

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Howard P King, Circuit Court Judge

RECEIVED

SEP 4 2012

SC Supreme Court

Case No 2012-CP-18-1632

Dorchester County Democratic Party and Richard
Hayes,

Plaintiff,

v

Dorchester County Republican Party (Carroll Duncan, as Chairman),
Colleton County Republican Party, Berkeley County Republican Party,
Charleston County Republican Party, South Carolina Republican Party
(Matt Moore as Executive Director & Chad Connolly as Chairman),
Dorchester County Election Commission (Joshua Dickard as Executive Director),
Colleton County Election Commission, Berkeley County Election Commission,
Charleston County Election Commission, South Carolina
State Election Commission (Marc Andino, as Executive Director
& Chris Whitmire as Director of Public Information and Training),
Sean Bennett, Mike Rose, and Tony Piscatella,

Defendants,

of whom Mike Rose is the

Appellant

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VOLUME II**

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DOCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
Dorchester County Democratic Party,	)	CIVIL ACTION NUMBER 2012 CP-18-1632
	)	
Plaintiff,	)	
	)	
vs	)	DEFENDANT MIKE ROSE'S MOTION
	)	FOR PARTIAL SUMMARY JUDGMENT
Dorchester County Republican Party	)	
(Carroll Duncan, as Chairman), Colleton	)	
County Republican Party, Berkeley County	)	
Republican Party, Charleston County	)	
Republican Party, South Carolina	)	
Republican Party (Matt Moore as Executive	)	
Director & Chad Connolly as Chairman),	)	
Dorchester County Election Commission	)	
(Joshua Dickard as Executive Director),	)	
Colleton County Election Commission,	)	
Berkeley County Election Commission,	)	
Charleston County Election Commission,	)	
South Carolina State Election Commission	)	
(Marc Andino, as Executive Director &	)	
Chris Whitmire as Director of Public	)	
Information and Training), Mike Rose, and	)	
Tony Piscatella,	)	
	)	
Defendants	)	

Defendant Mike Rose hereby moves this Court for partial summary judgment in accordance with Rule 56 of the South Carolina Rules of Civil Procedure. This motion is based upon the grounds that there is no genuine issue of material fact as to the non-compliance of Defendant Sean Bennett's Statement of Economic Interests with Anderson v. South Carolina Election Commission, 397 S.C. 551, 725 S.E.2d 704 (2012), Florence County Democratic Party v. Florence County Republican Party, 727 S.E.2d 418 (S.C. 2012), and S.C. Code Ann. § 8-13-1356, and Defendant Mike Rose is entitled to a judgment as a matter of law. Specifically, even assuming *arguendo* that Bennett's Statement of Economic Interest was filed "at the same time

and with the same official with whom the candidate files a declaration of candidacy," Bennett's Statement of Economic Interest was not filed "for the *preceding* calendar year" as required by S C Code Ann § 8-13-1356(B) (Emphasis added) In support of this Motion, Defendant Mike Rose relies on all matters of record, including the pleadings, affidavits, and exhibits, as well as the memorandum of law in support of this motion, and such oral argument as may be heard by the Court

Respectfully submitted,

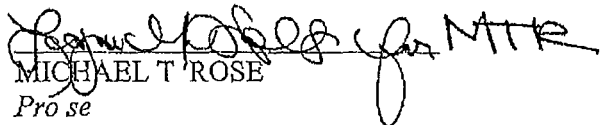
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Pro se

Columbia, South Carolina

August 1, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DOCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
Dorchester County Democratic Party,	)	CIVIL ACTION NUMBER 2012-CP-18-1632
	)	
Plaintiff,	)	
	)	
vs	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANT MIKE ROSE'S MOTION
	)	FOR PARTIAL SUMMARY JUDGMENT
Dorchester County Republican Party	)	
(Carroll Duncan, as Chairman), Colleton	)	
County Republican Party, Berkeley County	)	
Republican Party, Charleston County	)	
Republican Party, South Carolina	)	
Republican Party (Matt Moore as Executive	)	
Director & Chad Connolly as Chairman),	)	
Dorchester County Election Commission	)	
(Joshua Dickard as Executive Director),	)	
Colleton County Election Commission,	)	
Berkeley County Election Commission,	)	
Charleston County Election Commission,	)	
South Carolina State Election Commission	)	
(Marcy Andino, as Executive Director &	)	
Chris Whitmire as Director of Public	)	
Information and Training), Mike Rose, and	)	
Tony Piscatella,	)	
	)	
Defendants	)	

STATEMENT OF THE CASE

Plaintiff Dorchester County Democratic Party filed this action on June 29, 2012. On July 9, 2012, Defendant Sean Bennett filed a Motion to Intervene, and on July 12, 2012, Defendant Mike Rose filed a Motion to Intervene. On July 20, 2012, Plaintiff filed the First Amended Verified Complaint for Declaratory Judgment, Writ of Mandamus, and Injunctive Relief, adding, *inter alia*, Sean Bennett, Mike Rose, and Tony Piscatella as defendants. Defendant Mike Rose now moves this Court for partial summary judgment on the grounds that Defendant Sean Bennett's Statement of Economic Interests does not comply with Anderson v. South Carolina

Election Commission, 397 S C 551, 725 S E 2d 704 (2012), Florence County Democratic Party v Florence County Republican Party, 727 S E 2d 418 (S C 2012), or S C Code § 8-13-1356(B), and offers this memorandum in support

STATEMENT OF FACTS

Filing for the Dorchester County Republican Primary opened on March 16, 2012, and closed March 30, 2012. Mr. Piscatella was the individual in charge of the candidate filing process. (Ex. A, Aff. of Carol Duncan, at ¶3). Mr. Piscatella states that, on March 20, 2012, Sean Bennett, non-incumbent candidate for South Carolina Senate District 38, filed in front of a female witness (1) his SIC and pledge, (2) his SEI together with proof of filing, (3) a Candidate Support Committee Declaration Statement, and (4) his CDF. (Ex. B, Supp. Aff. of Tony Piscatella). Contrary to Mr. Piscatella's averment, Ann Shields and Janette Chipas state that the woman who accompanied Mr. Bennett to the DCRP Headquarters was not a witness to Mr. Piscatella's filing. (Ex. C, Aff. of Ann Shields), (Ex. D, Aff. of Janette Chipas re Affidavit of Ann Shields). The SEI Mr. Piscatella and Mr. Bennett aver is a part of Mr. Bennett's filing is on a form for the year 2011 (reporting period January 1, 2010, to December 31, 2010), not a form for the year 2012 (reporting period January 1, 2011, to December 31, 2011, i.e., the year "preceding" the 2012 elections). (Ex. E, Sean Bennett's SEI), (Ex. F, Public Reporting Name Results 2011), (Ex. G, Public Reporting Name Results 2012), (Ex. H, Aff. of Mike Rose, at ¶¶ 35-40).

ARGUMENT

The Statement of Economic Interests reporting period is the previous calendar year from January 1, through December 31. (Ex. I, S C Code of Regulations R. 52-601(C)). Thus, the reporting period for a 2012 form is January 1, 2011, through December 31, 2011. Likewise, the

reporting period for a 2011 form is January 10, 2010, through December 31, 2010 Pursuant to S C Code Ann § 8-13-1356(B)

A candidate must file a statement of economic interests for the *preceding calendar year* at the same time and with the same official with whom the candidate files a declaration of candidacy or petition for nomination

(Emphasis added), see also S C Code of Regulations R 52-502(B)(2) (“A person who has not filed a Statement of Economic Interests in the same calendar year as his declaration of candidacy or petition for nomination shall complete the Statement of Economic Interest Form for the *preceding calendar year* and file the entire Statement with the official with whom the candidate files his declaration of candidacy or petition for nomination”) (Emphasis added) The statute “means what it says” Anderson v S C Election Comm’n, 397 S C 551, 725 S E 2d 704, 705 (2012)

The SEI Mr Bennett claims to have filed with Mr Piscatella is a 2011 SEI, the reporting period for which is January 10, 2010, through December 31, 2010 (Ex F, Sean Bennett’s SEI), (Ex F, Public Reporting Name Results 2011), (Ex H, Aff of Mike Rose, at ¶¶ 35-40) Therefore, Mr Bennett’s SEI is not for the preceding year as required by statute S C Code Ann § 8 13-1356(B) Moreover, there is no evidence that a 2012 SEI for Mr Bennett exists as one has not been filed with the South Carolina State Ethics Commission (Ex G, Public Reporting Name Results 2012), (Ex II, Aff of Mike Rose, at ¶¶ 35-40) Accordingly, as Mr Bennett has failed to properly file his SEI for the preceding calendar year at the same time and with the same official with whom he filed a SIC, he must be decertified Anderson, 397 S C 551, 725 S E 2d at 707 08

Senator Rose anticipates that Mr Bennett will argue the filing was the result of an innocent mistake, however, the South Carolina Supreme Court’s recent decisions make clear that there can be no innocent mistakes in candidate filings which contravene South Carolina statutory law

We fully appreciate the consequences of our decision, as lives have been disrupted and political aspirations put on hold. However, the conduct of the political parties in their failure to follow the clear and unmistakable directives of the General Assembly has brought us to this point. Sidestepping the issue now would only delay the inevitable.

Anderson, 397 S.C. 551, 725 S.E.2d at 708, see also Florence County Democratic Party, 727 S.E.2d 418.

To the extent Mr. Bennett may argue that the issue of his 2011 SEI should have been the subject of an election protest, such an argument is in contravention of the South Carolina Supreme Court's decision in Florence County Democratic Party, 727 S.E.2d 418, in which the Court made clear that those candidates who failed to comply with S.C. Code Ann. § 8-13-1356 never should have been certified or placed on the ballot. Further, insofar as Mr. Bennett asserts that rather than decertify him, a blank-ballot all write-in election should be held, such an argument would also violate the Court's holding in Florence County Democratic Party, 727 S.E.2d 418. According to the Court's ruling, any votes cast for an improperly certified candidate not removed from the ballot are not to be counted. Id. at 421. Therefore, the number of votes for Mr. Bennett would be set to zero, and the runner-up, Senator Rose, is the proper candidate for certification for the General Election.

CONCLUSION

Sean Bennett's SEI is not for the preceding calendar year as required by S.C. Code Ann. § 8-13-1356. Accordingly, he was improperly certified as a candidate in the DCRP primary. As Mr. Bennett was not removed from the ballot prior to the primary election, votes for Mr. Bennett are not to be counted. Therefore, Senator Rose, not Mr. Bennett, is the proper candidate for certification for the General Election.

For the foregoing reasons, Defendant Mike Rose respectfully requests this Court grant partial summary judgment finding that Defendant Sean Bennett failed to comply with S.C. Code

Ann § 8 13-1356, and that Defendant Mike Rose is the proper candidate for the General Election

Respectfully submitted,

COLLINS & LACY, P C

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ATTORNEYS FOR DEFENDANT
MIKE ROSE

By


MICHAEL T ROSE
Pro se

Columbia, South Carolina
August 1, 2012

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

Dorchester County Democratic Party,

Civil Action No 2012-CP-18-1632

Plaintiff,

v

Dorchester County Republican Party
(Carroll Duncan as Chairman), South
Carolina Republican Party (Malt Moore as
Executive Director & Chad Connelly as
Chairman), Dorchester County Board of
Elections (Joshua Dickard as Executive
Director), South Carolina State Election
Commission (Marci Andino as Executive
Director & Chris Whitmire as Director of
Public Information and Training),

Defendants

**AFFIDAVIT OF
CARROLL S DUNCAN,
DORCHESTER COUNTY
REPUBLICAN PARTY
CHAIRMAN**

The undersigned Carroll S Duncan, first being duly sworn, hereby deposes and
says

1 My name is Carroll S Duncan, and I am Chairman of the Dorchester County
Republican Party. In addition, I filed to run for the Republican nomination for Dorchester
County Council District 5 in the June primaries. No other candidate filed for the office
with the Republican Party or any other entity.

2 I provide this affidavit to give a factual accounting of what I know regarding
candidate filing by the Dorchester County Republican Party, the basis of my prior
candidate certifications, and facts that have come to light since the election on June 12,
2012.

3 Tony Piscatella, Dorchester County Republican Party Treasurer, was the
individual in charge of the candidate filing process.

4 Outside of submitting my own filing for County Council, my direct involvement in the candidate filing process was very limited. I suffered a serious ankle injury as a result of a fall in bad lighting at the Sotille Theater in Charleston on January 14 during an event for SCGOP Presidential Primary candidates. I could not move around very well and was still recuperating during the candidate filing period in March.

5 The SCGOP provided candidate filing instructions and a checklist to the County Republican Parties based on information provided to them by the South Carolina State Election Commission and South Carolina State Ethics Commission.

6 The SCGOP's instructions explained the various documents which needed to be filed by candidates. With respect to the Statement of Economic Interest ("SEI") filing requirement, the SCGOP instructed that candidates bring a proof of online filing showing that the SEI form had been filed with the South Carolina State Ethics Commission rather than a paper copy of the SEI form itself.

7 On March 12, 2012, I sent an email to all elected officials and announced candidates who I believed would be filing with the Dorchester County Republican Party to run in the June 12 primary elections. This email consisted of filing instructions based on those given to us by the SCGOP.

8 With regard to the SEI filing requirement, the checklist sent to Dorchester County Republican candidates required a "proof of online filing" rather than a paper copy of the SEI itself. This mirrored the filing instructions sent out by the SCGOP.

9 Filing ended on March 30 and was, so far as anyone knew at the time, uneventful.

10 However, just over a month later, the South Carolina Supreme Court issued its decision in Anderson v. South Carolina Election Commission and found that, for non-

incumbent candidates, a paper copy of the SEI had to be filed at the same time as a paper copy of the SIC. The Supreme Court ordered the political parties to remove any non-incumbent candidate who had not legally filed according to the Anderson case.

11 The SCGOP required county party chairmen to put together a certified list of candidates who had lawfully filed under Anderson. As Tony Piscatella had been the filing official and was the document custodian in charge of the files, I immediately asked him to review the files and determine who had filed paper SEIs and who had not.

12 Tony quickly reported back that all but one candidate had filed a paper SEI along with a paper SIC. I was absolutely shocked and excited, as I had expected that most candidates had not filed a paper SEI given that the instructions did not require a paper SEI. I asked Tony how it was possible that all but one of our candidates had managed to file correctly. Tony responded that he had deviated from the instructions he had been given and required all candidates to file a paper SEI. I had no reason to doubt him because I had filed a paper SEI during my filing.

13 The Supreme Court had ordered that amended candidate certifications be provided by noon on May 4th. The morning of May 4th, I prepared and hand-delivered a letter to the Dorchester County Election Commission certifying all Dorchester County Republican Party candidates except for the one referenced above. I sent the same letter by email to the South Carolina Republican Party.

14 The election proceeded. Then, on June 5th, the South Carolina Supreme Court issued its decision in the Florence County case. Because Tony had represented to me that all remaining certified non-incumbents had filed paper copies of their SEIs, I did not believe the Florence County decision would have any effect on our certifications because

it only applied to situations where a non-incumbent did not file a paper SEI but had an electronic SEI on file with the State Ethics Commission. Nonetheless, I asked Tony to again verify whether any candidates needed to be decertified. Tony responded that no candidates needed to be decertified, so none were.

15 The election occurred on June 12th. After the election, a number of rumors began circulating around the state that various non-incumbent candidates had not lawfully filed according to the Supreme Court's recent decisions. Dorchester County was no exception.

16 Shortly after the election, Sen. Mike Rose asked Tony Piscatella to provide a copy of Sean Bennett's paper SEI on file with the Dorchester County Republican Party. Tony told Sen. Rose that he would provide it, but Piscatella told me that Bennett's paper SEI was not in the file. Piscatella told me that every other paper SEI for the previously-certified candidates was in the file except for Bennett's.

