THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case No. 2013-002499

Anderson County .....Appellant,

vs.

Joey Preston and The South Carolina Retirement System .....Respondents.

APPELLANT'S RETURN TO RESPONDENT JOEY PRESTON'S MOTION TO DISMISS APPEAL

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I. Introduction and Summary of Argument

Appellant Anderson County ("Anderson County") filed and served a timely notice of appeal in accordance with the South Carolina Appellate Court Rules. The resulting appeal has been pending for over six months. Respondent Joey Preston ("Preston") does not claim that Anderson County has departed from the Rules in any way. Despite this, Preston asks this Court to dismiss the appeal on the basis of his claim that two members of Anderson County Council should have been disqualified from voting on a resolution authorizing an appeal. This motion should be denied, for several independent reasons:

- **The Appeal Complies with the Rules.** Preston has not identified any procedural defect in Anderson County's appeal. Because the appeal is regular on its face, it is not subject to dismissal.
- **A Summary Motion at the Appellate Level Is Not a Proper Vehicle for a Challenge to County Council Votes for Bias.** An appellate motion is poorly suited for a challenge to County Council votes for bias. Reinforcing the proposition that this Court should not look behind the fact that Anderson County's notice of appeal complies fully with the Rules, such an inquiry cannot be carried out with a "record" that was created before the challenged vote even took place. Preston asks the Court to invalidate a County Council resolution on the basis of a brief motion, and on the basis of selected excerpts from the record of a lawsuit that contained no allegations concerning the vote to appeal. (To state the obvious, the record in this case ***could not*** directly address the propriety of the vote to approve the appeal, as that vote post-

dated the trial court's order.) Preston cites no cases dismissing an appeal under similar circumstances.

- **This Motion Is Untimely.** The notice of appeal in this case was filed November 22, 2013. The 1,627-page trial transcript was completed on December 16, 2013, and Anderson County filed its 60-page initial brief on February 26, 2014. Preston has since sought and obtained (with Anderson County's consent) two extensions of time to file his own initial brief. Preston should have filed this motion long ago, and it is now prejudicially late.
- **The Appeal Was Independently Authorized by the Interim County Administrator and the County Attorney.** Even assuming that the vote to authorize the appeal could be disregarded, this appeal was still validly authorized. Both the County Administrator and the County Attorney independently authorized the appeal, an act within their respective authorities.
- **Preston Has Not Carried the Burden Required to Disqualify Votes.** Anderson County has shown this Court, in its own argument on the merits of this appeal, that clear evidence exists sufficient to invalidate the vote in favor of Preston's Severance Agreement. However, Anderson County acknowledges that votes should not lightly be disqualified for bias, and Preston's meager showing here fails. The only concrete interest that Cindy Wilson is purported to have in the underlying Severance Agreement was moot long before this vote, and the general claim that Wilson and Moore

disapproved of Preston confuses the possession of articulated views on a topic with an appearance of impropriety.

II. Anderson County Complied with the Rules in Perfecting Its Appeal

Anderson County filed and served a timely notice of appeal, signed by its counsel of record in this case. Preston does not argue or allege that Anderson County has failed to comply with any Rule governing the appellate process. Instead, he argues that the notice of appeal on file in this case should be disregarded because it was not duly authorized.

Preston cites no authority that this Court can or should look behind a duly filed appeal to gauge its authenticity. That is not surprising given that our Supreme Court has actually ***rejected*** a litigant's invitation to do this. In *Hartman v. City of Columbia*, 268 S.C. 44, 232 S.E.2d 15 (1977), a landowner who had prevailed before the circuit court in seeking a variance to a zoning ordinance moved to dismiss the city's appeal of the circuit court's decision. At that time the rules allowed such a motion to be heard by the circuit court, and the circuit court denied the motion to dismiss. The landowner then appealed that decision to Supreme Court. The landowner's counsel alleged that although he had received oral notice within the time allowed for service of the notice of intention to appeal, written notice was received outside the timeframe and had been "predated" by him to the same date he had received oral notice. This acceptance and predating, the landowner's counsel contended, had been "conditional." The Supreme Court took little time in rejecting the landowner's argument that the Court should look behind a valid notice of appeal to extraneous facts:

> We first discuss the Landowner's appeal. Counsel for the Landowner contends that the acceptance of service of the notice of intention to appeal and its predating was conditional, and would have us look behind this instrument to find an alleged irregularity. ***The instrument, signed and dated by counsel, is valid on its face*** and we refuse to allow him to impeach his own signature under the circumstances of this case.

