 82, 678 S.E. 2d 412 (2009). Further, SCASA represents itself as the leading force for public education, and the mission of SCASA includes advocacy for a superior education for citizens of South Carolina by influencing legislation and policy. SCASA's political speech and issue advocacy in support of public education are undoubtedly protected by the First Amendment. *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 346 (1995) (recognizing that speech and advocacy of politically controversial viewpoints relating to school funding is "the essence of First Amendment expression").

A State "cannot foreclose the exercise of constitutional rights by mere labels." *NAACP v. Button*, 371 U.S. 415, 429 (1963). However, by pinning the label of "public body" onto corporations like SCASA engaging in issue advocacy and political speech this is precisely the effect of the FOIA.

Initially, the FOIA's records disclosure and open meeting requirements foreclose a corporation's First Amendment right to control its message and not to speak publicly.¹ The

¹ With respect to corporations, the FOIA's open meeting requirements regulating meetings and discussions of a corporation's board of directors or members to determine corporate affairs are particularly significant. A corporation, unlike a natural person, can only govern itself through action of its board or members. The open

First Amendment encompasses the right not to speak publically:

There is necessarily a ... freedom not to speak publicly, one which serves the same ultimate end as freedom of speech in its affirmative aspect.

Pac. Gas & Elec. v. Pub. Util. Comm'n, 475 U.S. 1, 11 (1986). See also *McIntyre*, 514 U.S. at 342 ("decision to remain anonymous, like other decisions concerning omissions or additions to the content of a publication, is an aspect of the freedom of speech protected by the First Amendment"); *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 791 (1988) ("[T]he government, even with the purest of motives, may not substitute its judgment as to how best to speak for that of speakers and listeners; free and robust debate cannot thrive if directed by the government."); *Hurley v. Irish-Am. Gay, Lesbian and Bisexual Group of Boston*, 515 U.S. 557, 573-74 (1995) (discussing the "general rule, that the speaker has the right to tailor the speech, applies not only to expressions of value, opinion, or endorsement, but equally to statements of fact the speaker would rather avoid").

Open meeting requirements obviously restrict a corporation's right to control its message and to not speak publicly. However, disclosure requirements also restrict the right not to speak publicly. In *Citizens United*, the Supreme Court noted that "disclosure requirements may burden the ability to speak." *Citizens United*, 130 S.Ct. at 914. See also *McIntyre*, 514 U.S. at 355 (noting that "mandatory reporting undeniably impedes protected First Amendment activity . . ."). Consequently, the Court "has subjected these [disclosure] requirements to 'exacting scrutiny,' which requires a 'substantial relation' between the disclosure requirement and a 'sufficiently important' governmental interest." *Citizens United*; 130 S.Ct. at 914. Similarly, the Fourth Circuit Court of Appeals recognized that reporting requirements burden the speech of groups engaging in issue advocacy:

The statute subjects groups engaged in only issue advocacy to an

meeting requirements, therefore, effectively compel a corporation to "think out loud," laying bare its inner thoughts and mandating that they be written down and made public, even if ultimately not adopted by the corporation.

intrusive set of reporting requirements. In so doing, it 'blankets with uncertainty' the entire field of campaign politics 'compelling the speaker to hedge and trim.' *Thomas v. Collins*, 323 U.S. 516, 535, 65 S.Ct. 315, 89 L.Ed. 430 (1945). Burdening speech of this sort is unacceptable in an area of such crucial import to our representative democracy. The district court was correct in finding section 163-278.6(14) facially unconstitutional, and we affirm its judgment.

N.C. Right to Life, Inc. v. Bartlett, 168 F.3d 705, 713 (4th Cir. 1999). By requiring a corporation to hold its meetings open to the public and disclose its records, the FOIA restricts a corporation's ability and right to control its speech and not to speak publicly.