17 I was shocked to hear Bennett's paper SEI was not in the file after Piscatella had repeatedly represented to me that it was in the file. Tony suggested various theories as to how the form had gone missing, but I became concerned that Tony had not been truthful with me about the filing process and that Bennett had not actually filed a paper SEI.

18 I continued to try to learn more about what had actually happened during the Dorchester County Republican Party filing process. John Hull and Roger Goodman have stated under oath that they have not filed paper SEIs. Other candidates have stated under oath that Piscatella did not require paper SEIs but instead was resistant to receiving them because the checklist required a proof of filing and not the actual paper SEI itself.

19 Though I deeply regret coming to this conclusion, I now believe that Tony Piscatella was not truthful with me with regard to his filing practices of the Dorchester

County Republican Party I do not believe I can, in good faith, come to any other conclusion

20 Further, it has been deeply troubling that Mr Piscatella has refused to turn over the Dorchester County Republican Party candidate filing documents

21 When word came that the Dorchester County Democratic Party was planning a lawsuit, Mr Piscatella told news media that any lawsuit would be defeated by the records in his possession He reportedly stated "Once they go through discovery, they will come back to my records and they'll say stop there "

22 After this lawsuit was filed, I repeatedly requested that Mr Piscatella provide the records or copies of them so that I could defend against the lawsuit Mr Piscatella has so far refused to turn them over I removed Mr Piscatella as records custodian pursuant to my authority as Chairman of the Dorchester County Republican Party and appointed Tim Huber as the new records custodian I directed Mr Piscatella to turn the records over to Mr Huber, but he refused I understand Mr Huber also requested the records from Mr Piscatella directly, but he refused

23 The only reasonable conclusion that can be drawn from this is that the records do not support Mr Piscatella's representations about them

24 I regret decertifying any candidates The candidates who filed incorrectly generally did so through no fault of their own They simply relied on erroneous instructions given to them by the political parties which the parties had, in turn, received from government agencies

25 However, my obligation is to follow the law and the Supreme Court has said in no uncertain terms that candidate certifications must be properly made in good faith Given

what I now know about the Dorchester County Republican Party filing process, I do not believe that Mr Piscatella required paper copies of SEIs from candidates. Instead, I believe he followed the checklist he was given and required proofs of filing rather than the paper SEI forms themselves. Because Mr Piscatella did not have a practice of requiring paper SEIs, and because Mr Bennett's paper SEI was not in the file, I am forced to conclude it is more likely than not that Mr Bennett did not file a paper SEI. I believe it is more likely than not that Mr Bennett filed the paperwork on the checklist he was given and, therefore, did not file correctly. I understand Mr Bennett claims to have filed a paper copy of his SEI, but I believe the best evidence of what Mr Bennett filed is what was actually in the file. I must therefore decertify Mr Bennett.

26 With regard to Mr Hull and Mr Goodman, they admit they did not file paper copies of their SEIs. Obviously, I must also decertify them.

27 Given what I now know, I must decertify every other non-incumbent candidate as well, but I will reconsider that decision if and when I gain access to the files in Mr Piscatella's possession.

28 Further affiant sayeth not.


CARROLL S. DUNCAN

Sworn to and subscribed before me this

18th day of July, 2012


Notary Public for South Carolina

My Commission Expires 2-9-2017

Exhibit B

received. Only one non-exempt candidate, John Mondo, did not simultaneously file a paper SEI at the time he filed for office.

- 10 After matching the SEIs with each candidate's file, the files were placed back into the filing cabinet drawer located in the back room. I then left.
- 11 When I left party HQ that morning, Sean Bennett's file contained his SEI along with all of his other documents.
- 12 On Thursday, June 7, 2012 after the court decision was handed down regarding Florence County, I was directed again by Carroll Duncan to re-verify the files again because the candidates had to be re-certified. At that time, all files were intact with complete documentation to include SEIs for those non-exempt candidates.
- 13 On June 13, 2012, I was asked by Carroll Duncan to again check the files because there was talk in the community regarding the ineligibility of candidates. I went to party HQ and discovered that the files were intact with the exception of Sean Bennett's file which was missing his SEI and initial campaign disclosure forms but not the confirmations.
- 14 On June 21, 2012, I requested attorney Chris Murphy to obtain a copy of Mr. Bennett's candidate documents that I knew he received from me on March 20, 2012. I have supplemented Mr. Bennett's candidate file with those documents. These documents are true and accurate copies of the original documents that Mr. Bennett filed with me on March 20, 2012.

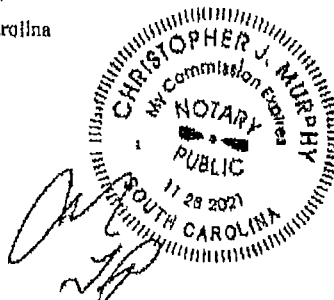
FURTHER AFFIANT SAITH NOT!

SWORN TO AND SUBSCRIBED BEFORE ME
this 22nd day of June, 2012

Notary Public for the State of South Carolina

My Commission expires 11/28/2021

By Tony Piscatella
Tony Piscatella



FILED-RECORDED
2012 JUL 24 PM 12:20
CLERK OF COURT
BONHOMME COUNTY

DORCHESTER COUNTY REPUBLICAN PARTY

CANDIDATE PACKET CHECKLIST

Name as it will appear on the ballot Sean BennettCandidate for office of State Senator District 38Paid DCRP Membership ☒ Y ☐ NFiling Fee Amount \$ 416⁰⁰ Paid Date 3 / 20 /2012

Make checks payable to DCRP

☒ Statement of Intention of Candidacy (SIC) and Pledge☒ Statement of Economic Interests (SEI) – proof of online filing☒ Candidate Support Committee Declaration Statement☒ Affidavit – (Requirements for Coroner and Sheriff)☒ Campaign Disclosure – Not required at time of filing

file online within 10 days of raising or spending \$500, copy to office

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2012 JUL 24 PM 12 20
JUL 24 2012
CLERK OF COURT
DORCHESTER COUNTY

STATEMENT I hereby acknowledge that I have received all of the forms and information needed to file for the above office and state that I have accurately and honestly completed the documents

Candidate signature [Signature] Date 5 / 20 /2012Received by [Signature] Date 3 / 29 /2012

SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES
DRIVER'S LICENSE

PISCATELLA, ANTHONY L JR
203 HUNT CLUB DR
SUMMERVILLE SC 294854803

DL# 002168484
Expires 01-22-2017

Class D Hgt 5-08 Wgt 210
Sex M DOB 01-22-1942
Issued 01-18-2007 18081 R 1

C. P. Ramsey



Residence A

for

Governor



FILED-RECORDED
2012 JUL 24 PM 12:28
CLERK OF COURT
ROCHESTER COUNTY

Exhibit C

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

Dorchester County Democratic Party,

Plaintiff,

v

Dorchester County Republican Party
(Carroll Duncan as Chairman), South
Carolina Republican Party (Matt Moore as
Executive Director & Chad Connelly as
Chairman), Dorchester County Board of
Elections (Joshua Dickard as Executive
Director), South Carolina State Election
Commission (Maici Andino as Executive
Director & Chris Whitnile as Director of
Public Information and Training),

Defendants

Civil Action No 2012-CP-18-1632

**AFFIDAVIT OF ANN SHIELDS,
VOLUNTEER FOR THE
DORCHESTER COUNTY
REPUBLICAN PARTY RE
CANDIDATE FILING**

The undersigned Ann Shields, first being duly sworn, hereby deposes and says

1 My name is Ann Shields I am a volunteer for the Dorchester County Republican
Party ("DCRP") I am also the Precinct President of the Coastal 2 precinct

2 My duties are to work in the DCRP office performing administrative tasks such as
database management, handling walk-ins, answering the phone, and collecting the mail

3 I was at the DCRP office when Sean Bennett filed

4 I was in the small reception area where the outside door is located The filing took
place in another room, a conference room in the rear of the office I could not see what
was taking place in the conference room

5 When Bennett filed, the only individuals associated with the DCRP who were
present were myself, Janette Chipas, and Tony Piscatella Janette and Tony were in the
back room handling the filing

6. When Bennett arrived, he walked in the front door of the reception area. He was accompanied by a lady who I later learned worked for him in some capacity.

7. I announced he had arrived and John Mondo, who had just completed his filing, left the back room and exited the office. Tony Piscatella walked out of the back room and invited Bennett back to file. Bennett and Piscatella walked to the back room. The employee who accompanied Bennett remained in the reception area and did not accompany Bennett back to the filing room.

8. Bennett's employee and I struck up a pleasant conversation while Bennett was filing. We discussed the Tea Room at St. Paul's Episcopal Church in Summerville, a fundraiser event the church puts on. She described the Tea Room at Bethany, which I believe is a Methodist Church, and I gathered—though I am not certain—that she is a member at Bethany.

9. The conversation then moved to what her relationship was with Sean Bennett. She indicated that she worked for Mr. Bennett and believed in him as a candidate. We had a little bit more small talk, and then Bennett emerged from the back room. Bennett and his employee then left the office.

10. At no point in time did Bennett's employee go to the filing room to observe or witness Mr. Bennett's filing. The entire time Mr. Bennett was filing, she and I were having a conversation as described above.

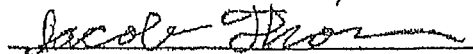
11. Further affiant sayeth not.



ANN SHIELDS

Sworn to and subscribed before me this

26th day of July, 2012

 Jacob Thompson
Notary Public for South Carolina

My Commission Expires 05/15/22

Exhibit D

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Chapman

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Exhibit E

**SC GOV - SC State Ethics Commission Public Disclosure and Accountability
Reporting**

Electronic Filing

Statement of Economic Interests Filing confirmation

Your report has been filed successfully on 3/19/2012 2 08 11 PM Your confirmation number is
SEI11867 R33162-378da468

Your confirmation has been sent to the email address on record Please print this page for your records Click 'Continue' to return
to your Statement of Economic Interests Filings or logout if you are finished

Continue

FILED-RECORDED
2012 JUL 24 PM 12 12
CLERK OF COURT
BERKELEY COUNTY

SC GOV SC State Ethics Commission Public Disclosure and Accountability
Reporting
Electronic Filing
Statement of Economic Interests Review

Filing Report Review

Name Sean Bennett
Year 2011
Filing Type Original

Demographic Information

Name	Address	Phone	County
Sean Bennett	1422 Peninsula Pointe Summarville SC 29485	843 442 3009	Dorchester

Positions

Position/Title	Entity	Type	Term of Office	Date Filed
Senator	Senate	Candidate	1/2013 1/2017	3/2012

Income and Benefits

*** No Income and Benefits Reported ***

Family Income and Benefits

*** No Family Income and Benefits Reported ***

Regulated Business Associations

*** No Regulated Business Associations Reported ***

Real or Personal Property Interests

*** No Property Interest Entries Reported ***

Real or Personal Property Interests II

FILED-RECORDED
 2012 JUL 24 PM 12:12
 CLERK OF COURT
 BORCHESTER COUNTY

*** No Sold Leased, or Rented Property Interests Reported ***

Business Interests

Name of Business	Relationship
Asset Integration Consultants, Inc	Owner

Creditors

*** No Creditors Reported ***

Lobbyist/Lobbyist's Principal

*** No Lobbyist/Lobbyist's Principal Entries Reported ***

Government Contracts

*** No Government Contracts Reported ***

Gifts

*** No Gifts Reported ***

Travel Reimbursement

*** No Travel Reimbursements Reported ***

General Assembly

*** No General Assembly Entries Reported ***

Print Go Back

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2012 JUL 24 PM 12 12
CLERK OF COURT
BERKELEY COUNTY

Exhibit F

7/26/12

SC GOV SC State Ethics Commission Public Disclosure and Accountability Reporting

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting**Individual Reports****Statement of Economic Interests****Selected**

Last Name bennett
Year 2011

Click on name to review the report

Search Results

Name	Office	Type	Entity	Date Filed	Version
<u>Bennett, Bennie D</u>	Superintendent	Employee	Newberry	3/21/2011 3 07 00 PM	Original
<u>Bennett, Brenda P</u>	Probate Judge	Elected	Allendale	4/27/2011 2 06 00 PM	Original
<u>Bennett II, Charles S</u>	Chief Administrative Official	Employee	North Augusta	4/12/2011 4 18 00 PM	Original
<u>Bennett, Earle M</u>	Public Member, Trustee, Commission Member, or Board Member	Appointed	Wil Low Gray Opportunity School	3/3/2011 10 33 00 AM	Original
<u>Bennett, Frankie</u>	City Council	Elected	Estill	1/24/2011 5 59 00 PM	Original
<u>Bennett, Linda</u>	Public Member, Trustee, Commission Member, or Board Member	Appointed	Patriots Point Dev Authority	9/22/2011 3 05 00 PM	Original
<u>Bennett, Sean</u>	Senator	Candidate	Senate	3/19/2012 2 08 00 PM	Original
<u>Bennett, Timothy R</u>	Chief Administrative Official	Employee	Allendale	4/4/2011 4 30 00 PM	Original

[Back](#) [Start Over](#)

Exhibit G

7/26/12

SC GOV SC State Ethics Commission Public Disclosure and Accountability Reporting

SC GOV - SC State Ethics Commission' Public Disclosure and Accountability Reporting**Individual Reports****Statement of Economic Interests****Selected**

Last Name bennett
Year 2012

Click on name to review the report

Search Results

Name	Office	Type	Entity	Date Filed	Version
Bennett, Bennie D	Superintendent	Employee	Newberry	3/26/2012 3 06 00 PM	Original
Bennett, Bennie D	Superintendent	Employee	Newberry	3/26/2012 3 07 00 PM	Amendment 1
Bennett, Larle M	Public Member, Trustee, Commission Member, or Board Member	Appointed	Wil Lou Gray Opportunity School	3/13/2012 3 45 00 PM	Original
Bennett, Lanck	City Council	Elected	Estill	2/20/2012 8 00 00 PM	Original
Bennett, Jeffrey	City Council	Candidate	Clemson	4/19/2012 10 47 00 AM	Original
Bennett, Linda	Public Member, Trustee, Commission Member, or Board Member	Appointed	Patriots Point Dev Authority	1/26/2012 9 10 00 AM	Original
Bennett, Timothy R	Chief Administrative Official	Employee	Allendale	1/24/2012 4 13 00 PM	Original

[← Back](#) [Start Over](#)

Exhibit H

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

Dorchester County Democratic Party,

Plaintiff,

Civil Action No 2012-CP-18-1632

v

Dorchester County Republican Party
(Carroll Duncan as Chairman), Colleton
County Republican Party, Berkeley
County Republican Party, Charleston
County Republican Party, South Carolina
Republican Party (Matt Moore as
Executive Director & Chad Connelly as
Chairman), Dorchester County Board of
Elections (Joshua Dickard as Executive
Director), Colleton County Election
Commission, Berkeley County Election
Commission, Charleston County Election
Commission, South Carolina State
Election Commission (Marc Andino as
Executive Director & Chris Whitmire as
Director of Public Information and
Training), Sean Bennett, Mike Rose, and
Tony Piscatella

Defendants

**AFFIDAVIT OF
MIKE ROSE,
INCUMBENT CANDIDATE
FOR THE REPUBLICAN
NOMINATION FOR SENATE
DISTRICT 38**

The undersigned Michael T Rose a/k/a Mike Rose, first being duly sworn, hereby
deposes and says

1 My name is Mike Rose I live at 409 Central Ave, Summerville, SC
29483

2 I was a candidate in the June 12, 2012 Republican Primary for Senate
District #38

3 I am a member of the South Carolina Senate representing Senate District
#38

4 I am submitting this affidavit in connection with the above-captioned lawsuit

5 I gave Tony Piscatella ("Piscatella"), in his then capacity as candidate filing officer/records custodian of the Dorchester County Republican Party ("DCRP"), my Statement of Intention of Candidacy Partisan on March 16, 2012 at or about 12 36 pm, at the Dorchester County Republican Party Headquarters at 89B Old Trolley Road, Summerville, SC 29483

6 On June 13, 2012 I received an unexpected and unsolicited telephone call during which I was told that Sean Bennett ("Bennett"), my opponent in the June 12, 2012 Republican Primary for Senate District #38, may not have been a legitimate candidate in that Primary because Bennett may not have filed his required SEI with the DCRP properly. I replied to the caller that Piscatella and Carroll Duncan ("Chairman Duncan"), Chairman of the DCRP, had assured me before the Primary that all individuals certified by the DCRP as candidates for that Primary had filed their paperwork properly. The caller replied by expressing doubt that the paperwork had been filed properly and by urging me to look at the paperwork myself to determine if it had been filed properly.