268 S.C. at 47, 232 S.E.2d at 16 (emphasis added).

The *Hartman* Court's refusal to "look behind" an appeal document that was regular on its face reflects the broader judicial skepticism toward attempts to dismiss appeals. *See Haughton v. Order of United Commercial Travelers of Am.*, 108 S.C. 73, 74-75, 93 S.E. 393, 393-94 (1917) ("Our decisions show that this court is very reluctant to dismiss appeals on technical grounds. Therefore we have construed the statutes and rules of court liberally in favor of the right to appeal."); *O'Rourke v. Atlantic Paint Co.*, 91 S.C. 399, 403, 74 S.E. 930, 931 (1912) (courts "should give a liberal construction to the Constitution and statutes, in favor of the right to appeal"); *see also J. R. Quaid, Inc. v. Cyclone Fence Co.*, 76 So.2d 409, 411 (La. 1954) ("An appeal is a remedy that is favored in law and is an important right which should never be denied unless its forfeiture or abandonment is clearly shown."). Similarly, a leading treatise explains

> Since motions to dismiss appeals must be considered from the point of view that the law favors appeals, and that a hearing or review on the merits is favored over dismissal or other disposition, motions to dismiss are not looked on with favor, and in a doubtful case the appeal will be maintained.

5 C.J.S. APPEAL & ERROR § 764 (footnotes omitted).

Anderson County has complied with this Court's rules for noticing and preserving an appeal. The Court should decline Preston's invitation to "look behind" that clear compliance. *See Hartman*, 268 S.C. at 47, 232 S.E.2d at 16.

III. A Motion to Dismiss an Appeal Is Not a Proper Vehicle for an Attempt to Void an Action of County Council

For similar reasons, a motion to dismiss directed to this Court is not a proper vehicle for challenging the votes cast in favor of this appeal by certain Councilmembers. The materials on which Preston relies in his motion to dismiss are from the trial in this case. Obviously, the vote to authorize this appeal was ***not*** a subject of that trial, since the vote

occurred months later. Simply put, the motives and proprieties of the votes that Preston now seeks to challenge were not issues – even peripherally – in the trial of this case. Yet Preston asks this Court to make findings of fact and conclusions of law concerning the vote to authorize this appeal, based on a slender collection of exhibits selectively pulled from the record in this case – a case that was focused on a different vote altogether.

Invalidating votes of County Council members should be a serious undertaking. In this case, for example, Anderson County has shown indisputable and substantial financial improprieties that should have prevented the votes of key proponents of Preston's severance package. The facts concerning those votes were subjected to detailed discovery and probing examination. By contrast, in this motion Preston asks this Court to examine a handful of statements lifted from the record in this case and to rely on those statements to rule on a topic that was not (and could not have been) at issue in the trial of this case. There is no way that such a meager showing could be relied on to undo a County Council resolution.[1]

A motion to dismiss is not the proper vehicle for a challenge seeking to void an act of County Council for bias, and Preston's motion should be denied for that reason as well. Such an undertaking would require a separate civil action, commenced in circuit court.

IV. The Motion Should Be Denied Because It Is Prejudicially Late

This appeal has been pending over six months. A large trial transcript has been produced, and Anderson County has prepared and filed its brief.

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[1] For similar reasons, we do not believe that an opposing litigant has standing to attack a vote like this one. While the County's opponent in litigation would plainly ***care*** about whether that litigation was properly authorized, there is a substantial question about whether that is the kind of interest the courts would recognize as conferring standing. Preston did not file this motion out of concern with the propriety of the public acts of Anderson County; his motive is purely adversary. Allowing such motions would promote collateral attacks on any litigation brought by a government body – or indeed a private corporate body.

