

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

APPEAL FROM RICHLAND COUNTY  
Alison Renee Lee, Circuit Court Judge

JAN 14 2025

SC Court of Appeals

Case No. 2020-CP-40-01980  
Appellate Case No. 2021- 000804

Johnnie Cordero ..... Appellant  
v.

Valerie Moore, in her official capacity as  
Chair of The Richland County Democratic  
Party; The Richland County Democratic Party;  
Christale Spain, in her official capacity as  
Chair of The South Carolina Democratic  
Party; The South Carolina Democratic Party, ..... Respondents.

**APPELLANT'S RETURN IN OPPOSITION TO  
RESPONDENT'S MOTION FOR COSTS  
PURSUANT TO RULE 222(b) SCACR**

On or about December 12, 2024, the Remittitur was issued in the  
above-captioned matter.

The appellant received a copy of the Motion for Costs from the Respondents'  
via United States mail postmarked January 2, 2025, and received by him on Saturday,  
January 4, 2025.

On or about December 27, 2024, the Respondents filed a Motion for Costs pursuant to  
Rule 222(a) SCACR, which included an attorney's fee of \$2500.00. The Motion for costs was  
postmarked January 2, 2025, and received by the appellant on Saturday, January 2, 2025.

The appellant now submits his Return in Opposition to the Respondent's Motion for Costs.

#### ARGUMENT

The appellant contends and urges this court to find that Respondents are not entitled to costs or attorney's fees for the following reasons:

##### **1. Respondent's Motion for Costs is Untimely.**

It is now settled law that Rule 222 SCACR permits attorney's fees to be awarded to the prevailing party on appeal. The Respondents, however, are not entitled to the award, having failed to file the Motion for Costs and sworn itemized statement *before* the Court of Appeals issued the remittitur.

The motion filed by Respondents states that the remittitur was issued on December 12, 2024, but the motion was not filed until December 27, 2024. Appellant contends that the latest date for Respondent's motion to be timely would have been December 11, 2024. As a result, the Respondents have effectively waived the right to the statutory award of \$2,500.00. See *Austin v. Stokes-Craven Holding Corp.*, 691 S.E.2d 135 (S.C. 2010) citing *Muller v. Myrtle Beach Golf & Yacht Club*, 313 S.C. 412, 416, 438 S.E.2d 248, 250 (1993) (finding Appellant waived right to recover appellate costs and fees under Rule 222 as he failed to file an itemized statement of costs before the Court's issuance of the remittitur....").

##### **2. Rule 222 SCACR is Unconstitutional as Applied to the Appellant**

Rule 222 of the South Carolina Appellate Court Rules is unconstitutional as applied to the Appellant because it violates his fundamental right to access to the courts guaranteed by Article 1 Section 2 of the South Carolina Constitution, which provides in

pertinent part "The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances."

Appellant contends that Rule 222 SCACR also violates his fundamental right to access to the courts, which the First Amendment to the United States Constitution guarantees. This right is also applied to the actions of state governments through the Due Process clause of the Fourteenth Amendment.

Court access is a "fundamental right, implicit in freedom of speech. It plays an essential role in a democratic society by enhancing both trial fairness and its appearance." See *Bounds v Smith*, 430 817 (1917). Of course, the First Amendment also applies to the actions of state governments through the Due Process clause of the Fourteenth Amendment.

In this case, the appellant sought a final adjudication to which he is entitled as a matter of law but is now being penalized or punished for exercising his right. The chilling effect of having to pay \$150.00 to file the action for declaratory and injunctive relief in the Court of Common Pleas, \$250.00 to appeal the decision of the Court of Appeals; \$250.00 to file the Petition for Writ of Certiorari and \$2,500.00 *punishment* for filing the appeal. This is particularly true where the Respondent's itemized statement indicates \$3.15 for copying the final brief as "actual expenses."

The right to appeal is the final stage of the judicial process. It can be accurately stated that no case is truly finalized until denied or affirmed on appeal. The right to appeal is part of the fundamental right protected by the First Amendment. If the conduct

is constitutionally protected, awarding attorney's fees under Rule 222 amounts to a *penalty* and *punishment* for exercising a constitutionally protected right. It is axiomatic that the threat of penalty or punishment for exercising such rights may have an impermissible chilling effect on exercising the right.