7 Upon ending that call I promptly called Piscatella, told him what had been said to me during the telephone call as described above and asked him to let me see a copy of the paperwork filed with the DCRP by all DCRP candidates, especially by Bennett. Piscatella told me he would get and let me see that paperwork. He called me a few hours later and told me he had located all DCRP candidates' paperwork at DCRP headquarters, including that of Bennett. I asked him to give me a copy of Bennett's

paperwork because I wanted to see it myself, and he agreed to give me a copy of that paperwork that day. I told him that he could scan and e-mail the paperwork to me, fax it to me, or let me come pick it up from him. He stated that he would get Bennett's paperwork to me that day, but did not tell me how he would do so. Piscatella did not provide me any of Bennett's candidate paperwork that day and has not done so on any other day. Piscatella did not inform me that any of Bennett's paperwork was missing but led me to believe, incorrectly, that all of Bennett's candidate paperwork, including Bennett's SEI, was in the official DCRP candidate file for Bennett. I later learned that in truth Piscatella could not find a SEI in Bennett's DCRP file because no SEI was in Bennett's file.

8 On June 14, 2012, I unexpectedly was informed by telephone by a Republican that the Dorchester County Democratic Party ("DCDP") was about to publish, or had just published, that day a press release demanding that the DCRP make public its candidate paperwork filed with the DCRP by House District #97 GOP candidate Ed Carter ("Carter"), because the DCDP believed that Carter had been improperly certified as a candidate in the June 12, 2012, Republican Primary because Carter had not filed properly his SEI with the DCRP. That person also informed me during that telephone conversation that the DCDP believed that Bennett and other Republican candidates had not submitted SEIs to the DCRP as required by law, that, therefore, those individuals had been improperly certified as Republican Primary candidates by the DCRP, and that, as a result, the DCDP was going to file a lawsuit against the DCRP challenging the certification of all non incumbent DCRP candidates. That DCDP press release was published that day in the *Summerville Patch*. P1101 to that

telephone call to me I had no knowledge of any of these past or anticipated future actions by the DCDP

9 By nearly the end of Thursday, June 14, 2012, Piscatella had not given me a copy of Bennett's paperwork, despite his representations on June 13 that he would do so, had not informed me that he was not going to provide me that paperwork, and had given me no explanation as to why he had not provided me that paperwork. Further, based on Piscatella's representations to me on June 13, I believed that Piscatella had possession of all of Bennett's paperwork filed with the DCRP, including a SEI for Bennett, and would give me a copy of all of that paperwork. Therefore, on June 14 at 11 24 pm I sent Piscatella an e-mail, attached hereto as Exhibit #1, stating the following

"Tony, As we discussed yesterday, please give a copy of all the paperwork regarding Sean Bennett's paperwork [sic] that you filed on behalf of the DCRP. I want to review it.

Please confirm where you filed that paperwork, and when. Thank you.

Mike Rose"¹

10 On June 15, 2012, at 9 42 am I received an e-mail, attached hereto as Exhibit #2, from Piscatella stating as follows

"Mike The SCGOP has advised the county parties not to provide any information except through them. Apparently several issues have been raised by people and the state wants to control the flow of information. We are bound by that ruling and can't provide the information I had agreed to give you. It doesn't look like this is going to go away any time soon. I'm sorry for the inconvenience this may have caused you."² (Emphasis added.)

11 On June 15, 2012, at 9 47 am, I received an e-mail, attached hereto also as Exhibit #3, from Matt Moore ("SCRIP ED Moore"), Executive Director of the South

¹ E-mail dated June 14, 2012, from Mike Rose to Tony Piscatella attached as Exhibit #1

² E-mail dated June 15, 2012, from Tony Piscatella to Mike Rose attached as Exhibit #2

Carolina Republican Party ("SCRCP"), stating the following

"Senator – please understand this has been our policy due to the Democrats trying to beat down our doors and rifle through our filing cabinets. We've made the same requests of them, and they're not budging. Matt Moore, Executive Director, South Carolina Republican Party"³

Below that e mail from Matt Moore is the e mail to me from Piscatella referenced in Paragraph 10 above and below that is my e mail to Piscatella referenced in Paragraph 9 above. Until I received that e mail from Matt Moore I had no idea that Piscatella had been communicating with the SCGOP about my request to see Bennett's paperwork.

12 As shown in paragraph 13 below, on July 5, 2012 I learned, for the first time, that when SCRCP ED Moore sent me the e mail dated June 15, 2012 described in paragraph 11 above, SCRCP ED Moore, DCRP Chairman Duncan and Piscatella all knew that there was no SEI in Bennett's DCRP candidate file on June 13, 2012. Piscatella and SCRCP ED Moore have never revealed to me the fact that there was no SEI in Bennett's DCRP candidate file on June 13. Instead, on July 5, 2012, Chairman Duncan informed me of that fact, through her attorney. On June 18, 2012 the DCDDP issued another press release, published in the *Summerville Patch*, demanding the public release by the DCRP of candidate documents of all candidates certified by the DCRP and threatening that the DCDDP would sue the DCRP to get those documents if the DCRP did not promptly publicly release those documents.

13 On June 19, 2012, I communicated to Chairman Duncan and DCRP Vice Chairman Dr. Tim Huber ("Vice Chairman Huber") by e mail (a true copy of which is attached as Exhibit #4) that, given the circumstances, I wanted to appeal Bennett's victory in the June 12, 2012 Republican Primary for Senate District #38, and asked how

³ E mail dated June 15, 2012, from Matt Moore to Mike Rose attached as Exhibit #3

to do so⁴ On June 20, 2012 I sent Tim Hubei, Vice Chairman of the DCRP, and Chairman Duncan an e-mail stating the following

"A lawyer told me this afternoon that Tony Piscatella needs to be told that there are computerized records of all computer transactions regarding the paperwork in question, that those records will reveal the truth, and that Tony better not alter in any way the records because if he does he could be indicted"⁵

In response to that e-mail from me, Chairman Duncan responded not directly to me but by sending SCRP ED Moore an e mail dated June 20, 2012, stating in its entirety as follows

"Answer him or not?"

For you, Tony has not and will not alter any records He's added a copy of the SEI to the file but with note that it's a copy and what day he added and why"⁶
(Emphasis added)

I received a copy of that e-mail above, attached hereto as Exhibit 6, from Chairman Duncan to SCRP ED Moore via her attorney on July 5, 2012 That e mail and subsequent conversations and documents evidence to me that Piscatella had added a SEI to Bennett's DCRP candidate file, that Chairman Duncan and SCRP ED Moore had been aware that Piscatella had added an SEI to Bennett's DCRP candidate file, that Chairman Duncan, Piscatella and SCRP ED Moore had been aware that no SEI had been in Bennett's DCRP candidate file on June 13, 2012, that Chairman Duncan and SCRP ED Moore had been discussing what to do about my requests to see the DCRP candidate documents, and that all of those facts had been withheld and concealed from me by them

14 I had not protested that election and had not inquired previously about

⁴ See E-mail dated June 19, 2012, from Mike Rose to Dr Tim Hubei and DCRP Chairman Duncan, attached as Exhibit #4

E-mail dated June 20 2012 from Mike Rose to Dr Tim Hubei and Carroll S Duncan attached as Exhibit 5

⁶ E mail dated June 20 2012, from Carroll S Duncan to SCRP ED Malt Moore , attached as Exhibit 6

filing a protest of that election because (1) the DCRP had lured and caused me to believe, incorrectly, that Bennett had filed his candidate paperwork properly and, until June 15, 2012, that Piscatella would give me a copy of Bennett's paperwork so I could see myself whether Bennett had filed his paperwork properly, and (2) because the DCRP and the SCGOP had failed to disclose to me that Bennett's SEI in fact was missing, even when they knew there was no SEI in Bennett's DCRP candidate file and that I was asking the DCRP to show me Bennett's SEI in his DCRP candidate file. Without seeing Bennett's paperwork myself, and without knowing that Bennett's SEI was missing from his DCRP file, I could not reasonably determine whether or not I had a valid ground for protesting the Primary election. Ultimately I learned that the cutoff date for my filing a protest of the Primary election with the SCRP was June 18, 2012, which already had passed by the time I asked for an election protest on June 19 as stated above. I do not believe that I should be in any way prejudiced in the above captioned lawsuit by my not having filed an election protest with the SCGOP by June 18, 2012, for the following reasons: (1) due to the doctrine of equitable tolling, because the DCRP and the SCGOP wrongfully concealed and prevented me from obtaining sufficient facts to enable me reasonably to know I had a reasonable grounds for a protest and misled and lured me into believing, and caused me to believe, that I did not have a reasonable grounds for a protest, and (2) because the basis for this lawsuit is different than, and totally independent of, the statutory procedure for a candidate to file a protest of an election.

15 On June 29, 2012 the DCDP filed the above captioned lawsuit with the Dorchester County Clerk of Court. On July 9, 2012 Bennett filed a Motion to Intervene in that lawsuit. On July 12, 2012 I also filed a Motion to Intervene. On July 23, 2012,

these Motions to Intervene were granted by the Court

16 Chairman Duncan sent a letter, attached hereto as Exhibit #7, dated July 9, 2012 to Piscatella directing that Piscatella provide her a copy of all DCRP candidate filings in his possession, and announcing that she was going to make those documents public. That same information was provided, along with a copy of that letter from Chairman Duncan, by Chairman Duncan's attorney, Todd Kincannon, to Piscatella's attorney, Chris Murphy, by an e mail dated July 9, 2012. A copy of that e mail is attached as Exhibit #8. Murphy replied with an e mail dated July 10, 2012, a copy of which is attached hereto as Exhibit #9, to Kincannon which said that Piscatella, his client, refused, as advised by Murphy, to provide Chairman Duncan or any other person a copy of any of the paperwork of DCRP candidates, and that Piscatella was going to retain personal possession of those documents until ordered by a Court to cease doing so. That e mail from Murphy to Kincannon states in part as follows

"On Thursday, June 21, 2012, I was retained by Tony Piscatella to represent him with regards [sic] to his potential testimony as it relates to the pending lawsuit filed by the Dorchester County Democratic Party whereby they have challenged all non-incumbent Republican candidates. As Mr. Piscatella's attorney, I have advised him to safeguard the filing documents of all the 2012 Republican candidates in Dorchester County. Absent a Court Order directing Mr. Piscatella or my office to turn over the files, they will remain in his custody. This will help to ensure the chain of custody and the integrity of any potential evidence as the case makes its way through the judicial process."⁷ (Emphasis added.)

17 Chairman Duncan sent a letter, attached hereto as Exhibit #10, dated July 11, 2012, to Piscatella stating as follows

"Dear Mr. Piscatella

You are hereby removed as candidate filing officer/records custodian of the Dorchester County Republican Party ("DCRP"). DCRP First Vice Chairman Tim

⁷ F mail dated July 10, 2012 from Chris Murphy to Todd Kincannon, attached as Exhibit #9

Huber is hereby appointed as the new DCRP candidate filing officer/records custodian. You are directed to immediately provide all DCRP documents in your possession to Dr. Huber including but not limited to all candidate filings

I take this action pursuant to my authority under Article VII Section 1 of the DCRP Bylaws, which vests appointment – and therefore removal – authority in the Chairman. While I have the unilateral authority to remove for any reason or no reason, I believe the DCRP should know why I have taken this action.

On July 9, 2012 I requested in writing that you provide copies of all candidate filing documents to me. Through your attorney, you refused to provide the documents to me despite the fact that I have a right to these documents as a member of the DCRP under Article VII Section 2 of the DCRP Bylaws

I have no alternative but to take this step given your refusal to provide the documents. Again, please immediately provide all DCRP documents in your possession to Dr. Huber including but not limited to all candidate filings. Sincerely, Carroll S. Duncan, Chairman, Dorchester County Republican Party”⁸ (Emphasis added.)

18 Piscatella has failed to provide me a copy of Bennett’s candidate paperwork, including any SEI for Bennett, at any time, and has refused to give either the original or a copy of any DCRP candidate’s paperwork to Chairman Duncan or to Dr. Tim Huber, the new DCRP candidate filing officer/records custodian appointed by Chairman Duncan.⁹ Further, Piscatella removed all the DCRP candidate records from the DCRP headquarters and unlawfully retained them in his personal possession at Piscatella’s home.¹⁰ As a result, I was not able to see the paperwork of Bennett and the other DCRP candidates until Piscatella filed the original of all those documents with the Clerk of the Dorchester County District Court on July 24, 2012, as ordered by Judge Howard P. King verbally on July 23, 2012. Further, until my Motion to Intervene was

⁸ Letter dated July 11, 2012, from DCRP Chairman Carroll S. Duncan to Tony Piscatella, attached as Exhibit #10.

⁹ See paragraphs 16-17, *supra*.

¹⁰ See paragraphs 16-17, *supra*. Exhibits 5, 6, 7 and 8. Murphy volunteered during a telephone conference with attorneys and Judge Howard P. King on July 23, 2012 that Piscatella, as advised by Murphy, had removed the DCRP candidate documents from DCRP headquarters and taken those documents to Piscatella’s home.

granted on July 24, 2012, joining me as a party defendant in the lawsuit as referenced in Paragraph 14 above, I could not use a legal process to compel production of those documents as discovery

19 As a result of the above, three and a half weeks passed after the filing of the lawsuit referenced in Paragraph 15 above, and six weeks passed after I first asked Piscatella to let me see the DCRP candidate records, including the SEIs of Bennett and others, during which time I could not gain access to those DCRP candidate records to enable me to analyze the facts regarding those documents, to determine whether I had grounds to file an election protest and to prepare my position in this lawsuit. In contrast, during most of that period – since June 21, 2012¹¹ -- Chris Murphy has had access to view the documents via his client, Piscatella, thereby giving information to Murphy that could help the non incumbent candidates, including Bennett, whom Murphy supported politically for the Primary¹² and has been supporting politically since the Primary¹³. As one example of Murphy's and Piscatella's attempts to help Bennett, Murphy acquired from Bennett and gave Piscatella a copy of documents, including an SEI for Bennett, in Bennett's personal possession and thereafter commingled¹⁴ those personal documents of Bennett with the official documents in the official DCRP candidate file for Bennett¹⁵. As another example, Murphy advised Piscatella to remove the official DCRP candidate

¹¹ Murphy began representing Piscatella on June 21, 2012. See paragraph 16 *supra*.

¹² Murphy gave money and a public endorsement to Carter. Murphy encouraged voters to support Bennett.