In the meantime, it appears Preston sat on his motion to dismiss the appeal until the end of the last briefing extension available to him from the Court. Every fact relied on in Preston's motion predated the filing of Anderson County's notice of appeal. Indeed, Preston's counsel wrote a letter to counsel for the County and the County Attorney in July of 2013 contending that the "continuing participation" of Councilmember Wilson in matters relating to this lawsuit was improper. *See* Affidavit of Michael S. Pitts ¶ 6 & Exhibit A thereto (Pitts Affidavit is Exhibit A to this Return). Plainly, nothing prevented Preston from filing this motion months sooner than he did.

Courts faced with similar belated motions to dismiss an appeal, filed long after the facts supporting the motions were known and long after the appellant had expended significant resources on the appeal, have denied them. In *Mortimer v. Pacific States Sav. & Loan Co.*, 141 P.2d 552, 553 (Nev. 1943), the Nevada Supreme Court denied a motion to dismiss an appeal that was filed approximately four months after the appeal had been perfected, and after the parties' briefs had been filed and the case set for oral argument. The court also observed that – just as in this case – the respondent (and a receiver) had "obtained stipulations extending time to file briefs on the merits." Under these circumstances, the court explained, "the right to move to dismiss an appeal so belatedly and unilaterally made . . . ought to be disregarded." The basis for the respondent's motion to dismiss – that the receiver and not the appellant was the aggrieved party – could also have been asserted by the respondent before the trial court but had not been, leading the Nevada Supreme Court to note that "the element of estoppel is involved." *Id.* (finding "prejudice"). Similarly, in *Henry L. Doherty & Co. v. Youngblut*, 185 P. 257, 257-58 (Colo. 1919), the Colorado Supreme Court denied a respondent's second motion to dismiss an appeal where the grounds

of that motion "were available at the time of the former motion" and where the appellants had "expended large sums in the preparation and printing of abstracts and briefs." *Id.*; *cf. id.* ("A dismissal evades a test of the merits of the controversy and ought not to be favored.").

The reasoning of these decisions also animates the rules and practice of numerous federal circuit courts of appeal. *See, e.g., East v. Crowdus*, 302 F.2d 645, 646 (8th Cir. 1962) (stating that the court's rules required filing of a motion to dismiss "prior to the time the record on appeal was lodged in this Court"); 8th Cir. R. 47A(b) ("Except for good cause or on the motion of the court, a motion to dismiss based on jurisdiction must be filed with 14 days after the court has docketed the appeal."); Fed. Cir. R. 27(f) ("A motion to dismiss for lack of jurisdiction or to remand should be made ***as soon after docketing as the grounds for the motion are known***. After the appellant or petitioner has filed the principal brief, the argument supporting dismissal for lack of jurisdiction or remand should be made in the brief of the appellee or respondent." (emphasis added)); 10th Cir. R. 27.2(A)(3)(a) (a motion to dismiss must be filed within "14 days after the notice of appeal is filed unless good cause is shown").

Anderson County filed its notice of appeal on November 22, 2013, and its initial brief on February 26, 2014. This motion, held back for ***six months*** after Anderson County perfected its appeal and ***three months*** after it filed its brief on the merits, should be denied.

V. The Appeal Was Authorized by Anderson County's County Administrator and County Attorney

Each of Anderson County's Interim County Administrator and its County Attorney gave independent authorization for the filing of this appeal. *See* Affidavits of Michael S. Pitts and W. Russell Burns, attached as Exhibits A and B.

At least in the absence of an express directive by County Council to the contrary, each of those officials has independent authority to oversee litigation and authorize an appeal on behalf of Anderson County. With respect to the County Attorney, the Anderson County Code of Ordinances sets out a broad-based grant of authority for management of the county's legal affairs. Among other things, the County Attorney is charged with the following:

> (a) The county attorney is hereby authorized to represent and to render professional legal services to the county . . . in the performance of the duties prescribed in this Code.
>
> (b) The county attorney is authorized to and shall perform the following duties in such manner as he deems appropriate . . . :
>
> (1) Representation of the county, its departments, employees, boards, commissions and agencies, in all legal matters, whether or not an action has been commenced.
>
> . . . .
>
> (9) Procuring the services of, assisting, supervising and monitoring the work of other attorneys as needed for county matters.