Moreover, the FOIA's record disclosure and open meetings requirements also restrict a corporation's freedom of association. It has long been recognized that freedom of association is fully protected under the First Amendment:

Like freedom of speech and a free press, the right of peaceable assembly was considered by the Framers of our Constitution to lie at the foundation of a government based upon the consent of an informed citizenry—a government dedicated to the establishment of justice and the preservation of liberty. U.S. Const., Amend. I. And it is now beyond dispute that freedom of association for the purpose of advancing ideas and airing grievances is protected by the Due Process Clause of the Fourteenth Amendment from invasion by the States.

Bates v. City of Little Rock, 361 U.S. 516, 522-23 (1960). The Court further made clear in *Bates* that these First Amendment freedoms "are protected not only against the heavy-handed frontal attack, but also from being stifled by more subtle governmental interference." *Bates*, 361 U.S. at 523. By requiring corporations to open their meetings and disclose their records to others, the FOIA restricts those corporations' freedom of association. *See Id.* ("This Court has recognized the vital relationship between freedom to associate and privacy in one's associations.").

Additionally, the FOIA's broad definition of "public body" imposes a chilling effect on the exercise of free speech by corporations engaged in political speech because of the threat of FOIA litigation against those corporations. The citizen lawsuit, the FOIA's primary enforcement

procedure, exacerbates the burden the FOIA imposes on First Amendment rights. FOIA litigation involving corporations requires a detailed analysis of the economic relationship between the corporation and the State and a determination of whether payments from the State were in exchange for goods or services. *Weston*, 303 S.C. at 403-04, 401 S.E.2d at 164; *Sutler v. Palmetto Elec. Coop., Inc.*, 325 S.C. 465, 468, 481 S.E.2d 179, 180 (Ct. App. 1997). The United States Supreme Court has explained that:

the burden and expense of litigating the issue—especially when what must be established is a complex and amorphous economic relationship—would unduly impinge on the exercise of the constitutional right. The free dissemination of ideas might be the loser.

First Nat'l Bank of Boston v. Bellotti, 435 U.S. 765, 785, n.21 (1978). Likewise, the Fourth Circuit Court of Appeals has explained that:

Speakers are left to guess and wonder whether a regulator, applying supple and flexible criteria, will make a *post hoc* determination that their speech is regulable This approach simply guarantees that ordinary political speech will be chilled, the very speech that people use to express themselves on all sides of those issues about which they care most deeply.

N.C. Right to Life, Inc., 525 F.3d at 284-85. See also *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. at 793 (burdensome enforcement "scheme must necessarily chill speech in direct contravention of the First Amendment's dictates."); *Citizens United*, 130 S.Ct. at 896; *Fed. Election Comm'n v. Mass. Citizens for Life, Inc.*, 479 U.S. 238, 255-56 (1986). Thus, the FOIA's chilling effect is increased by the risk of ad hoc, arbitrary, or retaliatory enforcement efforts because any citizen may bring a lawsuit under the FOIA. The First Amendment does not tolerate laws, such as the FOIA, that require an organization to hire lawyers or engage in litigation and case-by-case interpretations before determining that the organization can discuss political issues.

In summary, the FOIA's record disclosure and open meeting requirements stifle, burden,

and chill the constitutionally protected speech and assembly of corporations such as SCASA engaged in political speech and issue advocacy by (1) eliminating such corporations' right not to speak, to speak anonymously, or to otherwise control their message (2) restricting such corporations' right to freely associate, and (3) imposing the threat of ad hoc, arbitrary, or retaliatory litigation on such corporations.

2. **The FOIA's requirements are neither substantially related to a legitimate governmental purpose nor narrowly tailored to achieve the FOIA's purpose.**

The FOIA's broad definition of "public body" can only be sustained as constitutional if the FOIA's open meeting and records disclosure requirements are substantially related to a sufficiently important governmental purpose and no less restrictive means of achieving this purpose exist. *Citizens United*, 130 S.Ct. at 914; *Shelton v. Tucker*, 364 U.S. 479, 488 (1960); *Elrod v. Burns*, 427 U.S. 347, 362-63 (1976). Although the FOIA's purpose as set forth in the Act, § 30-4-10, is an important governmental interest, the FOIA's open meeting and records disclosure requirements are not substantially related to the FOIA's purpose, which could be achieved by narrower means less burdensome on First Amendment rights.