¹³ Murphy obtained documents from Bennett which in turn Murphy had Piscatella add to Bennett's official DCRP candidate file, without authority and in violation of law. In addition upon information and belief, Murphy has conferred and met with and has been working for the benefit of, Bennett since the June 12 Primary. Instead of providing advice solely for the benefit of Murphy's client, Piscatella, Murphy has been, upon information and belief, providing Piscatella advice for the benefit of Carter and Bennett. To accomplish that Murphy arranged, upon information and belief, that Murphy represent Piscatella as an attorney regarding as stated by Murphy, Piscatella's "potential testimony" in the above captioned lawsuit. See paragraph 16 *supra*.

¹⁴ See Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14 ("I have supplemented Mr. Bennett's candidate file with those documents") attached as Exhibit #13.

¹⁵ See Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14.

filing documents, including those of Bennett, from the DCRP headquarters, to not allow Chairman Duncan, myself and the public to see or have a copy of them, and to keep the DCRP candidates files at Piscatella's home instead of at DCRP headquarters¹⁶ Piscatella's hoarding of those DCRP official documents in Piscatella's home not only kept the documents from me, Chairman Duncan, Vice Chairman Huber and other members of the public, but also gave Piscatella, and perhaps others, ample opportunity to alter the documents. The fact that those documents could have been altered by Piscatella or other persons very easily is particularly significant given that, as verified by a qualified digital and computer forensics expert who also is an attorney licensed in South Carolina, alteration of the printed date on SEIs printed from the State Ethics Commission website was so easy that the printed date on any candidate's SEI is not reliable evidence of when the form was actually printed. As attested to by attorney and digital/computer expert Steven Marc Abiams

" [I]t is my conclusion to a scientific certainty that the printed date shown on the lower right hand corner of any candidate's Statement of Economic Interests that was printed from the SC gov website is not reliable evidence of when the form was actually printed. It is my opinion therefore that the date appearing on the lower right hand corner of the Statement of Economic Interests reports that are proposed as evidence in this matter is not reliable evidence as to when the reports were printed."¹⁷

20 I believe it is outrageous that Bennett, Piscatella and Murphy unlawfully added and conspired to add -- to "supplement"¹⁸ -- personal documents obtained from Bennett to Bennett's official DCRP candidate file when they had no authority to do so. I

¹⁶ See paragraphs 16-17 supra, Exhibits 5, 6, 7 and 8. Murphy volunteered during a telephone conference with attorneys and Judge Howard P. King on July 23, 2012 that Piscatella, as advised by Murphy, had taken the DCRP candidate documents to his home and refused to return them to the DCRP when requested to do so by Chairman Duncan.

¹⁷ Affidavit dated July 30, 2012 from Steven Marc Abiams, I.D., M.S., attached as Exhibit #11.

¹⁸ See Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14 (I have supplemented Mr. Bennett's candidate file with those documents'), supra paragraphs 16-17, Exhibits 5, 6, 7 and 8.

believe it is outrageous that Piscatella, upon the advice of Murphy, took and retained personal possession of those official DCRP documents, as least some of which were public documents by law,¹⁹ hoarded and secreted them, covered up the fact that Bennett's SEI was missing from his official DCRP file, and led me to believe, falsely, that Bennett's DCRP file contained a proper SEI. That tampering with and hoarding of evidence is an obstruction of justice having the effect and apparent purpose of preventing the public and even the Chairman of the DCRP from learning and proving whether candidates had been certified illegally. All of this spoliation of evidence should require construing as evidence against Bennett and Piscatella any of the supplemental documents from Bennett added to the DCRP file for Bennett. Bennett should not be able to participate in supplementing and mixing the official DCRP file with his own inaccurate,²⁰ different²¹ and self-serving personal version of the documents and reap the benefit of a SEI form he inserted into that file.

21. Piscatella claims in an affidavit that the documents with which Piscatella "supplemented Mr. Bennett's candidate file"²² "are true and accurate copies of the original documents that Mr. Bennett filed with [Piscatella] on March 20, 2012."²³ Evidence shows that claim by Piscatella is false. The personal Bennett documents obtained by Murphy from Bennett that Piscatella, as advised by Murphy, used to "supplement", commingle and pollute Bennett's official DCRP candidate file were not identical to the documents that Bennett filed with the DCRP on March 20, 2012. One reason that is true is that the official DCRP file for Bennett contains a NOTICE OF

¹⁹ See paragraph 22-23 infra.

²⁰ See paragraphs 25-32 infra.

²¹ See paragraphs 25-32 infra.

²² Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14, paras 16-17 supra, Exhibits 5, 6, 7, 8.

²³ Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14, paras 16-17, supra, Exhibits 5, 6, 7, 8.

CANDIDACY AND PLEDGE form signed by Bennett that does NOT appear among the documents Bennett gave Murphy which Murphy gave Piscatella which Piscatella added to the official DCRP file for Bennett. Further, the CANDIDATE PACKET CHECKLIST in the file Bennett gave Murphy which Murphy gave Piscatella which Piscatella added to the official DCRP file for Bennett is not identical to the CANDIDATE PACKET CHECKLIST already in the official DCRP file for Bennett before Piscatella added documents to the official DCRP file for Bennett ²⁴

22 I believe Murphy's and Piscatella's withholding of the DCRP candidate documents was an illegal conversion of DCRP property, in addition to being harmful to me, the DCDP, the DCRP and the public. Neither Murphy nor Piscatella had legal authority to withhold any of the DCRP candidate filing documents from Chairman Duncan. That is true because of the clear language in Article VII Section 1 of the DCRP Bylaws giving the DCRP's Chairman, Chairman Duncan, the authority to appoint, and therefore to remove and to replace, the DCRP's candidate filing officer/records custodian. In addition, neither Murphy nor Piscatella had legal authority to withhold the SEI of Bennett or of any other DCRP candidate from Chairman Duncan, Vice Chairman Huber, me or any other member of the public, because all SEIs of candidates are public documents according to Section 8-13 1356(C) of the Code of Laws of South Carolina. Piscatella's illegal actions did not become legal because Murphy gave Piscatella legal advice to obstruct justice and engage in these unlawful concealment actions that benefitted Bennett.

23 Section 8-13 1356 is titled "Filing of statement of economic interests by candidates for public office" (Emphasis added.) Subsection (C) states that "[t]he official

²⁴ See Paragraphs 27-29 infra

with whom the candidate files a declaration of candidacy or petition for nomination, no later than five business days after the candidacy books close, must file a copy of the statement with the appropriate supervisory office” (Emphasis added) Thus, Piscatella, the DCRP official with whom Bennett and all other DCRP candidates filed a declaration of candidacy, was required, within five business days of the closing of the candidacy books on March 30, 2012, to file a copy of their statement of economic interests, or SEI, with the appropriate supervisory office for their respective statements of economic interest. The appropriate supervisory office where the SEI of Senate candidate Bennett was required to be filed was the Senate Ethics Committee. Leonard Odom, Research Director for the Senate Ethics Committee, has confirmed in an affidavit, attached hereto as Exhibit #10, dated June 11, 2012, filed with the Charleston County Clerk of Court that as of June 11, 2012, that no Statement of Economic Interests had been filed with the Senate Ethics Committee regarding a candidate for the SC Senate.²⁵ If Piscatella had filed a SEI for Bennett with the Senate Ethics Committee as he was required to do by Section 8-13-1356(C), Piscatella would not have been able to prevent, as he did, Bennett’s two²⁶ purported SEIs from being seen by me, the DCDP and other members of the public during the six week period of June 13-July 24, 2012. Further, Piscatella and Murphy should not have prevented the public, including me, from viewing and obtaining a copy of Bennett’s two purported SEIs since they are public records according to Section 8-13-1356(C).

24 In addition to Piscatella’s unlawful withholding of DCRP paperwork as

²⁵ See Affidavit dated June 11, 2012 by Leonard Odom attached hereto as Exhibit #12

²⁶ Bennett had no SEI in his DCRP file on June 13, 2012. Subsequently Piscatella, in concert with Bennett and Murphy with regard to at least one of the SEIs put two different substitute SEIs in Bennett’s DCRP file to make up for the absence of any SEI in Bennett’s file. See paragraphs 16, 17, 20, 21 supra and paragraphs 27-29 infra.

described above, for the more than three week period June 13-July 5, 2012 the DCRP and the SCRCP both misled me, as did Piscatella, into believing that there was a valid SEI in Bennett's DCRP candidate file when in fact they knew there was no SEI in that file on June 13, 2012, and withheld from me -- concealed and "covered up" -- the fact known to them that an SEI for Bennett had been found by Piscatella to be missing on June 13, 2012 from the DCRP Bennett file

25 On July 23, 2012 Judge Howard P King ordered, on a telephone conference with me and other attorneys in this lawsuit, Chris Murphy and Piscatella to file by 5 pm on July 24, 2012, with the Dorchester County Clerk of Court three affidavits by Piscatella and the original of all DCRP documents Murphy and Piscatella had been secretng/withholding at Piscatella's house. On July 24, 2012 the Dorchester County Clerk of Court e mailed me those three affidavits by Piscatella and the respective documents (collectively "Candidate Documents") for each of the nineteen DCRP candidates that Piscatella had filed that day with the Court as had been ordered by Judge Howard P King on July 23, 2012. A copy of those three affidavits are attached as Exhibits 13, 14 and 15

26 My review and inspection of those Candidate Documents reveal numerous inconsistencies and discrepancies that lead me to disbelieve and doubt the legality, accuracy, integrity, credibility, reliability and completeness of those Candidate Documents and statements made about those Candidate Documents, including the following

27 Two Sets of Intermingled Bennett Candidate Documents Created by Bennett, Murphy and Piscatella Shockingly, the DCRP documents filed with the Court

by Piscatella regarding Bennett contain in reality not one but two different sets of documents that Piscatella intermingled, as advised by Murphy, and with the cooperation and assistance of Murphy and Bennett Piscatella attests in one²⁷ of his affidavits the following

- A Paragraph 8 On March 20, 2012 Piscatella asked Bennett if Bennett wanted a copy of all of the paperwork that Bennett had filed that day with Piscatella at DCRP Headquarters Bennett said he did want a copy, so Piscatella made a copy and gave it to Bennett, who left DCRP headquarters with that copy²⁸
- B Paragraph 13 On June 13, 2012 Piscatella discovered that Bennett's official DCRP file did not contain a SEI or a Campaign Disclosure form²⁹
- C Paragraph 14 Murphy obtained from Bennett personal documents in the possession of Bennett and gave those personal documents to Piscatella In turn, Piscatella added those personal Bennett documents to, and intermingled those personal Bennett documents with, the official DCRP candidate file for Bennett³⁰ Piscatella says those personal Bennett documents added and intermingled by Piscatella to the DCRP's official candidate file for Bennett "are true and accurate copies of the original documents that Mr Bennett filed with me on March 20, 2012 "³¹

Thus, as shown above, Bennett, Murphy and Piscatella conspired, cooperated and acted, unlawfully and without authority, to add Bennett's personal documents (hereinafter sometimes "Bennett Version #2 documents") to, and to intermingle Bennett's personal documents with, the documents already in the official DCRP candidate file for Bennett (hereinafter sometimes "Bennett Version #1 documents") Thus, Bennett, Murphy and Piscatella added Bennett Version #2 documents to, and intermingled Bennett Version #2 documents with, the official DCRP Bennett Version #1 documents, to come up with a completely new version of Bennett DCRP candidate filing documents

²⁷ Supplemental Affidavit of Tony Piscatella, June 22, 2012, attached as Exhibit #15

²⁸ Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 8, attached as Exhibit #15

²⁹ Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 13, attached as Exhibit #15

³⁰ Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14, attached as Exhibit #15

³¹ Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14, attached as Exhibit #15

28 A comparison of Bennett Version #2 documents with Bennett Version #1 documents shows that the representation attested to by Piscatella that the Bennett Version #2 documents are "true and accurate copies of original documents Mr. Bennett filed with [Piscatella] on March 20, 2012", ³² is not accurate. Specifically, the Bennett Version #2 documents added by Bennett, Murphy and Piscatella to Bennett Version #1 documents differ from the Bennett Version #1 documents in at least the following important respects:

- A. Bennett Version #1 documents contain a Notice of Candidacy and Pledge form signed by Bennett. However, Bennett Version #2 documents do not contain a Notice of Candidacy and Pledge form. That difference alone proves that Bennett Version #2 documents are not a complete copy of Bennett Version #1 documents.
- B. Bennett Version #1 documents contain a Candidate Packet Checklist that has near the top (1) the handwritten words "District 38" next to the typewritten words "State Senator" on one line and (2) the handwritten term "3/20" next to the typewritten words "Paid Date" on another line. Bennett Version #2 documents do not contain a Candidate Packet Checklist with either the words "District 38" or the term "3/20" referenced above. Those differences alone prove that Bennett Version #2 documents are not a complete copy of Bennett Version #1 documents.
- C. Bennett Version #2 documents contain a "Campaign Disclosure" form for Bennett. Bennett Version #1 documents do not contain a "Campaign Disclosure" form for Bennett. That difference alone proves that the Bennett Version #2 documents are not the same as the Bennett Version #1 documents.
- D. Bennett Version #2 documents contain a different SEI for Bennett than the SEI contained in the Bennett Version #1 documents. Specifically, the SEI in the Bennett Version #2 documents contains "3/19/2012 2:07 pm" at the bottom right of each of the three pages of the SEI as the only date and time on each page of that SEI. However, the SEI in the Bennett Version #2 documents do not contain that date or time and, instead, contain the date "6/13/12" at the upper left of each page as the only date on each of three pages of that SEI. Further, a handwritten note attached to the first page of the SEI in the Bennett Version #1 documents states that it was "downloaded 6/13/12", which means it was not provided by Bennett to the DCRP or Piscatella when Bennett submitted his SIC to Piscatella and the DCRP on March 20, 2012 but, instead, was added by Piscatella to the Bennett Version #1 documents on June 13, 2012.

³² Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14 attached as Exhibit #13

29 In addition to the differences between the Bennett Version #1 documents and the Bennett Version #2 documents, there are differences between both the Bennett Version #1 documents and the Bennett Version #2 documents, on the one hand, and similar campaign documents submitted by each of the eighteen other DCRP candidates, on the other hand, including the following

- A A NOTICE OF CANDIDACY AND PLEDGE form, along with a packet of other forms, was given by DCRP candidate filing officials Piscatella or Janette Chipas at DCRP Headquarters to every person signing up to become a DCRP candidate. Those forms were filled out by each candidate applicant in his or her own handwriting at the time of filing with the DCRP to become a candidate. The NOTICE OF CANDIDACY AND PLEDGE of each of the eighteen DCRP candidates other than Bennett was filled out in his or her own handwriting, not typewritten, at no less the five locations on that form. However, the NOTICE OF CANDIDACY AND PLEDGE signed by Bennett was typewritten, not handwriting. The fact that Bennett, alone, has a typewritten form while eighteen other candidates have a handwritten form, when all nineteen candidates followed the same DCRP procedure to become a candidate, itself evidences the unreliability of the DCRP documents for Bennett.
- B The DCRP candidate file for each of the nineteen DCRP candidates for the June 12, 2012 Republican Primary contains a "CANDIDATE PACKET CHECKLIST" ("Checklist"). The first question at the top of each of those nineteen Checklists is worded as follows: "Name as it will appear on the ballot." The name "Sean Bennett" is typewritten as Bennett's answer to that question at the top of the Checklist in both the Bennett Version #1 documents and the Bennett Version #2 documents. However, the name of all of the other eighteen candidates stated to answer that question is handwritten, not typed.
- C The second question at the top of each of those nineteen Checklists is worded as follows: "Candidate for office of." The name "State Senator" is typewritten as Bennett's answer to that question at the top of the Checklist in both the Bennett Version #1 documents and the Bennett Version #2 documents. However, the name of all of the other eighteen candidates as their answer to that question is handwritten, not typed.