Anderson County Code § 2-178. In addition, the county attorney "shall . . . perform such other duties as the office may require or as the county administrator may require . . . ." *Id.* § 2-178(c). Taken together, these provisions plainly give the County Attorney the authority to approve an appeal in pending litigation.

The County Administrator has broad authority over the County's business. State law states that the powers and duties of the County administrator "include," but are not limited to, serving as the County's "chief administrative officer" and "direct[ing] . . . administrative activities of the county government." S.C. Code Ann. § 4-9-630.[2] These broad powers would include making decisions in lawsuits to which the County is a party. Indeed, if the

[2] Anderson County Code of Ordinances § 2-156 states that the administrator "shall have those powers and duties provided for in S.C. Code 1976, § 4-9-620 *et seq.*"

County Administrator and County Attorney were not empowered to make such decisions, all such decisions would have to go to County Council for a vote – a plainly absurd result.

We would emphasize that this is not a situation in which these officials were acting contrary to County Council's instructions. Even if Preston's challenge to the Wilson and Moore votes were sound, the invalidation of those votes would not undo the independent authorizations of the County Administrator and Attorney. At most, the result of invalidating the Wilson and Moore votes would be a ruling that County Council did not affirmatively approve an appeal. It would ***not*** generate a County Council ***prohibition*** on an appeal. So even if the County Council vote were somehow invalidated, the independent authority of these two officers to approve this appeal would remain.

The independent authorization of this appeal by each of the Interim County Administrator and the County Attorney further undermines Preston's contention that the notice of appeal was unauthorized.

VI. Preston Has Not Carried His Burden of Showing the Resolution Authorizing This Appeal Should be Voided

Preston claims that two members of County Council, Cindy Wilson and Eddie Moore, should not have voted on the resolution approving this appeal.

With respect to Councilmember Wilson, Preston argues (i) that the finding below by the trial court that she had an interest in the Severance Agreement that is in dispute in this case should have prevented her from voting on the appeal; and (ii) that she should have been disqualified to vote on the appeal because the trial court's order contained findings that she had a "personal animus" against Preston.

Preston argues that Councilmember Moore should be disqualified (i) because he too had a personal animus toward Preston; and (ii) because (as we understand Preston's

briefing) Moore is a bad person. None of these arguments supports voiding the resolution approving this appeal.

A. Cindy Wilson

Preston first argues that the trial court's *sua sponte* finding that Cindy Wilson had an economic interest in Preston's Severance Agreement should operate to disqualify her from voting on the resolution authorizing this appeal. Putting to one side the extraordinary procedural history of this ruling and the fact that it is, itself, a subject of this appeal,[3] the finding that Councilmember Wilson had an economic interest in the Severance Agreement will not support the relief Preston seeks. That purported economic interest, if it ever existed, had disappeared before the vote on the appeal.

Preston's Severance Agreement contained routine language releasing claims against the County and its Councilmembers. At the time, a lawsuit ("*Preston v. Waldrep*") brought in Preston's name was pending against Councilmembers Cindy Wilson and Bob Waldrep. (The core allegation of the action was that Wilson and Waldrep were improperly interfering in Preston's authority to supervise County employees.) Although the release in the Severance Agreement ran in favor of all Council members, and although Councilmember Wilson voted against her purported interest (in obtaining this release) in opposing the

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[3] In its Amended Complaint, Anderson County alleged that three invalid votes were cast in favor of the Preston Severance Agreement – votes of Michael Thompson, Ron Wilson, and Bill McAbee. Anderson County did not challenge any other votes. Nor did Preston seek invalidation of any votes. Despite this, the trial court's Order purported to invalidate a total of four votes – two of the three challenged by Anderson County, plus the votes of Cindy Wilson and Bob Waldrep. The Court then undertook to recount all votes on the Preston Severance Package after excluding those four. As Anderson County explains in detail in its merits brief, one result of this decision by the trial court was a holding that the Severance Package passed by a 2-1 vote – a legal impossibility because three votes does not constitute a quorum. While Anderson County submits that it was error for the trial court to invalidate the Waldrep and Cindy Wilson votes, it is unavoidable that if those votes are invalid the Severance Package should be rescinded for lack of a quorum.