As Professor Frederick Schauer defines the chilling effect in the free speech context,

"[a] chilling effect occurs when individuals seeking to engage in activity protected by the First Amendment are deterred from doing so by governmental regulation not specifically directed at that protected activity." Schauer, Frederick. *The Establishment Clause and the Chilling Effect*, Volume 133 HARV. L. REV. 1338.

The appellant respectfully contends that the threat of having to pay \$2500.00 to exercise his right to file an appeal to which he is otherwise entitled as a matter of law is itself a violation of a constitutionally protected right.

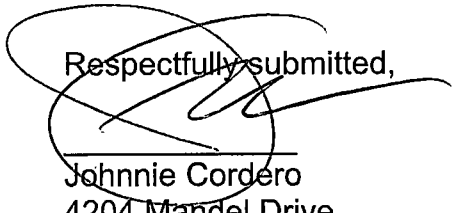
Appellant also notes that the American Rule established in 1796 provides that each party is responsible for paying its own attorney's fee, unless specific authority is granted by statute or contract to allow the assessment of those fees against the other party.

Appellant contends that since Rule 222 is unconstitutional as set forth above the American Rule should control.

Conclusion

For the foregoing reasons Appellant respectfully requests that Respondents Motion for Costs be denied in its entirety.

Dated: January 14, 2025  
Columbia, SC

  
Respectfully submitted,

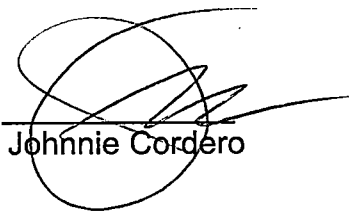
Johnnie Cordero  
4204 Mandel Drive  
Columbia, SC 29210  
Tel.: (803)753-8091  
Appellant, Pro Se

**CERTIFICATE OF SERVICE**

I, JOHNNIE CORDERO, hereby certify that I served APPELLANT'S RETURN IN OPPOSITION TO RESPONDENT'S MOTION FOR COSTS PURSUANT TO RULE 222(b) SCACR by United States mail first class postage prepaid and return address clearly indicated on said envelope and addressed as follows:

**BURNETTE SHUTT MCDANIEL  
912 LADY STREET  
COLUMBIA, SC 29202  
ATTN: NEKKI SHUTT  
ATTN: GRANT BURNETTE LEFEVER**

Columbia , South Carolina  
January 14, 2025

  
Johnnie Cordero

**RECEIVED**

JAN 14 2025

SC Court of Appeals

**Dr. Johnnie Cordero, B.A., J.D.**

4204 Mandel Drive  
Columbia, SC 29210  
Tel.: (803)753-8091  
Email.: cordero1018@att.net

January 14, 2025

Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street,  
Columbia, SC 29201

**RECEIVED**

**JAN 14 2025**

**SC Court of Appeals**

**Re: Cordero v. Moore, et., al.**  
**Case No. 2020-cp-40-01980**

Dear Clerk of Court

Please accept for filing the attached Return in Opposition to Respondent's Motion for Costs Pursuant to Rule 222(b) SCACR.

I received Respondent's Motion for Costs by mail on January 4, 2025, the envelope was postmarked January 2, 2025. I have attached a copy of the envelope with this letter.

Out of an abundance of caution I write to determine if I am required to file a Motion to file my return. It is my understanding that I have ten (10) days from the date of service to file the return.

Please advise. Thank you for your kind attention. .

Sincerely,



Johnnie Cordero

Enc: Return in Opposition  
Copy of envelope

cc: Nekki Shutt, Esq.  
Grant Burnett Lefever, Esq.



**BURNETTE SHUTT MCDANIEL**

Moving law forward.

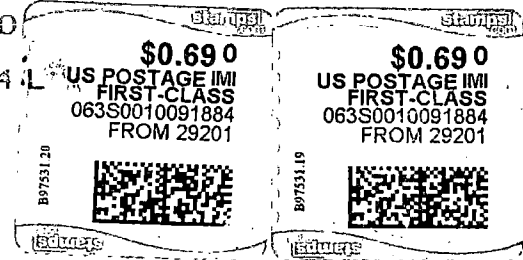
BURNETTE SHUTT & MCDANIEL, PA

912 Lady Street | PO Box 1929 | Columbia, SC 29202

[burnetteshutt.law](http://burnetteshutt.law)

COLUMBIA SC 29201

2 JAN 2025 PM 4:11



Johnnie Cordero  
4204 Mandel Drive  
Columbia, SC 29210

29210-433204