The fact that Bennett's DCRP paperwork differs from the paperwork of all eighteen other DCRP candidates in the respects stated above evidences the unreliability of, and some kind of tampering with, the DCRP documents for Bennett.

30 In addition to all of the differences and discrepancies regarding the DCRP documents regarding Bennett described above, numerous additional discrepancies regarding the DCRP candidate paperwork for DCRP candidates also evidence the lack of, and cast doubt on the, truthfulness and reliability of those other DCRP candidate documents

For example, all nineteen candidates signed a CANDIDATE PACKET CHECKLIST ("Checklist") with either Piscatella or Janette Chipas, Assistant Filing Officer for the DCRP, showing which of five specific documents on the Checklist the parties agreed were in the candidate's DCRP file at the time they signed the Checklist. Inexplicably, for twelve of those candidates the DCRP documents provided by Piscatella to the Court on July 24, 2012 are not the same as and are not consistent with what is listed on the CANDIDATE PACKET CHECKLIST signed by the DCRP and each of those twelve respective candidates. Those discrepancies/ inconsistencies include the following

- A. Bennett Bennett Version #1 documents did not include a Campaign Disclosure Form among the documents submitted to the Court on July 23, 2012, even though the Checklists for both the Bennett Version #1 documents and the Bennett Version #2 documents state that a "Campaign Disclosure Form" was among the Bennett Version #1 documents on March 20, 2012.
- B. Bennett The Checklists for both the Bennett Version #1 documents and the Bennett Version #2 documents stated at one time that an "Affidavit" was among the Bennett Version #1 documents and Bennett Version #2 documents. However, no affidavit appears in either version of those documents submitted to the Court on June 23, 2012, and the word "Affidavit" has been crossed out on both version's Checklist.
- C. Byrnes His Checklist says a Campaign Disclosure form was in his file on March 28, 2012, but no Campaign Disclosure form was in his file submitted to the Court on July 23, 2012.

- D Duncan Her Checklist says a Campaign Disclosure form was in her file on March 28, 2012, but no Campaign Disclosure form was in her file submitted to the Court on July 23, 2012
- E Goodman His Checklist says a Campaign Disclosure form was in his file on March 28, 2012, but no Campaign Disclosure form was in his file submitted to the Court on July 23, 2012
- F Hargott His Checklist says a Campaign Disclosure form and an affidavit were in his file on March 20, 2012, but no Campaign Disclosure form or affidavit was in his file submitted to the Court on July 23, 2012
Inexplicably, there are two paper SEIs in his file
- G Heain His Checklist says a Campaign Disclosure form was in his file on March 28, 2012, but no Campaign Disclosure form was in his file submitted to the Court on July 23, 2012
- H Hull His Checklist says a Campaign Disclosure form and an affidavit were in his file on March 20, 2012, but no Campaign Disclosure form or affidavit was in his file submitted to the Court on July 23, 2012
- I Knight His Checklist says a Campaign Disclosure form was in his file on March 16, 2012, but no Campaign Disclosure form was in his file submitted to the Court on July 23, 2012
- J Mondo His Checklist shows that at one time a "Statement of Economic Interests (SEI) – proof of online filing" was in his file, but no SEI was among his documents submitted to the Court on July 23, 2012
- K Nisbet His Checklist says a Campaign Disclosure form was in his file on March 16, 2012, but no Campaign Disclosure form was in his file submitted to the Court on July 23, 2012
- L Pearson Her Checklist says a Campaign Disclosure form was not in her file on March 16, 2012, but a Campaign Disclosure form was in her file submitted to the Court on July 23, 2012. In addition, the following note appeared attached at the upper right corner of her SEI in her file on July 23, 2012: "3/26/12 Per your request. Thanks to all at the office for what you do Mary"
- M Turner The Checklist says a Campaign Disclosure form was in his file on March 28, 2012, but no Campaign Disclosure form was in his file submitted to the Court on July 23, 2012

31. Based on a representation by Piscatella that John Mondo ("Mondo") had filed properly as a candidate, the DCRP certified Mondo in April, 2012, as a properly qualified DCRP candidate for the June 12 Primary. However, the DCRP later decertified Mondo, in May, 2012, as a Primary candidate after Piscatella determined Mondo had not submitted his SEI as required after the SC Supreme Court decision on May 2, 2012, in Anderson v. South Carolina Election Commission, 397 S.C. 551, 725

SE 2d 704 (May 2, 2012) The fact that Piscatella caused the certification of Mondo who later was decertified as unqualified for failure to have submitted a proper SEI evidences that Piscatella did not understand or require compliance with the SEI requirements for becoming a candidate when Bennett signed up with the DCRP to become a candidate on March 20, 2012

32 The above stated facts make me doubt and disbelieve the legality, accuracy, integrity, credibility, reliability and completeness of all the DCRP candidate documents for Bennett I believe that all documents in the DCRP candidate file for Bennett should be construed against both Bennett and Piscatella due to spoliation of evidence because of (a) the illegal, surreptitious and unreliable manner in which the DCRP documents regarding Bennett were commingled and wrongfully maintained outside the control of the DCRP, with the active cooperation and participation of Bennett, and (b) the confusion, inaccuracies, uncertainty and unreliability of those documents resulting from the wrongful manner in which those documents have been intermingled and maintained It is outrageous that Piscatella, Murphy and Bennett surreptitiously conspired to add to -- to "supplement"³³ -- the official DCRP file for Bennett with personal documents maintained by Bennett when they had no authority to do so It is outrageous that Piscatella, at the direction of Murphy, wrongfully was secreting and possessing those documents and withholding even a copy of those documents from me, the DCRP Chairman and members of the public as we all were trying, as they all well knew, to determine whether the non-incumbent DCRP candidates' paperwork had been submitted to the DCRP properly as the August 15, 2012 deadline for finally certifying

³³ See Supplemental Affidavit of Tony Piscatella June 22 2012, para 14 (I have supplemented Mr Bennett's candidate file with those documents)

candidates was approaching. The secretion and withholding of these public documents by Piscatella and Murphy from the DCRP Chairman, me and other members of the public whom they knew wanted a copy of them was done, I believe, for the purpose of helping Bennett, Carter and possibly other candidates Piscatella and Murphy supported, instead of Piscatella fulfilling his duties as a DCRP appointed custodian of records and instead of their neutrally allowing the truth to be ascertained by releasing a copy of the documents. I believe that that Bennett, Murphy, Piscatella and the SCGOP were trying to "run out the clock" by withholding even a copy of those documents from me, the DCRP Chairman and the public until it would be too late to litigate the validity of those documents before the August 15, 2012 certification deadline. It was only the demand of Chairman Duncan on July 9, 2012³⁴ followed by the order by Judge King on July 23, 2012, that finally got these wrongfully withheld public documents released to DCRP Chairman Duncan, me and the public. I believe that Bennett and Piscatella should not reap any benefit from any DCRP document about Bennett as evidence in this litigation given that they have participated in a scheme to supplement the official DCRP file about Bennett with their own inaccurate, different personal documents of Bennett and have helped withhold/secret those documents.

33 The paper SEI Bennett claims to have filed with Piscatella is attached to Bennett's motion to intervene and is a printed copy of a South Carolina State Ethics Commission SEI that was filed online on March 19, 2012 at 2:08 p.m. A copy of that SEI is attached as Exhibit #14.

34 Section 8-13-1356(B) of the Code of Laws of South Carolina states that

"A candidate must file a statement of economic interests for the preceding

³⁴ See paragraphs 16-17 supra.

calendar year at the same time and with the same official with whom the candidate files a declaration of candidacy ” (Emphasis added)

I believe that, by a preponderance of the evidence, Bennett did not file a paper copy of his SEI “at the same time and with the same official with whom” Bennett filed his “declaration of candidacy”, as required by Section 8-13-1356(B) and the Anderson and Florence County cases. I believe that the best evidence of whether Bennett filed an SEI as required by Section 8-13-1356(B) is the fact that there was no SEI in Bennett’s DCRP candidate file on June 13, 2012, even though the DCRP had a routine business practice of maintaining a copy of all documents submitted by a candidate to the DCRP.

35 Even if Sean Bennett did file a SEI with Piscatella properly, Bennett must be decertified. Section 8-13-1356(B) requires that the SEI filed with the party official be “for the preceding calendar year” and Bennett has failed to do so.

36 Stated another way, even if Bennett did file a paper copy of his SEI “at the same time and with the same official with whom” he filed his “declaration of candidacy”, Bennett did not file a statement of economic interests “for the preceding year”, as required by Section 8-13-1356(B). That is shown conclusively by the following facts:

- A Both of the SEIs contained in the Bennett Version #1 documents and the Bennett Version #2 documents filed with the Court on July 23, 2012, show “2011”, not “2012”, as the “Year” of his “Statement of Economic Interests Report”³⁵
- B The SEI Bennett attached to his Motion to Intervene and claimed to have filed properly was for the 2011, not the 2012, report year³⁶
- C Go to the State Ethics Commission website at <http://ethics.sc.gov/Pages/default.aspx>. Click in sequence “Public Reporting”,

³⁵ See Exhibits #17 and #18 attached

³⁶ See Exhibit #16 attached

'Individual Financial Reports', 'Statement of Economic Interests Reports', Filing Year 2012, Search by Last Name, and Next, Enter "Bennett", Click Next. You will NOT see "Sean Bennett" listed with the seven other persons there having the last name of "Bennett"

D Go to the State Ethics Commission website at <http://ethics.sc.gov/Pages/default.aspx>. Click in sequence "Public Reporting", "Individual Financial Reports", "Statement of Economic Interests Reports", Filing Year 2011, Search by Last Name, and Next, Enter "Bennett", Click Next. You will see "Sean Bennett" listed with seven other persons having the last name of "Bennett". You will see there that "Sean Bennett" filed on March 19, 2012 at 2:08:00 pm as a "Candidate Senate". As shown by the attached copy of Bennett's SEI printed at that website, the year of Bennett's "Statement of Economic Interests Report" is "2011", not "2012"

E In order to file a Statement of Economic Interests Report for the year of 2011, Bennett was required to file his SEI in the 2012 Report Year, not in the 2011 Report Year

F Because Bennett filed his SEI in the 2011 Report Year, Bennett in fact filed his SEI for the year 2010, which is not the year preceding the year (2012) he became a DCRP candidate

G Thus, because Bennett filed his SEI "for" the year 2010 and not "for the preceding year", which was 2011, Bennett did not comply with Section 8-13-1356(B)

37 The fact that Bennett had to have filed his SEI on the Report form for 2012 instead of on the Report form for 2011 in order to have filed his SEI "for the preceding year" 2011 is shown by the following

A Instructions on how to "start a new filing" of a SEI appear on Page 7 of the user guide of the State Ethics Commission at the following website <http://ethics.sc.gov/PDFs/Statement%20of%20Economic%20Interest%20User%20Guide%20V1%200.pdf>. That page at that website states that to do a new SEI filing, "Please select the filing year for this report" (Emphasis added).³⁷ It indicates that the year of the form is the filing year. As a result, in 2012 one is supposed to file a 2012 SEI to report for the year 2011.

B The only way to file a SEI for the first time, as Bennett did on March 19,

³⁷ See South Carolina State Ethics Commission Public Disclosure and Accountability Reporting System Electronic Filing Statement of Economic Interest User Guide, at 7 (Version 1.01.01)

2012, is to click "Start a New Filing", which Bennett did on March 19, 2012. Upon clicking "Start a New Filing" Bennett saw, and one would see now, the following message:

"Electronic Filing"

Statement of Economic Interests

Please select the filing year for this report: The information in this report is for the previous calendar year

Note

April 15, 2011 deadline is the 2011 report for information from 1/1/10 to 12/31/2010
April 15, 2012 deadline is the 2012 report for information from 1/1/11 to 12/31/2011" (Emphasis added)

38 Bennett's SEI he claims to have given the DCRP covers the year 2010, not 2011. Bennett did not file a SEI for the year 2011. Therefore, Bennett did not comply with Section 8-13-1356(B)'s requirement that to become a candidate Bennett must have filed a SEI "for the preceding year", which is 2011.

39 Every non-uncumbent DCRP candidate (i.e., Bryngelson, Carter, Duncan, Goodman, Hull, Turner) except Bennett filed his or her SEI on the 2012 Report form, and thereby filed a SEI "for the preceding year", which was 2011. Further, every person with the last name of "Bennett" other than Sean Bennett filed properly on a 2012 or a 2011 report as was required.³⁸ By looking at Exhibit #17 one can see that everyone on the 2011 Bennett list filed a SEI on a 2011 form in 2011 for the year 2010. Similarly, Exhibit #18 shows that everyone on the 2012 Bennett list filed a 2012 form in 2012 for the year 2011. Only Sean Bennett filed his SEI incorrectly, by filing in 2012 on a 2011 form for the year 2010, instead of in 2012 on a 2012 form for the year 2011.

40 The Candidate Campaign Disclosure forms candidates, including Bennett,

³⁸ See attached Exhibits 19 and 20.

were required to complete and did complete work the same way as SEIs. Specifically, the "2012 January 10th" filing for the Campaign Disclosure form that Bennett and other candidates filed electronically with the State Election Commission covers the preceding quarter from October 1 to December 31 of 2011. Bennett completed correctly his "2012, January 10th" "Candidate Campaign Disclosure form" covering the period from October 1 to December 31 of 2011. That exact form completed by Bennett was contained among his Bennett Version #2 documents. Bennett had no trouble figuring out the Ethics Commission form dating system for Candidate Campaign Disclosures. The same form dating system is used for SEIs, i.e., the "filing date" of the SEI form is the date the form is filed, but the SEI form covers activity from a prior time period.

40 Regulations of the State Ethics Commission can be found at

<http://www.scstatehouse.gov/coderegs/c052.php>

According to S.C. Code Regs. 52-204, the State Ethics Commission approves its official forms,³⁹ including the Statement of Economic Interests form,⁴⁰ pursuant to properly promulgated Ethics Commission regulations. The Statement of Economic Interests form has been officially adopted by the State Ethics Commission as part of its regulatory authority. The State Ethics Commission deliberately considers the "filing year" for a Statement of Economic Interests to be the year in which one files a SEI, not the year for which one files a SEI.

³⁹ See S.C. Code Regs. 52-204A.

⁴⁰ S.C. Code Regs. 52-204E(13).