Severance Package, the trial court held that the presence of the release language in the Severance Agreement disqualified Cindy Wilson and Bob Waldrep from voting on the Severance Package.

The critical point – which Preston's motion utterly fails even to mention to this Court – is that *Preston v. Waldrep* was dismissed long before the vote to authorize this appeal, and not on the basis of the release contained in the Severance Package. Instead, once Preston left office he was succeeded as County Administrator by Michael Cunningham. *Preston v. Waldrep* was thereafter recaptioned, with Cunningham replacing Preston as the named plaintiff. Then, County Council directed Cunningham to dismiss the lawsuit, and he did so on January 29, 2009. *See* Exhibits C & D hereto (substitution of Cunningham for Preston as Plaintiff, and dismissal of action on January 29, 2009).

The remaining "economic interest" found by the trial court – a general threat that Preston would bring unspecified tort claims against at least two Councilmembers if his severance demand was not satisfied – will not support a finding that Councilmember Wilson should not have voted, years later, on whether to appeal. First, to the extent any interest of hers is implicated at all, Ms. Wilson would have been voting against it in voting to appeal, since the appeal seeks rescission of the agreement containing the release that is of purported special benefit to her. Second, this general threat is too vague to support a finding of a disqualifying conflict of interest. Third, the general, boilerplate release contained in the Severance Agreement was not specific to Councilmember Wilson, and so the argument that it affects her differently from any other Councilmember fails.

Once *Preston v. Waldrep* was dismissed, on January 29, 2009, the only particularized special economic interest that the trial court attributed to Cindy Wilson was

gone. The validity of the Severance Agreement and the release it contained could no longer have any effect on that dismissed lawsuit. When Cindy Wilson voted in favor of this appeal on November 19, 2013, that vote was not affected by any "economic interest."[4]

The remainder of Preston's allegations regarding Cindy Wilson's vote to authorize this appeal simply will not satisfy the burden Preston must shoulder in order to disqualify a vote for appearance of impropriety. The conclusory propositions that Cindy Wilson carried a "grudge" or made "accusations and claims" against Preston lack the clarity and specificity required for such a step. In particular, the mere fact that there is a history of disputes or disagreements between Cindy Wilson and Preston does not establish impropriety; if it did, political rivals could never take any actions that involved one another. That surely proves far too much.

Furthermore, Preston's motion relies exclusively on statements (largely or exclusively dicta, we believe) in the trial court's Order concerning Cindy Wilson; obviously, none of those statements could have been directed specifically to Councilmember Wilson's vote to authorize this appeal, as that vote had not occurred when the trial court Order was signed. Indeed, many of the underlying facts lie years in the past. This reinforces the point made above that a motion at the appellate level, based on a record created for different purposes altogether and with no regard to the vote that is being challenged, is not an appropriate vehicle for such a challenge.

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[4] Anderson County does not concede that Councilmember Wilson had a disqualifying economic interest at any time with respect to the Severance Agreement or related matters.

B. Eddie Moore

Preston's case for disallowing Eddie Moore's vote concerning the appeal is equally tenuous. First, Preston does not even attempt to argue that Councilmember Moore had any economic interest in the vote, either actual or apparent.

Instead, Preston points to a handful of statements Moore made ***before*** he took office in 2009, in which he expressed a desire to "run Preston off." As with Preston's argument that Cindy Wilson and Preston had disagreements, these out-of-context utterances will not carry the burden of disqualifying a voter. They are as readily attributable to policy differences as to any sort of disqualifying conflict of interest, and colorful political language should not normally operate to disqualify the speaker from acting on the topic.

The remainder of Preston's argument regarding Councilmember Moore appears to be that he is a "bad person" and therefore should not have voted to approve this appeal – or, presumably, on anything else. Obviously, this "bad person" argument proves far too much. Preston cites no authority for his argument that a sufficiently bad person can never exercise a voting right; it is hard to see any other motive for this argument than an attempt to smear Councilmember Moore, presumably in the hope that this will somehow affect the Court's view of Anderson County. This argument should be disregarded entirely.