Notably, the test for whether an organization is subject to the FOIA, *i.e.*, whether the organization is supported by any public funds, is completely different from the more nuanced test under the federal FOIA. In *Irwin Mem'l Blood Bank of the S.F. Med. Soc'y v. Am. Nat'l Red Cross*, 640 F.2d 1051 (9th Cir. 1980), the federal test was described as follows:

It is the existence of this element of substantial federal control that distinguishes those entities that can be fairly denominated as federal agencies under the FOIA from the organizations whose activities may be described as merely quasi-public or quasi-governmental.

Irwin, at 1055. See also *Forsham v. Harris*, 445 U.S. 169 (1980); *Bd. of Trs. of Woodstock Acad. v. Freedom of Info. Comm'n*, 436 A.2d 266 (Conn. 1980) (adopting federal "functional

67-9

equivalent" test). The federal "functional equivalent" test, which requires "substantial federal control," obviously does not raise the patent First Amendment concerns with respect to private corporations that South Carolina's "any support" test does. This "functional equivalent" test has a narrowing purpose, absent from South Carolina's FOIA, that is similar in operation to the "main purpose" test used to determine when electioneering advocacy can be regulated. *See S.C. Citizens for Life, Inc. v. Krawcheck*, 759 F. Supp. 2d 708, 715-20 (D.S.C. 2010).

The FOIA restrains and burdens the political speech and assembly of corporations such as SCASA by mandating that all meetings be open to the public, requiring that meetings be subject to prior public notice, and prescribing the content of the meeting notice, meeting minutes, and meeting discussions. The FOIA also requires that the records of a corporation such as SCASA be accessible to the public. The FOIA imposes its open meeting and record disclosure requirements on corporations such as SCASA without regard to the amount of public funds or support received by the corporation or whether the meeting or records of the corporation pertain to public funds or public activity.

Further, the FOIA has no temporal limitations. Once a corporation such as SCASA is determined to be a public body, its records are subject to disclosure, even those predating any support from public funds. Likewise, the FOIA's disclosure and open meeting requirements extend limitlessly into the future, even if years have passed since the corporation's receipt of public support. This overly broad sweep of the FOIA's mandates simply does not bear any substantial relationship to vindicating the interest of citizens to be advised of the performance of public officials, the decisions that are reached in public activity, or the formulation of public policy. This is particularly true of SCASA, which is neither a public officer nor a representative of the State. *See Order Granting Defendant's Motion to Dismiss Pursuant to Rule (12)(B)(3), SCRCF, p. 7.*

The statutory purpose of the FOIA could be fully achieved with regard to public activity



and funds that support private corporations in a more narrowly tailored manner by merely requiring one-time reporting and disclosure of actions and records relating to the receipt and expenditure of such funds. Such limited disclosure requirements have been approved in the context of election law regulations. In *Buckley*, the United States Supreme Court approved a limited disclosure requirement, noting that the disclosure requirement was narrowly limited to those situations where the information sought had a substantial connection with the governmental interest sought to be advanced. *Buckley*, 424 U.S. at 80-82. Importantly, the disclosures approved by the Court, and unlike those required under the FOIA, did "not reach all partisan discussion for it only requires disclosure of those expenditures that expressly advocate a particular election result." *Buckley*, 424 U.S. at 80. See also *Riley*, 487 U.S. at 800 (expressing approval of narrowly limited disclosure requirements in the context of regulation of charitable fundraising).