Michael T. Rose
MICHAEL T ROSE

Sworn to and subscribed before me this

30th day of July, 2012

William O Rose
Notary Public for South Carolina

My Commission Expires 8-23-21

EXHIBITS

AFFIDAVIT of MICHAEL T ROSE

- 1 E-mail dated June 14, 2012, from Mike Rose to Tony Piscatella
- 2 E mail dated June 15, 2012, from Tony Piscatella to Mike Rose
- 3 E mail dated June 15, 2012, from Matt Moore to Mike Rose
- 4 E mail dated June 19, 2012, from Mike Rose to Dr Tim Huber and DCRP Chairman
Carroll S Duncan
- 5 E-mail dated June 20, 2012, from Mike Rose to Dr Tim Humber and DCRP Chairman
Carroll S Duncan
- 6 E-mail dated June 20, 2012, from DCRP Chairman Carroll S Duncan to SCGOP ED
Matt Moore
- 7 Letter dated July 9, 2012, from DCRP Chairman Carroll S Duncan to Tony Piscatella
- 8 E-mail dated July 9, 2012, from Todd Kincannon to Chris Murphy
- 9 E-mail dated July 10, 2012, from Chris Murphy to Todd Kincannon
- 10 Letter dated July 11, 2012, from DCRP Chairman Carroll S Duncan to Tony Piscatella
- 11 Affidavit dated July 30, 2012, of Steven Marc Abrams, J D , M S
- 12 Affidavit dated June 11, 2012, of Leonard Patrick Odom
- 13 Affidavit of Tony Piscatella, dated June 21, 2012
- 14 Affidavit of Tony Piscatella, dated June 21, 2012
- 15 Supplemental Affidavit of Tony Piscatella, dated June 22, 2012
- 16 Statement of Economic Interest of Sean Bennett, filed with State Ethics Commission
March 29, 2012, attached to Motion to Intervene of Sean Bennett
- 17 Statement of Economic Interest of Sean Bennett in Bennett Version #1 Documents
- 18 State of Economic Interest of Sean Bennett in Bennett Version #2 Documents
- 19 Persons having last name "Bennett" who filed on 2011 Report Form on State Ethics
Commission website

20 Persons having last name "Bennett" who filed on 2012 Report Form on State Ethics
Commission website

Exhibit
1-10

From Michael Rose [mailto:mrose5@sc.rr.com]
Sent Thursday, June 14, 2012 11:24 PM
To 'Me', tpiscatella@gmail.net
Cc 'mrose5@sc.rr.com'
Subject Tony Piscatella Bennett paperwork

Tony,

As we discussed yesterday, please give me a copy of all of the paperwork regarding Sean Bennett's paperwork that you filed on behalf of the DCRP. I want to review it.

Please confirm where you filed that paperwork, and when.

Thank you.

Mike Rose

Michael Rose

From Matt Moore <matt@scgop.com>
Sent Friday, June 15, 2012 9:47 AM
To Tony Piscatella
Cc mrose5@scrr.com
Subject Re: Tony Piscatella Bennett paperwork

Senator - please understand this has been our policy due to the Democrats trying to beat down our doors and rifle through our filing cabinets. We've made the same requests of them, and they're not budging.

Matt Moore
Executive Director
South Carolina Republican Party
email matt@scgop.com
twitter @MattMooreSC
phone 803 988 8440

On Jun 15, 2012, at 9:42 AM, Tony Piscatella wrote:

Mike

The SCGOP has advised the county parties not to provide any information except through them. Apparently several issues have been raised by people and the state wants to control the flow of information. We are bound by that ruling and can't provide the information I had agreed to give you. It doesn't look like this is going away any time soon.

I'm sorry for the inconvenience this may have caused you.

Tony Piscatella

Treasurer
<image002.jpg>Dorchester County Republican Party
P O Box 2625
Summerville SC 29484
Phone 843 871 7311
Fax 843 821 2405
Cell 843 670 7537
E-Mail tpiscatella@scrr.com
E-Mail2 dc1ptony@gmail.com
Delivery Address for UPS & FedEx
203 Hunt Club Drive
Summerville, SC 29485

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. If you are not the intended recipient of this e-mail and the information it contains or if you are not the employee or agent responsible for delivering this e-mail and the information it contains to the intended recipient, be advised that you have received this e-mail in error and that any use,

On Jun 19, 2012, at 1:16 PM, "Michael Rose" <mrose5@sc.rr.com> wrote

Carroll and Tim,

Given the present circumstances, I want to appeal the certification of Shaun Bennett as
The Republican Party's candidate in the upcoming General Election for Senate District #38

Please tell me what I need to do to process this appeal

Thank you

Mike Rose

----- Forwarded message -----
From: Carroll S. Duncan <carrollsduncan@gmail.com>
Date: Wed, Jun 20, 2012 at 5:06 PM
Subject: Fwd: Appeal Rose vs Bennett Senate District 38
To: Matt Moore <matt@scgop.com>

Answer him or not?

For you, Tony has not and will not alter any records. He's added a copy of the SEI to the file but with note that it's a copy and what day he added and why.

Sent from my iPad

Begin forwarded message:

From: "Mike Rose" <mrose5@sc.rr.com>
Date: June 20, 2012 4:48:21 PM EDT
To: "Tim Huber" <trh61054@aol.com>
Cc: "Carroll Duncan" <carrollsduncan@gmail.com>, <mrose5@sc.rr.com>
Subject: RE: Appeal Rose vs Bennett Senate District 38

Tim and Carroll,

A lawyer told me this afternoon that Tony Piscatella needs to be told that there are computerized records of all computer transactions regarding the paperwork in question, that those records will reveal the truth, and that Tony better not alter in any way the records because if he does he could be indicted.

Mike Rose

Dorchester County Republican Party

89-B Old Trolley Road | Suite 203A | Summerville, South Carolina 29485

July 9, 2012

Tony Piscatella Candidate Filing Officer
Dorchester County Republican Party
89 B Old Trolley Road, Suite 203A
Summerville, South Carolina 29485

Dear Mr. Piscatella

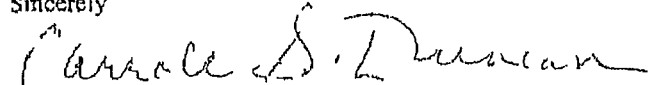
Under direction from the South Carolina Republican Party, the decision was made to keep confidential all Dorchester County Republican Party documents related to candidate filing for the June Primary Elections. I believe this decision was made in error and in my authority as Chairman of the Dorchester County Republican Party, I am reversing it. Accordingly, you are hereby requested to take the following steps:

Please scan as individual PDFs all documents filed with the Dorchester County Republican Party by candidates for the June Primary Elections including but not necessarily limited to statements of intention of candidacy, statements of economic interest, filing receipts for statements of economic interest, pledges, etc. Please email these PDFs to me in a series of emails not exceeding 5 MB in total attachment size. Please verify that no scans cut off any information whatsoever from the header or footer of the documents.

I will provide these documents to anyone who requests them as I believe the public has a right to see them. Further, it is necessary that I obtain them in connection with the litigation we are now facing as well. I am in the process of choosing a member of the South Carolina Bar who is not a resident of Dorchester County to safeguard the documents for the remainder of this election cycle. As soon as they are scanned, please let me know, and I will advise you to deliver all such documents to the Bar member who will serve as the document custodian.

Please see to this as soon as possible.

Sincerely,



Carroll S. Duncan

Chairman

Dorchester County Republican Party

From Chris Murphy [mailto:chris@MURPHYLAWFIRM.LLC.COM]
Sent Tuesday, July 10, 2012 3:31 PM
To: Todd Kincannon
Subject: RE: DCGOP Filing Documents

Todd

Thank you for your email and I apologize for not getting back to you earlier but I have been running around catching up

First I would like to know under what authority you believe you have the capacity to represent the Dorchester County Republican Party (DCRP) or demand the return of any documents maintained by the custodian appointed by the Chairman. I am not aware of any action by the DCRP Executive Committee in which you were retained to represent the interest of the DCRP. I believe it is a conflict of interest for you (under any authority) to represent Candidate Carroll Duncan and the DCRP. Additionally, your attempt to enter into a Consent Order with the Democratic party to decertify Republican Candidates, without the knowledge and agreement of those candidates directly affected, was in my view improper to say the least.

Tony Piscatella, was appointed by Carroll Duncan to oversee the 2012 candidate filing process and as such he is entrusted with maintaining and safeguarding the files. I have taken the liberty of cutting and pasting Article VIII of the DCRP by laws for your review.

ARTICLE VIII

Records

Section 1 All records shall be kept in written or printed hard copy as well as on computer discs. These records

shall be maintained and controlled by a custodian appointed by the County Chairman. They shall be filed in accordance

with the approved filing system and stored in locked file cabinets before the close of business on any day the office has

been opened.

Section 2 Party records shall be made available only to party members. No copies of party records, in any form,

may be distributed without established fees being paid in cash or by check at the time of distribution. Fees will be set by

the Executive Committee.

Section 3 Party computer records shall be stored on two separate storage devices. All storage devices, floppy

discs or other, are to be kept in locked cabinets when not in use.

Section 4 Party records shall be kept from scrutiny by the public or the news media.

Section 5 The County Chairman shall be responsible to ensure that all records, including lists of any kind,

minutes of meetings, correspondence sent and received, etc., shall be kept as permanent party records, and shall be

formally turned over to the succeeding County Chairman immediately upon his taking office.

On Thursday, June 21, 2012, I was retained by Tony Piscatella to represent him with regards to his potential testimony as it relates to the pending lawsuit filed by the Dorchester County Democratic Party whereby they have challenged all non-incumbent Republican candidates. As Mr. Piscatella's attorney, I have advised him to safeguard the filing documents of all the 2012 Republican candidates in Dorchester.

County Absent a Court Order directing Mr Piscatella or my office to turn over the files, they will remain in his custody This will help to ensure the chain of custody and the integrity of any potential evidence as the case makes its way through the judicial process

Sincerely,

Christopher J Murphy, Esq
Murphy Law Firm, L.L.C
136 West Richardson Avenue
Summerville, SC 29483
Phone (843) 832-1120
Fax (843) 832-5969
www.murphyllawfirmllc.com



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From: Todd Kincannon [mailto:todd@thekincannonfirm.com]

Sent: Monday, July 09, 2012 5:11 PM

To: Chris Murphy

Subject: DCGOP Filing Documents

Rep. Murphy

Tony Piscatella has directed that all communication relating to the Dorchester County Republican Party go through you as his attorney. I have not heard back from you regarding my email of last week seeking a convenient time to matters relating to the Dorchester County Democratic Party's lawsuit against the DCGOP. Accordingly, please see the attached letter to your client, Tony Piscatella, from my client, Chairman Carroll Duncan.

The letter requests that Mr. Piscatella scan and email all Dorchester County Republican Party filing documents to Chairman Duncan, though you can send them directly to me as well. Upon receiving them, Chairman Duncan will make them available for public inspection. Given the persistent questions about

these documents and the Dorchester County Republican Party filing process, there is no question but that Dorchester County Republican Party members and the general public should be able to see the contents of the documents

The originals should be maintained in a manner that will prevent tampering, and as explained in the letter, I am looking for a member of the South Carolina Bar not from Dorchester County to perform that service. It will also be important to establish a complete chain of custody of these documents for this litigation.

Chairman Duncan and I wish none of this was necessary, but given the Supreme Court's recent rulings, the pending litigation against the Dorchester County Republican Party and Chairman Duncan, and the public perception surrounding this matter, I simply see no other way to handle this. Please let me know if you have any questions.

Todd Kincannon

NOTE NEW ADDRESS BELOW

****PLEASE UPDATE RECORDS****



THE KINCANNON FIRM
P O Box 7901
COLUMBIA, SC 29202
THEKINCANNONFIRM.COM
OFFICE 877 99 COURT
FAX 888 704 2010

Dorchester County Republican Party

89-B Old Trolley Road | Suite 203A | Summerville South Carolina 29485

July 11, 2012

Tony Piscatella, Candidate Filing Officer/Records Custodian
Dorchester County Republican Party
89-B Old Trolley Road, Suite 203A
Summerville, South Carolina 29485

Dear Mr. Piscatella

You are hereby removed as candidate filing officer/records custodian of the Dorchester County Republican Party ("DCRP"). DCRP First Vice Chairman Tim Huber is hereby appointed as the new DCRP candidate filing officer/records custodian. You are directed to immediately provide all DCRP documents in your possession to Dr. Huber including but not limited to all candidate filings.

I take this action pursuant to my authority under Article VIII Section 1 of the DCRP Bylaws, which vests appointment—and therefore removal—authority in the Chairman. While I have the unilateral authority to remove for any reason or no reason, I believe the DCRP should know why I have taken this action.

On July 9, 2012, I requested in writing that you provide copies of all candidate filing documents to me. Through your attorney, you refused to provide the documents to me despite the fact that I have a right to these documents as a member of the DCRP under Article VIII Section 2 of the DCRP Bylaws.

I have no alternative but to take this step given your refusal to provide the documents. Again, please immediately provide all DCRP documents in your possession to Dr. Huber including but not limited to all candidate filings.

Sincerely,
Carroll S. Duncan
Carroll S. Duncan
Chairman
Dorchester County Republican Party

cc Tim Huber, DCRP First Vice Chairman

Exhibit 11

digital forensics. My office address is 1558 Ben Sawyer Blvd, Suite D, Mount Pleasant, SC 29464. My business phone number is (843) 216-1100. I am a member of the South Carolina Electronic Crime Task Force and a contractor to the United States government to provide digital forensics services to the Department of Justice and Department of Defense. I have been qualified numerous times in state and federal court as an expert on digital and computer forensics at trial. I have been qualified as an expert by the court on every occasion in which I have been offered as such. My CV is attached to this affidavit as Appendix A.

II Materials Reviewed as Basis of My Opinion

- 2 I was retained in this matter to examine a series of computer generated documents that are to be offered as evidence in this above captioned matter, and to opine on the evidentiary value of those documents.
- 3 I have reviewed the following documents in connection with this matter:
 - a) Attachments Affidavit Larry Hargett pdf
 - b) Attachments to Supplemental Affidavit R Goodman pdf
 - c) Bryngelson Affidavit pdf
 - d) Chipas Affidavit Exhibits pdf
 - e) Chipas Affidavits - signed - two 208230812698 pdf
 - f) Duncan Affidavit pdf
 - g) Goodman Affidavit pdf
 - h) Goodman Supplemental affidavit pdf
 - i) Hargett Affidavit signed pdf
 - j) Hull Affidavit pdf

k) Shields GOP Affidavit pdf

l) Turner Affidavit pdf

m) Sean Bennett SEI Backdating Experiment pdf

4 In the affidavits listed above there are repeated references to a date which appears in the lower right hand corner of the reports of the candidate's Statement of Economic Interests that were printed from the SC Ethics Commission's Public Disclosure and Accountability Reporting system on the SC gov website

5 The aforementioned affidavits rely on the date printed in the lower right hand corner of the reports as the actual date on which the reports were printed

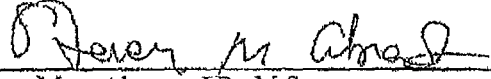
6 For reasons shown below I disagree that this printed date is reliable evidence of when the report was actually printed

III **Experimental evidence and conclusions**

7 On July 28, 2012, I performed an experiment that involved printing the Statement of Economic Interests Report for a randomly selected candidate in the 2012 election cycle from the SC Gov - SC State Ethics Commission Public Disclosure and Accountability Reporting system. I performed this experiment using two different Internet browsers, Microsoft Internet Explorer, and Google Chrome. I printed the economic interest report with the computer's system date set correctly at 7/28/2012, and again after resetting the system date to 6/16/2012. The date shown in the lower right hand side of the printed page each time reflected the system date that was currently set in the machine at the time of the printing. Thus I easily produced a copy of the economic interest form on July 28, 2012, that showed the printed date (in the lower right hand corner of the page) as June 16, 2012 (See Appendix B.)

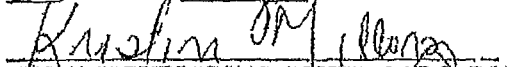
- 8 tests on both browsers showed the same results, that the printed date on the form was not the actual date the form was printed, but in reality was only the system date set in the computer at the time of printing
- 9 The only reliable forensic evidence that can be used to determine to a scientific certainty when these reports were printed is located on the hard drive of the computer(s) that printed the forms in question. That digital evidence is fragile, and once it is overwritten there is no means of accurately determining the date and time that the forms were printed
- 10 Thus it is my conclusion to a scientific certainty that the printed date shown on lower right hand corner of any candidate's Statement of Economic Interests that was printed from the SC gov website is not reliable evidence of when the form was actually printed
- 11 It is my opinion therefore that the date appearing on the lower right hand corner of the Statement of Economic Interests reports that are proposed as evidence in this matter is not reliable evidence as to when the reports were printed

FURTHER THE AFFIANT SAYETH NO!