As with the arguments regarding Councilmember Wilson, Preston's attack on Councilmember Moore is completely divorced from the specific vote Preston seeks to invalidate. Most of the conduct attributed to Moore occurred before he took office on January 1, 2009, and thus ***five years*** or more before the vote that Preston challenges. Preston has completely failed to carry the burden of showing that Moore's vote should be invalidated.

VII. Conclusion

Anderson County filed its notice of appeal six months ago. That appeal satisfied this Court's rules. Preston's challenge to the vote approving that appeal is late, it fails to make an adequate showing, and it is inappropriate for resolution on a motion. This appeal was properly authorized, both by Anderson's County Council and by other appropriate officials. The motion to dismiss the appeal should be denied.

Respectfully submitted,

By: J. Theodore Gentry

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June 12, 2014

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Appellate Case No.: 2013-002499

Anderson County, ...Appellant,

v.

Joey Preston and The South Carolina Retirement System,.....Respondents.

PROOF OF SERVICE

The undersigned counsel for Appellant certifies that the Appellant's Return to Respondent Joey Preston's Motion to Dismiss Appeal has been served upon all other counsel of record on June 12, 2014 by depositing copies of same in the U.S. Mail, first-class postage prepaid, addressed as follows:

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Respectfully submitted,

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June 12, 2014

Hon. Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RE: ***Anderson County v. Joey Preston and The South Carolina Retirement System***
Appellate Case No. 2013-002499

Dear Ms. Kitchings:

Enclosed please find for filing with the Court the original and seven copies of the Appellant's Return to Respondent Joey Preston's Motion to Dismiss Appeal, and Proof of Service in connection with the above-referenced matter. Please return a file stamped copy to us in the envelope provided.

By copy of this letter we are serving a copy on counsel for Respondents.

Thank you for your assistance.

With highest regards,

Ted Gentry

J. Theodore Gentry
(864) 242-8270
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JTG/lr
Enclosures

c: Lane W. Davis, Esquire
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EXHIBIT A

AFFIDAVIT OF MICHAEL S. PITTS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Roger L. Couch, Circuit Court Judge

Case No. 2013-002499

Anderson County ..... Appellant,

vs.

Joey Preston and The South Carolina Retirement System ..... Respondents.

AFFIDAVIT OF MICHAEL S. PITTS

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Attorneys for Appellant

PERSONALLY appeared before me Michael S. Pitts who, being duly sworn, says that:

1. I am over the age of 18. I make this affidavit of my own personal knowledge.

2. I currently, and at all times described in this affidavit, fulfill the role of County Attorney for Anderson County, South Carolina.

3. On or about November 21, 2013, I authorized appeal on behalf of Anderson County in the above-captioned action (the "Action"), and I communicated this authorization to counsel for Anderson County in this Action.

4. I gave this authorization in my capacity as County Attorney for Anderson County.

5. Also on or about November 21, 2013, I was informed by Interim County Administrator W. Russell Burns that Mr. Burns was also authorizing an appeal of the Action. I accordingly informed counsel for Anderson County in this Action that an appeal was also authorized by the Interim County Administrator.

6. Attached hereto as Exhibit A is a true and correct copy of a letter sent to me by Joey Preston's attorney, dated July 18, 2013. In that letter, Mr. Preston's attorney took the position that Cindy Wilson should not participate in County Council decisions concerning the Action because of an alleged conflict of interest.

FURTHER AFFIANT SAYETH NOT.

Michael S. Pitts

Sworn to before me
this 12th day of June, 2014

Lisa A. Styles
Notary Public for the State of South Carolina
My Commission expires 9/18/23.