Similarly, disclosure requirements narrowly limited to the receipt or expenditure of public funds would reasonably serve to fulfill the important interests the FOIA seeks to vindicate with regard to private corporations supported in part by public funds. In *S.C. Citizens for Life, Inc. v. Krawcheck*, 759 F. Supp. 2d 708 (D.S.C. 2010), the District Court for South Carolina recently declared provisions of the South Carolina Ethics Act facially unconstitutional because the term "committee" as used in the Act was overly broad and imposed undue burdens on the First Amendment rights of groups engaged primarily in issue advocacy. The court noted other jurisdictions' use of one-time reporting requirements as narrowly designed to achieve the legitimate governmental objective of transparency and accountability rather than the overly broad panalogy of registration, disclosure, and reporting requirements mandated by the Act. See also *N.C. Right to Life, Inc.* 525 F.3d at 281; *Colo. Right to Life Comm. v. Coffman*, 498 F.3d 1137, 1154 (10th Cir. 2007).



III. CONCLUSION


The FOIA unconstitutionally burdens SCASA's protected speech and associational rights. Specifically, the FOIA's open meeting and records disclosure requirements restrict SCASA's political speech and issue advocacy without a substantial relation to the purpose of the FOIA, and where narrower means are available to achieve the FOIA's purpose. As a result, the First Amendment prohibits the application of the FOIA's requirements to SCASA, and the Plaintiff's claim must fail because Plaintiff cannot, as a matter of law, state a claim for relief under the FOIA against SCASA.

This ruling does not conflict with the holding in *Weston v. Carolina Research and Dev. Found.*, 303 S.C. 398, 401 S.E.2d 161 (1991). *Weston* held that a private corporation can be a "public body" under certain circumstances. *Weston* did not address the specific circumstances of the FOIA's application to an issue advocacy organization like SCASA, and this Court's decision does not limit the FOIA's application to corporations or organizations not engaging in political speech or issue advocacy. Moreover, this decision does not find the FOIA to be unconstitutional, but that the First Amendment protects SCASA from the requirements of the FOIA, and consequently Plaintiff cannot state a claim against SCASA under the FOIA.

THEREFORE, Plaintiff's claim against SCASA is hereby DISMISSED with prejudice.

IT IS SO ORDERED.

August 10, 2011
Columbia, South Carolina



G. Thomas Cooper, Jr.
Judge, Fifth Judicial Circuit

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
)
 Rocky Disabato d/b/a "Rocky D,")
)
 Plaintiff,)
)
 vs.)
)
 South Carolina Association of School)
 Administrators,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO.:2009-CP-10-7593

**ORDER GRANTING DEFENDANT'S
 MOTION TO DISMISS PURSUANT TO
 RULE 12(B)(3), SCRPC**

FILED
 2011 MAR 15 AM 10:16
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

Presiding Judge: Deadra L. Jefferson
 Hearing Date: January 18, 2011
 Court Reporter: Anne Meyer
 Plaintiff's Attorneys: Kevin Hall, Esq.
 M. Todd Carroll, Esq.
 Defendant's Attorneys: John M. Reagle, Esq.
 Keith R. Powell, Esq.

This matter is before the Court on Defendant South Carolina Association of School Administrators' ("SCASA") Motion to Dismiss filed February 4, 2010. Defendant moves to transfer venue from Charleston County to Richland County pursuant to Rule 12(b)(3), SCRPC. This motion was argued before the Court on January 18, 2011.¹ Representing the Plaintiff were Kevin Hall, Esq. and M. Todd Carroll, Esq., and representing the Defendant were Keith R. Powell, Esq. and John M. Reagle, Esq.

BACKGROUND

In August 2009, Plaintiff sent SCASA a written request for materials pursuant to the South Carolina Freedom of Information Act ("FOIA"). (Compl. ¶ 17 & Compl. Ex. D.) Plaintiff

¹ Also before the Court on January 18, 2011 were Plaintiff's Motion to Compel Discovery Responses filed March 17, 2010 and Defendant's Motion for a Protective Order filed March 15, 2010. The Court, at the request of counsel, ordered these motions continued until the Motion to Dismiss pursuant to Rule 12(b)(3) is disposed of.