Steven Marc Abrams, J D , M S

SWORN TO AND SUBSCRIBED BEFORE ME THIS

20, DAY OF July, 2012


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES 12/31/2017

APPENDIX A

Steven M. Abrams, J.D., M.S.
Curriculum Vitae

Steven M Abrams, J.D., M.S.
Attorney, Digital Forensics Examiner and Instructor
1558 Ben Sawyer Blvd , Suite D
Mount Pleasant, SC 29464
843-216-1100
Steve@AbramsForensics.com

Curriculum Vitae

My key practice areas are Computer Forensics, e-Discovery, and Computer Law

Education

- 2012 -Techno Security 2012, Computer Forensics Training Seminar, Myrtle Beach, SC, June 3-6, 2012
- 2011 -November 9-12 EnCase 7 Certification Training, Salt Lake City, UT
-November 6-9 Parabon Forensics Innovations Conference, Park City, UT
- April 7, 2011 SC Electronic Crime Task Force Quarterly Meeting and Training
- 2010 -Techno Security 2010, Computer Forensics Training Seminar, Myrtle Beach, SC, June
- SCALI Annual Training Seminar, May 2010
- 2009 -Celebrity Mobile Device Forensics Certification (CCMDE), SEMAR, Mexico City, Mexico
-SCALI Annual Training Seminar, May 2009
- 2008 -South Carolina Basic Constable Training, Tri County Technical College / SC Criminal Justice Academy, October - November 2008
- Commissioned as a South Carolina State Constable (LFO) on November 20, 2008
Techno Security 2008, Computer Forensics Training Seminar, Myrtle Beach, SC, June
- 2007 - Charleston School of Law, Charleston, SC, Juris Doctor (JD - Magna Cum Laude)
- GMU2007 Computer Forensics Symposium, Regional Computer Forensic Group of the High Technology Crime Investigation Association, Fairfax VA, Aug 2007 (40 CEU HTCIA)
- Techno Security 2007, Computer Forensics Training Seminar, Myrtle Beach, SC, June
- 2006 - University of Aberdeen, School of Law, Kings College, Old Aberdeen, Scotland in collaboration with the University of Baltimore Law School
Summer Law Program in Comparative Criminal Procedure and UK Business Entities & Taxation
- Techno Security 2006, Computer Forensics Training Seminar, Myrtle Beach, SC, June
- SCALI Annual Training Seminar, May 2006
- 2005 - SCALI Annual Training Seminar, May 2005
- SCALI Fall Training Seminar, October 2005

- 2004 Access Data Advanced Windows Forensics, June 23-25, 2004, New York City (24 Credit Hours)
SCALI Annual Training Seminar, May 2004 (10 CEU)
- 2003 - GMU2003 Computer Forensics Symposium, Regional Computer Forensic Group of the High Technology Crime Investigation Association, George Mason University, Fairfax, VA Aug 2003, (40 CEU HTCIA)
Techno Security 2003, Computer Forensics and Security Conference (24 CEU)
SCALI Annual Training Seminar & PI Training Seminar (16 CEU SLED)
- 2002 SCALI Annual & Fall Training Seminars (16 CEU SLED)
GMU2002 Computer Forensics Symposium, Regional Computer Forensic Group of the High Technology Crime Investigation Association, Fairfax VA, Aug 2002, (40 CEU HTCIA)
- Access Data Computer Forensic Boot Camp, North Carolina Justice Academy, Edneyville, NC (24 CEU)
- 1992-1994 Microsoft Internet Developer Workshops NY, NY
- 1992-1993 Novell NetWare CNE Training, IBM Skills Discovery, Jericho NY
- 1984-1985 Microcomputer and Electronics Engineering, Hofstra University, Hempstead NY
- 1982-1983 Ph D Studies, Faculty Fellowship, Columbia University, Graduate School of Arts & Sciences
- 1981-1982 Columbia University, College of Physicians & Surgeons, Master of Science (M S)
- 1977-1981 Allegheny College, Meadville PA, Bachelor of Arts (B A) (Psychology - Computer Science)

Professional Licenses

Current

Licensed Attorney in South Carolina
Licensed Attorney in District of Columbia

Previous

Licensed as a Private Investigator in South Carolina and New York (2002-2008)

Experience (Selected)

- 2011 - Digital Forensics Instructor / Investigator, H-11 Digital Forensics / United States Embassy, Tirane, Albania
- 2010 -- Facilitator, Instructor, Annual In-Service Legals and CDV Training (SLED), Lowcountry Constable Association
- 2009 -- Speaker, South Carolina Association for Justice, Hilton Head, SC (August 6, 2009) Topic Civil Discovery of E-mails after *O'Grady*
- 2009 -- Digital Forensics Instructor/Investigator, H 11 Digital Forensics / United States Embassy, Mexico City, Mexico

2008 – Digital Forensics Instructor/Investigator, H-11 Digital Forensics / United States Embassy, Mexico City, Mexico

2008 – Faculty, SC Bar Convention – Family Law Section CLE

2008 - Shareholder, Abrams Millonzi Law Firm, P C , Mount Pleasant, SC 29464

2007 - Presenter, “E-Discovery Definition, FRCP Changes and Application CLE”, NBI, Charlotte, NC, December 19, 2007

2007 Digital Forensics Instructor/Investigator, H 11 Digital Forensics, United States Embassy, Mexico City, Mexico

2007 - Presenter, “Civil to Criminal Collaborative Computer Forensics Investigations between PIs and Law Enforcement”, GMU2007, August 9th & 10th, 2007

2007 - Presenter – “A South Carolina Lawyer’s Roadmap to Navigating the New Federal E-Discovery Rules,” The South Carolina Bar (CLE Division), April 13, 2007

2006 - Presenter – “Typical Internet Sexual Activity and its Detection”, Family Law CLE, The South Carolina Bar (CLE Division), November 2006

2006 - Instructor, “3-day Hands-on Computer Forensics Workshop”, Trident Technical College, Charleston, SC, CLE accredited by The South Carolina Bar, January 2006

2006 – Present International Journal of Cyber Criminology, Editorial Advisory Board

2005 Lecturer, “Computer Forensic Introduction”, Trident Technical College, CLE accredited by South Carolina Bar and CEU / In-Service hours for PIs / LE by SLED

2001 - Present Steve Abrams & Company, Ltd (dba Abrams Computer Forensics)
Licensed Private Investigator, Computer Forensics Examiner

1998 - 2001 Steve Abrams & Company, Ltd Mt Pleasant, SC, President

1996 - Democratic National Committee, Instructor - Southeast and Northeast Regional Schools for Congressional Campaign Managers

1995 – 1999 Direct Marketers of Charleston Mt Pleasant, SC, Partner
Co owner of Political Database Marketing Company and full service political print shop

1994 - 1995 The Software Studio Mt Pleasant, SC, Owner
Owner of software development company that developed database applications for the Newspaper publishing industry

1992 1993 Town of North Hempstead, Manhasset, NY, Deputy Commissioner of Finance

1986 - 1992 Digitron Telecommunications, Inc , Huntington, NY, Director of R&D

1984 - 1986 Computer Associates International, Islandia, NY, Senior Systems Programmer

1983 Contel Information Systems Division Great Neck NY, Software Engineer
(Developed the first Network Forensics Applications for the DoD)

Recent Publications

Steven M. Abrams, Knowledge of Computer Forensics Is Becoming Essential for Attorneys in the Information Age, 75 NY St B Assn J 8, 15 (Feb 2003)

Steven M. Abrams, Knowledge of Computer Forensics, Essential for 21st Century Private Investigators, 16 PI Mag 46, 59 (October 2003)

Professional Awards & Honors

2008 - Member, SLED Ad Hoc Committee on Computer Forensics

2007 - CALI Excellence for the Future Award, Aviation Law, Charleston School of Law, Fall 2006

- CALI Excellence for the Future Award, Interviewing, Counseling & Negotiation, Charleston School of Law, Fall 2006

- CALI Excellence for the Future Award, Insurance Law, Charleston School of Law, Fall 2006

- Dean's List, Charleston School of Law, Fall 2006, Spring 2007

2006 - Editorial Advisory Board, International Journal of Cyber Criminology

2004 "2004 SCALI Investigator of the Year"

2003 - Member, SLED Private Investigations Business Advisory Committee

Professional Associations

Member, Institute of Electrical and Electronics Engineers - IEEE

Member, South Carolina Association of Legal Investigators - SCALI

Member, Lowcountry Constables Association - LCA

Bar Association Memberships

Admitted to practice in South Carolina
and the District of Columbia

Compensation

I receive \$250 per hour, plus mileage, travel and lodging expenses, for all Computer Forensics services and for depositions and trial testimony

Previous Expert Testimony

I have completed over 800 computer forensics investigations, the overwhelming majority of cases were settled and did not require me to testify

South Carolina cases in which I was qualified in court as an expert are

Hillburn v Hillburn, (2001-DR-08-2354),
Smith v Smith, (2001-DR-22-212),
Natale v Natale, (2003-DR-10-775)
Berda v Berda, (2003-DR-10-1899),
Murphy v Murphy (2004-DR 10-1510) and
Overstolz v Fountain of Youth Wellness Centers LLC (2003 CP-10-000761)
Gitter v Gitter (2008-DR-10 2865)
Ricigliano v Ricigliano, (2009-DR-18-0102)
Edwards v Junevicius, (2010-DR 10-4736)

I was qualified as a testifying expert on digital forensics in federal court in

UHLIG LLC, v JOHN ADAM SHIRLEY, (CIVIL ACTION NO 6 08-1208-HFF)

I have also prepared expert's reports under Federal Rule 26(a)(2)(B) for the following federal civil suits filed in the United States District Court for the District of South Carolina:

Lumpkin v Bennam, (Civil Action No 2 03-2904-23), and
Miller v American LaFrance Corp (Civil Action No 2 04-1668-23)
Microsoft v BWC Products Inc (Civil Action No 2 06 CV-2023-CWII)
Quala Systems, Inc, et al, v Bulkhaul USA, Inc, et al (Civil Action No 2 07-CV-00673-PMD)
Mainfreight v John Marco, et al, (Civil Action No 9-cv00563 JFA)

I was appointed the Court's Expert in US District Court, District of South Carolina, Rock Hill Division

The Travelers Home and Marine Ins Co v Pope, C/A No 0 10-cv 1688-JFA

I was qualified as a computer forensics expert in North Carolina courts in
Hollins v Lightfoot

In addition I have been deposed in the following matters over the past five years

Calandra v Calandra (2004-DR-10-2675)

McLernon v McLernon (DR10 2003 003090)

White v Cassidy (2004-DR-08-256)

Khoury v Noce (2006-CP-10-001830)

Quala Systems, Inc, et al , v Bulkhaul USA, Inc , et al (Civil Action No 2 07-CV-00673-PMD)

Matrfreight v John Marco, et al , (Civil Action No 9 cv00563 JFA)

Beard v Dunn & Dixon-Hughes et al, (Case No 2010-CP-08-0776)

UHLIG, LLC, V JOHN ADAM SHIRLEY, (CIVIL ACTION No 6 08 1208-HFF)

(Revised July 28, 2012)

Appendix B ~ Experimental evidence that date in lower right corner of Statement of Economic Interests ("SEI") Reports from SC GOV is not reliable evidence as to when the SEI report was printed

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting

Individual Reports
Statement of Economic Interests

Statement of Economic Interests Report

Name Jeffrey Bennett
Year 2012
Filing Date 4/19/2012
Version Original

Demographic Information

Name	Address	Phone	County
Jeffrey Bennett	105 Ashley Road Clemson, SC 29631	864 654 8436	Pickens

Positions

Position/Title	Entity	Type	Term of Office	Date Filed
City Council	Clemson	Candidate	6/2012 - 11/2012	4/2012

Income and Benefits

*** Filer does not have any personal income and benefit items to disclose ***

Family Income and Benefits

*** Filer does not have any family income and benefit items to disclose ***

Regulated Business Associations

*** Filer does not have any regulated business items to disclose ***

Real or Personal Property Interests

*** Filer does not have any property interest items to disclose ***

Real or Personal Property Interests II

*** Filer does not have any sold, leased, or rented property interest items to disclose ***

Business Interests

*** Filer does not have any business interest items to disclose ***

Creditors

*** Filer does not have any creditor items to disclose ***

Lobbyist/Lobbyist's Principal

*** Filer does not have any Lobbyist/Lobbyist's principal items to disclose ***

Government Contracts

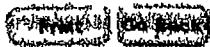
*** Filer does not have any government contract items to disclose ***

Gifts

*** Filer does not have any gift items to disclose ***

Travel Reimbursement

*** Filer does not have any travel items to disclose ***



SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting

Individual Reports

Statement of Economic Interests

Statement of Economic Interests Report

Name Jeffrey Bennett
Year: 2012
Filing Date 4/19/2012
Version Original

Demographic Information

Name	Address	Phone	County
Jeffrey Bennett	105 Ashley Road Clemson, SC 29631	854 654 8436	Pickens

Positions

Position/Title	Entity	Type	Term of Office	Date Filed
City Council	Clemson	Candidate	6/2012 - 11/2012	4/2012

Income and Benefits

*** Filer does not have any personal income and benefit items to disclose ***

Family Income and Benefits

*** Filer does not have any family income and benefit items to disclose ***

Regulated Business Associations

*** Filer does not have any regulated business items to disclose ***

Real or Personal Property Interests

*** Filer does not have any property interest items to disclose ***

Real or Personal Property Interests II

*** Filer does not have any sold leased or rented property interest items to disclose ***

Business Interests

*** Filer does not have any business interest items to disclose ***

Creditors

*** Filer does not have any creditor items to disclose ***

Lobbyist/Lobbyist's Principal

*** Filer does not have any lobbyist/lobbyist's principal items to disclose ***

Government Contracts

*** Filer does not have any government contract items to disclose ***

Gifts

*** Filer does not have any gift items to disclose ***

Travel Reimbursement

*** Filer does not have any travel items to disclose ***



Exhibit 12-15

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2012 CP 18- 1632

STATE OF SOUTH CAROLINA }
COUNTY OF DORCHESTER }

AFFIDAVIT OF TONY PISCATELLA

PERSONALLY APPEARED BEFORE ME, TONY PISCATELLA, who after being duly sworn, deposes and says as follows

- 1 I am a volunteer member of the Dorchester County Republican Party and serve as Treasurer for the Party I am also a member of the County Executive Committee.
- 2 I was designated by the County Party Chairwoman, Carroll Duncan, to be the person to receive candidate filings for the 2012 Republican Primary
- 3 The Republican Party HQ located at 89B Old Trolley Road, Suite 203A, Summerville South Carolina 29485 was designated as the location to receive the filings
- 4 On Tuesday, March 20, 2012, Sean Bennett, a person known to me, appeared and announced that he was going to file as a candidate for Senate District 38
- 5 Mr Bennett, who appeared with a female witness, filed the following documents with me
 - a Statement of Intention of Candidacy (SIC) and Pledge,
 - b Statement of Economic Interest (SEI) and Proof of filing,
 - c Candidate Support Committee Declaration Statement
 - d a Campaign Disclosure
- 6 We both acknowledged receipt of the documents by signing a Candidate Packet Checklist attached hereto as Exhibit A
- 7 Mr Bennett also paid his filing fee in the amount of \$416.00 made payable to the Dorchester County Republican Party

FURTHER AFFIANT SAITH NOT

SWORN TO AND SUBSCRIBED BY (OR ME)
this 21st day of April 2012

Notary Public for the State of South Carolina

My Commission expires 11/28/2021

By Tony Piscatella
Tony Piscatella
CHRISTOPHER J. MURPHY
NOTARY PUBLIC
My Commission Expires 11/28/2021
SOUTH CAROLINA