EXHIBIT A

TO PITTS' AFFIDAVIT

JULY 18, 2013 LETTER

Nelson Mullins

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July 18, 2013

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Re: ***Anderson County v. Joey Preston, et al.*****, 2009-CP-04-4482**
NMRS File No. 31268/01501

Dear Ted, Troy & Mike:

On behalf of Mr. Preston, an Anderson County ("County") taxpayer, please allow this letter to memorialize our prior conversations concerning the continued participation of M. Cindy Wilson on matters relating to the County's lawsuit against Preston. By virtue of the Court's Order, Council-member Wilson has a direct economic interest relating to Preston's Severance Agreement and the lawsuit seeking to undo the same. Council-member Wilson's continued participation in such matters likewise carries a substantial appearance of impropriety. Indeed, the County's most recent motion to amend seeks affirmative relief, in part, based upon Wilson's conflict of interest. The County must have had a good faith basis for affirming such facts. In turn, also by virtue of the County's court filings, the County appears to be of the mindset that other County officials and employees, besides M. Cindy Wilson, bear responsibility for ensuring her compliance with state and local ethics provisions. If the County is to be believed, such responsibilities are currently being abdicated. Immediate corrective action is requested.

Best regards,

Lane W. Davis

FILE NO. 1582-133

JUL 23 2013

REC'D MSP/lah
COLLINS & LACY

EXHIBIT B

AFFIDAVIT OF

W. RUSSELL BURNS

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
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Case No. 2013-002499

Anderson County ..... Appellant,

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AFFIDAVIT OF W. RUSSELL BURNS

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Attorneys for Appellant

PERSONALLY appeared before me W. Russell Burns who, being duly sworn, says that:

1. I am over the age of 18. I make this affidavit of my own personal knowledge.

2. I am currently, and was at all times described in this affidavit, the Interim County Administrator for Anderson County, South Carolina.

3. On or about November 21, 2013, I authorized appeal on behalf of Anderson County in the above-captioned action (the "Action").

4. I gave this authorization in my capacity as Interim County Administrator for Anderson County

5. I communicated this authorization to Michael Pitts, County Attorney for Anderson County, and directed Mr. Pitts to inform counsel for Anderson County in this Action of my authorization of an appeal.

FURTHER AFFIANT SAYETH NOT.

W. Russell Burns

Sworn to before me
this 12th day of June, 2014

Notary Public for the State of South Carolina
My Commission expires 9-21-20.

EXHIBIT C

12/22/08 ORDER GRANTING PLAINTIFF'S MOTION FOR SUBSTITUTION OF PARTY

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF ANDERSON

JUDGMENT IN A CIVIL CASE

CASE NO: 08-CP-04-2726

JOEY PRESTON VS. ROBERT WALDREP, JR., ET. AL.

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), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: Failure to Appear

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; ☐ Statement of Judgment by the Court:

Plaintiff's motion for substitution of party is granted. Michael Cunningham is substituted for Joey Preston. This case will now be referred to as Michael Cunningham v. Robert L. Waldrep, Jr., et, al.

Dated at Anderson, South Carolina, this 22 day of December, 2008.

Court Reporter:

PRESIDING JUDGE - The Honorable J.C. Nicholson, Jr.

This judgment was entered on the 22nd day of Dec., 2008, and a copy mailed first class this 22nd day of Dec., 2008, to attorneys of record or to parties (when appearing pro se) as follows:

Nancy Bloodgood

Larry Richter, Ross Plyler

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Cathy M. Phillips

EXHIBIT D

1/29/09 STIPULATION

OF DISMISSAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	TENTH JUDICIAL CIRCUIT
MICHAEL CUNNINGHAM, ANDERSON COUNTY ADMINISTRATOR	)	CASE NO. 2008-CP-04-2726
PLAINTIFF,	)	
vs.	)	**STIPULATION OF DISMISSAL**
ROBERT L. WALDREP, JR., and M. CINDY WILSON, in their individual capacities,	)	
DEFENDANTS.	)	

The parties in this matter have stipulated per *South Carolina Rules of Civil Procedure*, Rule 41 (a) to dismiss this action.

YOUNG CLEMENT RIVERS, LLP

By: Nancy Bloodgood

Nancy Bloodgood, Esquire
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Attorneys for the Plaintiff

Date: 1-27-09

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COMMON PLEAS AND
GENERAL SESSIONS

COLLINS & LACEY

By: _____

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Attorneys for Defendant M. Cindy Wilson

Date: JAN. 12, 2009

THE RICHTER & HALLER LAW FIRM, P.A.

By: Lawrence E. Richter, Jr. o/Permission AEE

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Attorneys for Defendant Robert L. Waldrep, Jr.

Date: Jan. 26, 2009