1/18/11
 [Signature]

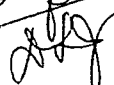
is a resident of Charleston County, and his FOIA request was sent from within Charleston County. (Compl. ¶ 2 & Compl. Ex. D.) SCASA declined to produce the requested materials, claiming it is not a public entity subject to the FOIA, and this lawsuit resulted. (Compl. ¶¶ 18-20 & Compl. Ex. E.)

This action was initiated by the filing of a Summons and Complaint on December 7, 2009. The Complaint asserts causes of action for (1) Declaration of a FOIA Violation, and (2) Injunction from Further FOIA Violations. The Plaintiff alleges in paragraph five (5) of the Complaint that venue is proper in Charleston County pursuant to S.C. Code Ann. § 15-7-20, which provides:

Actions for the following causes must be tried in the county where the cause or some part thereof arose, subject to the like power of the court to change the place of trial:

- (1) For the recovery of a penalty or forfeiture imposed by statute, except that when it is imposed for an offense committed on a lake, river or other stream of water situated in two or more counties the action may be brought in any county bordering on such lake, river or stream, and opposite to the place where the offense was committed; and
- (2) Against a public officer or person specially appointed to execute his duties for an act done by him in virtue of his office or against a person who by his command or in his aid shall do anything touching the duties of such officer.

S.C. Code Ann. § 15-7-20 (1976). In response, on February 4, 2010, the Defendant filed the present Motion to Dismiss pursuant to Rule 12(b)(3), SCRPC. The Defendant contends in its Motion that the Plaintiff improperly relied on Section 15-7-20(2) when asserting venue in Charleston County. The Complaint makes no reference to a particular subsection of Section 15-7-20, but the Plaintiff contends it relied on Section 15-7-20(1). Therefore, the Court will address both contentions as argued to determine whether venue is proper in Charleston County under

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Section 15-7-20.

ANALYSIS

I. Venue is not proper for this cause of action under S.C. Code Ann. § 15-7-20(1) because the relief sought by the Plaintiff does not constitute a statutory penalty.

South Carolina Code Ann. § 15-7-20(1) provides as follows:

Actions for the following causes must be tried in the county where the cause or some part thereof arose, subject to the like power of the court to change the place of trial:

(1) For the recovery of a penalty or forfeiture imposed by statute . .

Under this statute's plain terms, venue is proper in a county when (a) the litigation involves a statutory penalty, and (b) at least part of the case arose in that county. See All v. British & Am. Mortgage Co., 104 S.C. 239, 241, 88 S.E. 529, 529 (1916) (holding that under this section [former Code 1962 § 10-302] an action to recover a penalty for receiving usurious interest on a contract for the lending of money should be instituted in the county where the loan was made and in which the land that was mortgaged to secure the loan was located).

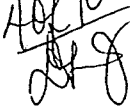
As the Complaint maintains, "This litigation involves a violation of the South Carolina Freedom of Information Act ("FOIA") by SCASA." (Compl. ¶ 1.) A component of the FOIA is its assessment of attorney fees when a public body fails to fully and properly respond to a request for records. See S.C. Code Ann. § 30-4-100(b) ("If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation."). The Plaintiff specifically seeks to recover his attorneys' fees and costs associated with this litigation. (Compl. ¶ 1) ("Plaintiff brings this suit . . . to recover his attorneys' fees and costs as directed by the statute."); (Compl. "Wherefore" ¶ d) (requesting that the Court award Plaintiff his "[a]ttorneys' fees and costs as provided by South Carolina Code § 30-4-100(b)"). The Plaintiff contends the assessment of attorneys' fees constitutes a statutory penalty bringing this action

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within Section 15-7-20(1).

First, the Court finds the relief requested by the Plaintiff does not constitute a “penalty” under the FOIA. “The determination of whether statutory attorney fees should be awarded is treated as one in equity.” Hardaway Concrete Co. v. Hall Contracting Corp., 374 S.C. 216, 230, 647 S.E.2d 488, 495 (Ct. App. 2007). Forfeitures or penalties are not favored in either law or equity. Cody Discount, Inc. v. Merritt, 368 S.C. 570, 575, 629 S.E.2d 697, 700 (Ct. App. 2006). The FOIA itself classifies attorney fees and costs as equitable relief rather than a penalty. See S.C. Code Ann. § 30-4-100. The Court finds Section 30-4-100 permits a discretionary award of attorney fees and costs when a person seeking equitable relief prevails. See id. Moreover, the FOIA contains a separate “Penalties” provision at Section 30-4-110 which imposes fines and imprisonment for willful violation of the FOIA. See S.C. Code Ann. § 30-4-110. Accordingly, the attorney fees and costs the Plaintiff seeks in this action do not constitute a penalty imposed by the FOIA.

Secondly, the Court finds that no part of the case arose in Charleston County. The Plaintiff contends venue is proper in Charleston County because the FOIA request on which this entire litigation is based came from Charleston County. (Compl. Ex. (stating that Rocky D’s return address was in North Charleston).) Likewise, the Plaintiff contends SCASA’s letter that gave rise to the alleged FOIA violation was delivered to Charleston County making it the proper county for venue. (Compl. Ex. E.) The Court finds that the alleged act which gave rise to this cause of action was SCASA’s denial of Plaintiff’s request for records pursuant to the FOIA. Plaintiff’s request was received and denied by SCASA in Richland County. The Court finds that the most substantial part of the alleged act giving rise to the cause of action occurred in Richland County. Therefore, there is no basis for venue in Charleston County under Section 15-7-20(1).

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II. Venue is not proper for this cause of action under S.C. Code Ann. § 15-7-20(2) because SCASA is not a public officer.

South Carolina Code Ann. § 15-7-20(2) provides as follows:

Actions for the following causes must be tried in the county where the cause or some part thereof arose, subject to the like power of the court to change the place of trial:

...

(2) Against a public officer or person specially appointed to execute his duties for an act done by him in virtue of his office or against a person who by his command or in his aid shall do anything touching the duties of such officer.

It is undisputed that SCASA is a South Carolina, non-profit corporation with its sole office in Richland County. Plaintiff asserts that SCASA is also a public body subject to the FOIA under Section 30-4-20(a) and Weston v. Carolina Research & Dev. Found., 303 S.C. 398, 403, 401 S.E.2d 161, 164 (1991). (Compl. ¶¶ 25-26.) SCASA denies it is a "public body," and further argues that even if it were assumed to be one for purposes of venue, venue would not be proper in this Court under Section 15-7-20(2), because "public body" as used in Section 30-4-20(a) is not equivalent to "public officer" as used in Section 15-7-20(2).

Whether SCASA is a "public body" as defined in Section 30-4-20(a) is the central issue in this case. However, this Court need not determine whether SCASA is a "public body" in order to determine proper venue.² Even if SCASA were assumed to be a public body under the FOIA, it would not follow that it is a public officer under Section 15-7-20(2). The definition of a public body is broad, and by the terms of the FOIA includes "any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including

² The parties have stipulated that the issue of whether SCASA is a public body is not before this Court, as it is premature at this time and is not required to be decided by the Court when deciding whether venue is proper under Section 15-7-20.

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committees, subcommittees, advisory committees, and the like of any such body" S.C. Code Ann. § 30-4-20(a). The definition of a public officer on the other hand is not so broad. A public officer is "one who is charged with exercising some sovereign power in the performance of his duties." State v. Thrift, 312 S.C. 282, 309, 440 S.E.2d 341, 356 (1994) (citing Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907)). Absent the statutory authority, the position would be one of mere employment. See State v. Bridgers, 329 S.C. 11, 14, 495 S.E.2d 196, 198 (1997) ("[T]he criteria we have considered when distinguishing between public officers and public employees include 'whether the position was created by the Legislature; whether the qualifications for appointment are established; whether the duties, tenure, salary, bond and oath are prescribed or required [and] whether the one occupying the position is a representative of the sovereign.'" (citing State v. Crenshaw, 274 S.C. 475, 478, 266 S.E.2d 61, 62 (S.C.1980)).

One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing, and not occasional or intermittent, is a public officer. In considering whether a particular position is an office in the constitutional sense, it must be demonstrated that the power of appointment comes from the state, the authority is derived from the law, and the duties are exercised for the benefit of the public. The powers conferred and the duties to be discharged with regard to a public office must be defined, directly or impliedly, by the legislature or through legislative authority. The duties must be performed independently and without control of a superior officer, other than the law, unless they are those of an inferior or subordinate officer, created or authorized by the legislature and by it placed under the general control of a superior officer of body.

Segars-Andrews v. Judicial Merit Selection Comm'n, 387 S.C. 109, 124, 691 S.E.2d 453, 461 (2010) (internal citations and quotation marks omitted).

The Plaintiff asserts SCASA is supported in whole or in part by public funds. The Court notes that it need not resolve the issue of whether SCASA is supported in whole or in part by

public funds pursuant to the parties' stipulation in order to rule on the current Motion to Dismiss pursuant to Rule 12(b)(3), SCRPC. Nonetheless, even if SCASA were supported by public funds, it meets none of the criteria required for a "public officer." SCASA does not have a duty to exercise any sovereign power of the State. SCASA was not created by the legislature. There are no legal qualifications for membership in SCASA or for SCASA's existence, other than those generally set forth in S.C. Code Ann. §§ 33-31-101 to -1708 respecting any non-profit corporation's existence.³ SCASA has no duties it must fulfill by legislative act, it has no tenure, it receives no salary, it posts no bond, it takes no oath of office, and it is not a representative of the sovereign or State. Consequently, even if SCASA is found to be supported by public funds and subject to the FOIA as a public body, SCASA would not thereby be transformed into a public office or officer clothed with both the rights and powers of the sovereign. Ultimately, SCASA does not qualify as a "public officer" under Section 15-7-20(2). Therefore, venue is not proper under Section 15-7-20(2).

Alternatively, even assuming that SCASA is a public body and that a public body is equivalent to a public official under § 15-7-20, Charleston County would not be the proper venue for this civil action. In Stalheim v. Doskocil, 275 S.C. 252, 269 S.E.2d 346 (1980), the Supreme Court established the rule under Section 15-7-20: "Accordingly, we hold that where the Plaintiff has not demonstrated any infirmity which would make prosecution of his action in the county where the public official presides unduly difficult or burdensome . . . that county is the proper venue under [S.C.] Code § 15-7-20(2)" Stalheim, 275 S.C. at 255, 269 S.E.2d at 347.

Plaintiff has neither alleged nor offered evidence that prosecution of his declaratory

³ Active SCASA membership is open to all persons who serve as a school system leader or who are in an administrative position in a public or private school system, education agency/association, college or university. South Carolina Ass'n of Sch. Adm'rs, *SCASA Membership*, <http://www.scasa.org/displaycommon.cfm?an=1&subarticlenbr=241> (last visited February 9, 2011).

judgment action in Richland County would be unduly difficult or burdensome. Consequently, even assuming that SCASA is a public body and that a public body is equivalent to a public officer under Section 15-7-20(2), Richland County would be the proper venue for this civil action under the holding in Stalheim.

III. Venue should be evaluated pursuant to S.C. Code Ann. § 15-7-30.

Section 15-7-30(B) provides, "In cases not provided for in Sections 15-7-10, 15-7-20, or 15-78-100, the action must be tried in the county where it properly may be brought and tried against the defendant according to the provisions of this section." S.C. Code Ann. 15-7-30(B) (2005). Actions against a domestic corporation are controlled by Section 15-7-30(E) which provides,

A civil action tried pursuant to this section against a domestic corporation, domestic limited partnership, domestic limited liability company, or domestic limited liability partnership, must be brought and tried in the county in which the:

- (1) corporation, limited partnership, limited liability company, or limited liability partnership has its principal place of business at the time the cause of action arose; or
- (2) most substantial part of the alleged act or omission giving rise to the cause of action occurred.

S.C. Code Ann. 15-7-30(E) (2005).

SCASA is a non-profit domestic corporation which was filed with the South Carolina Secretary of State on January 7, 1975. Its principal place of business is in Columbia, South Carolina which is located in Richland County. SCASA's only office is in Richland County, its records are maintained in Richland County, and its meetings are held in Richland County. The alleged act which gave rise to this cause of action was SCASA's denial of Plaintiff's request for records pursuant to the FOIA. Plaintiff's request was received and denied by SCASA in Richland County. The Court finds the corporation's principal place of business, as well as the

most substantial part of the alleged act giving rise to the cause of action occurred in Richland County. Accordingly, venue is proper in Richland County pursuant to Section 15-7-30(E).

Moreover, “[t]he right of a defendant to have a case tried against him in the county in which he resides is a substantial right.” Chestnut v. Reid, 299 S.C. 305, 306, 384 S.E.2d 713, 714 (1989). The South Carolina Supreme Court has held that “when a motion to change venue is brought pursuant to [Section] 15-7-30 and the facts concerning the defendant's residence are uncontradicted, the trial court must change the venue to the county where the defendant resides.” Id. at 307, 384 S.E.2d at 714.⁴ However,

where an action is properly instituted in a county other than that of the defendant's residence, a defendant has no right to request a change of venue to the county of his or her residence on the ground that the action was not brought in a proper county, even if the action could also have been commenced in the county where the defendant resides.

Jeter v. South Carolina Dep't of Transp., 369 S.C. 433, 442, 633 S.E.2d 143, 148 (2006). As established, *supra*, this action was not properly instituted in Charleston County pursuant to Section 15-7-20. Therefore, the Defendant had the right to request a change of venue to the county of its residence pursuant to Section 15-7-30, which it did in its Motion to Dismiss pursuant to Rule 12(b)(3), SCRCP. (“Venue is therefore only proper in the Fifth Judicial Circuit, Court of Common Pleas for Richland County, pursuant to S.C. Code § 15-7-30(E).”) The Court finds the residence of SCASA to be uncontradicted. Therefore, the Court must transfer the venue to Richland County where SCASA resides.

⁴ “If the plaintiff then wishes to change venue based on the convenience of witnesses and the promotion of justice, he may make such motion to the trial judge in the county of the defendant's residence.” Chestnut, 299 S.C. at 307, 384 S.E.2d at 714.

Conclusion

Wherefore, the Court finds the proper venue for this civil action is Richland County pursuant to Section 15-7-30(E). The Complaint is accordingly transferred to the Court of Common Pleas for Richland County, Fifth Judicial Court.

AND IT IS SO ORDERED.

D.L. Jefferson

The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

March 14, 2011
Charleston, South Carolina

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., O.S. & P.C.
By *Annelle Eaddy*
DEPUTY CLERK

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September 1, 2011

The Honorable Daniel E. Shearouse
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South Carolina Supreme Court
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Re: Rocky Disabato d/b/a "Rocky D," Appellant, v.
South Carolina Association of School Administrators, Respondent
Appeal from Richland County Case No. 2011-CP-40-2044

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Dear Mr. Shearouse:

S.C. Supreme Court

Enclosed for filing is a notice of appeal in the above case. Also enclosed are the following:

1. Proof of service of the notice of appeal on the respondent.
2. Copy of the orders to be challenged on appeal.
3. Our check for \$100 for the filing fee.

Also, for the Court's records are copies of the correspondence sent to court reporters requesting transcripts in this matter. Thank you.

Sincerely,

M. Todd Carroll

MTC/dj
Enclosures

cc: John M. Reagle, Esquire