EXHIBIT A

DORCHESTER COUNTY REPUBLICAN PARTY

CANDIDATE PACKET CHECKLIST

Name as it will appear on the ballot Sean Bennett

Candidate for office of State Senator District 38

Paid DCRP Membership ☒ Y ☐ N

Filing Fee Amount \$ 416.00 Paid Date 3/20 /2012

Make checks payable to DCRP

- ☒ Statement of Intention of Candidacy (SIC) and Pledge
- ☒ Statement of Economic Interests (SEI) – proof of online filing
- ☒ Candidate Support Committee Declaration Statement
- ☒ Affidavit – (Requirements for Coroner and Sheriff)
- ☒ Campaign Disclosure – Not required at time of filing

file online within 10 days of raising or spending \$500, copy to office

STATEMENT, I hereby acknowledge that I have received all of the forms and information needed to file for the above office and state that I have accurately and honestly completed the documents

Candidate signature [Signature] Date 3/20 /2012

Received by [Signature] Date 3/20 /2012

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2012 JUL 24 PM 12:28
CLERK OF COURT
DORCHESTER COUNTY

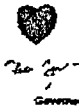
SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES
DRIVER LICENSE

PISCATELLA, ANTHONY L JR
203 HUNT CLUB DR
SUMMERVILLE SC 294354803

DL# 002168484
Expires: 01-22-2017

Class: D Hgt: 5-08 Wgt: 210
Sex: M DOB: 01-22-1942
Issued: 01-18-2007 18081 R 1

C. J. R. [Signature]



RENEWAL A



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CLERK OF COURT
BERNARD COUNTY

STATE OF SOUTH CAROLINA }
COUNTY OF DORCHESTER }

2012 CP 18 1632

AFFIDAVIT OF TONY PISCATELLA

PERSONALLY APPEARED BEFORE ME, TONY PISCATELLA, who after being duly sworn, deposes and says as follows

- 1 I am a volunteer member of the Dorchester County Republican Party and serve as Treasurer for the Party. I am also a member of the County Executive Committee
- 2 I was designated by the County Party Chairwoman, Carroll Duncan, to be the person to receive candidate filings for the 2012 Republican Primary
- 3 The Republican Party HQ located at 89B Old Trolley Road, Suite 203A, Summerville, South Carolina 29485 was designated as the location to receive the filings
- 4 On Friday, March 16 2012, Ed Carter, a person known to me, appeared and announced that he was going to file as a candidate for House District 97
- 5 Mr Carter, who appeared with a female witness, filed the following documents with me:
 - a Statement of Intention of Candidacy (SIC) and Pledge,
 - b Statement of Economic Interest (SEI) and Proof of filing,
 - c Candidate Support Committee Declaration Statement
 - d a Campaign Disclosure
- 6 We both acknowledged receipt of the documents by signing a Candidate Checklist attached hereto as Exhibit A
- 7 Mr Carter also paid his filing fee in the amount of \$208.00 made payable to the Dorchester County Republican Party

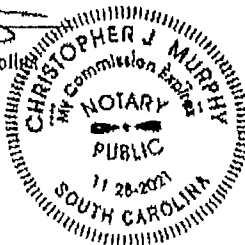
2012 JUL 24 PM 12:28
CLERK OF COURT
DORCHESTER COUNTY

FURTHER AFFIANT SATH NOT

SWORN TO AND SUBSCRIBED BEFORE ME
this 21st day of June 2012

Notary Public for the State of South Carolina

My Commission expires 11/28/2021



By Tony Piscatella
Tony Piscatella

EXHIBIT A
DORCHESTER COUNTY REPUBLICAN PARTY

CANDIDATE PACKET CHECKLIST

Name as it will appear on the ballot Ed Carter
Candidate for office of SC House of Representatives, District 97
Paid DCRP Membership ☒ Y ☐ N
Filing Fee Amount \$ 208 Paid Date 3 / 16 / 2012

Make checks payable to DCRP

☒ Statement of Intention of Candidacy (SIC) and Pledge
☒ Statement of Economic Interests (SEI) – proof of online filing
☒ Candidate Support Committee Declaration Statement
N/A Affidavit – (Requirements for Coroner and Sheriff)
☒ Campaign Disclosure – Not required at time of filing

2012 JUL 24 PM 12:28
-LED-RECORDED
JERRY L. GUY, JR.
CLERK OF COURT
DORCHESTER COUNTY

file online within 10 days of raising or spending \$500, copy to office

STATEMENT I hereby acknowledge that I have received all of the forms and information needed to file for the above office and state that I have accurately and honestly completed the documents

Candidate signature Ed Carter Date 3 / 16 / 2012
Received by Jerry Bennett Date 3 / 16 / 2012

SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES
DRIVER'S LICENSE

PISCATELLA, ANTHONY L JR
203 HUNT CLUB DR
SUMMERVILLE SC 294854803

DL#- 002168484
Expires 01-22-2017

Class D Hgt: 6-08 Wgt: 210
Sex M DOB: 01-22-1942
Issued: 01-18-2007 18081 R 1

C. L. R. R.



REVISIONS: A

CLASSIFICATION



CLERK OF COURT
BORCHESTER COUNTY

2012 JUL 24 PM 12:20

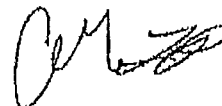
LED-RECORDED

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)
) SUPPLEMENTAL
) AFFIDAVIT OF TONY PISCATELLA

PERSONALLY APPEARED BEFORE ME, TONY PISCATELLA, who after being duly sworn, deposes and says as follows

- 1 I am a volunteer member of the Dorchester County Republican Party and serve as Treasurer for the Party I am also a member of the County Executive Committee
- 2 I was designated by the County Party Chairwoman, Carroll Duncan, to be the person to receive candidate filings for the 2012 Republican Primary
- 3 The Republican Party HQ located at 89B Old Trolley Road, Suite 203A, Summerville, South Carolina 29485 was designated as the location to receive the filings
- 4 On Tuesday, March 20, 2012, Sean Bennett, a person known to me, appeared and announced that he was going to file as a candidate for Senate District 38
- 5 Mr Bennett, who appeared with a female witness, filed the following documents with me
 - a Statement of Intention of Candidacy (SIC) and Pledge,
 - b Statement of Economic Interest (SEI) and Proof of filing,
 - c Candidate Support Committee Declaration Statement,
 - d a Campaign Disclosure
- 6 We both acknowledged receipt of the documents by signing a Candidate Packet Checklist attached hereto as Exhibit A
- 7 Mr Bennett also paid his filing fee in the amount of \$416.00 made payable to the Dorchester County Republican Party
- 8 I asked Mr Bennett if he would like a copy of his filing documents and he stated he did A copy was made of his entire packet for him
- 9 On May 4th, 2012, after the SC Supreme Court decision in Anderson, I was directed by Carroll Duncan to go to Party HQ and verify which non exempt candidates filed paper copies of their SEI at the time of their filing I proceeded to Party HQ and pulled the candidate files and matched up the candidate files with the paper SEI that we had

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2012 JUL 24 PM 12 28
CLERK OF COURT
DORCHESTER COUNTY



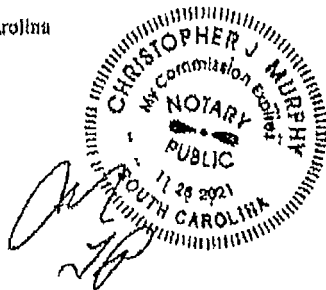
- received Only one non exempt candidate, John Mondo, did not simultaneously file a paper SEI at the time he filed for office
- 10 After matching the SEIs with each candidate's file, the files were placed back into the filing cabinet drawer located in the back room. I then left
 - 11 When I left party HQ that morning, Sean Bennett's file contained his SEI along with all of his other documents
 - 12 On Thursday, June 7, 2012 after the court decision was handed down regarding Florence County, I was directed again by Carroll Duncan to re verify the files again because the candidates had to be re certified At that time, all files were intact with complete documentation to include SEIs for those non-exempt candidates
 - 13 On June 13, 2012, I was asked by Carroll Duncan to again check the files because there was talk in the community regarding the ineligibility of candidates I went to party HQ and discovered that the files were intact with the exception of Sean Bennett's file which was missing his SEI and initial campaign disclosure forms but not the confirmations
 - 14 On June 21, 2012, I requested attorney Chris Murphy to obtain a copy of Mr Bennett's candidate documents that I knew he received from me on March 20, 2012 I have supplemented Mr Bennett's candidate file with those documents These documents are true and accurate copies of the original documents that Mr Bennett filed with me on March 20, 2012

FURTHER AFFIANT SAITH NOT!

SWORN TO AND SUBSCRIBED BEFORE ME
this 22nd day of June 2012

Notary Public for the State of South Carolina
My Commission expires 11 28 2021

By Tony Piscatella
Tony Piscatella



FILED-RECORDED
2012 JUL 24 PM 12:28
CLERK OF COURT
BORKESTER COUNTY

EXHIBIT A

DORCHESTER COUNTY REPUBLICAN PARTY

CANDIDATE PACKET CHECKLIST

Name as it will appear on the ballot Sean Bennett

Candidate for office of State Senator District 38

Paid DCRP Membership ☒ Y ☐ N

Filing Fee Amount \$ 416 Paid Date 3/20 /2012

Make checks payable to DCRP

- ☒ Statement of Intention of Candidacy (SIC) and Pledge
- ☒ Statement of Economic Interests (SEI) -- proof of online filing
- ☒ Candidate Support Committee Declaration Statement
- ☒ Affidavit -- (Requirements for Coroner and Sheriff)
- ☒ Campaign Disclosure -- Not required at time of filing

file online within 10 days of raising or spending \$500, copy to office

STATEMENT I hereby acknowledge that I have received all of the forms and information needed to file for the above office and state that I have accurately and honestly completed the documents

Candidate signature [Signature] Date 3/20 /2012

Received by [Signature] Date 3/20 /2012

FILED-RECORDED
2012 JUL 24 PM 12:20
CLERK OF COURT
DORCHESTER COUNTY

SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES
DRIVER'S LICENSE

PISCATELLA, ANTHONY L JR
203 HUNT CLUB DR
SUMMERVILLE SC 294854883

DL# 002188484
Expires 01 22-2017

Class D Hgt: 5-08 Wgt: 210
Sex M DOB: 01 22 1942
Issued 01-18 2007 18081 R 1

C. J. R. [Signature]



Restrictions A

Donor



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2012 JUL 24 PM 12:20
HENRY - GRANT
CLERK OF COURT
BERKELEY COUNTY

Exhibit 16

**SC GOV - SC State Ethics Commission Public Disclosure and Accountability
Reporting****Electronic Filing****Statement of Economic Interests, Review****Filing Report Review**

Name Sean Bennett
Year 2011
Filing Type Original

Demographic Information

Name	Address	Phone	County
Sean Bennett	1422 Peninsula Points Summerville, SC 29485	843 442 3009	Dorchester

Positions

Position/Title	Entity	Type	Term of Office	Date Filed
Senator	Senate	Candidate	1/2013 - 1/2017	3/2012

Income and Benefits

*** No Income and Benefits Reported ***

Family Income and Benefits

*** No Family Income and Benefits Reported ***

Regulated Business Associations

*** No Regulated Business Associations Reported ***

Real or Personal Property Interests

*** No Property Interest Entries Reported ***

Real or Personal Property Interests II

*** No Sold, Leased, or Rented Property Interests Reported ***

Business Interests

Name of Business	Relationship
Asset Integration Consultants, Inc	Owner

Creditors

*** No Creditors Reported ***

Lobbyist/Lobbyist's Principal

*** No Lobbyist/Lobbyist's Principal Entries Reported ***

Government Contracts

*** No Government Contracts Reported ***

Gifts

*** No Gifts Reported ***

Travel Reimbursement

*** No Travel Reimbursements Reported ***

General Assembly

*** No General Assembly Entries Reported ***

Print Go Back

Exhibit 17

6/13/12

SC GOV SC State Ethics Commission Public Disclosure and Accountability Reporting

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting

Individual Reports

Statement of Economic Interests

Statement of Economic Interests Report

Name Sean Bennett
Year 2011
Filing Date 03/19/2012

FILED-RECORDED
2012 JUL 24 PM 12 12
CLERK OF COURT
DORCHESTER COUNTY

Demographic Information

Name	Address	Phone	County
Sean Bennett	1422 Peninsula Pointe Summerville, SC 29485	843 442 3009	Dorchester

Positions

Position/Title	Entry	Type	Term of Office	Date Filed
Senator	Senate	Candidate	1/2013 1/2017	3/2012

Income and Benefits

*** Filer does not have any personal income and benefit items to disclose ***

Family Income and Benefits

*** Filer does not have any family income and benefit items to disclose ***

Regulated Business Associations

*** Filer does not have any regulated business items to disclose ***

Real or Personal Property Interests

*** Filer does not have any property interest items to disclose ***

Real or Personal Property Interests II

Downloaded
6/13/12

6/13/12

SC GOV SC State Ethics Commission Public Disclosure and Accountability Reporting

*** Filer does not have any sold, leased, or rented property interest items to disclose ***

Business Interests

Name of Business	Relationship
Asset Integration Consultants, Inc	Owner

Creditors

*** Filer does not have any creditor items to disclose ***

Lobbyist/Lobbyist's Principal

*** Filer does not have any Lobbyist/Lobbyist's principal items to disclose ***

Government Contracts

*** Filer does not have any government contract items to disclose ***

Gifts

*** Filer does not have any gift items to disclose ***

Travel Reimbursement

*** Filer does not have any travel items to disclose ***

General Assembly

*** Filer does not have any general assembly items to disclose ***

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CLERK OF COURT
BROOKS COUNTY

6/13/12

SC GOV SC State Ethics Commission Public Disclosure and Accountability Reporting

[Print](#) [Go Back](#)

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2012 JUL 24 PM 12
CLERK OF COURT
BERKELEY COUNTY

Exhibit 18

**SC GOV - SC State Ethics Commission Public Disclosure and Accountability
Reporting**

Electronic Filing

Statement of Economic Interests Filing confirmation

Your report has been filed successfully on 3/19/2012 2 08 11 PM Your confirmation number is
SEI11867 R33162 378da468

Your confirmation has been sent to the email address on record Please print this page for your records Click 'Continue' to return
to your Statement of Economic Interests Filings or logout if you are finished

[Continue](#)

FILED-RECORDED
2012 JUL 24 PM 12:12
CLERK OF COURT
BERKELEY COUNTY

SC GOV - SC State Ethics Commission Public Disclosure and Accountability
Reporting
Electronic Filing
Statement of Economic Interests Review

Filing Report Review

Name: Sean Bennett
 Year: 2011
 Filing Type: Original

Demographic Information

Name	Address	Phone	County
Sean Bennett	1422 Peninsula Pointe Summerville SC 29485	843 442 3009	Dorchester

Positions

Position/Title	Entity	Type	Term of Office	Date Filed
Senator	Senate	Candidate	1/2013 1/2017	3/2012

Income and Benefits

*** No Income and Benefits Reported ***

Family Income and Benefits

*** No Family Income and Benefits Reported ***

Regulated Business Associations

*** No Regulated Business Associations Reported ***

Real or Personal Property Interests

*** No Property Interest Entities Reported ***

Real or Personal Property Interests II

FILED-RECORDED
 2012 JUL 24 PM 12:12
 JEFFREY L. CARR
 CLERK OF COURT
 BORCHESTER COUNTY

*** No Sold, Leased or Rented Property Interests Reported ***

Business Interests

Name of Business	Relationship
Asset Integration Consultants, Inc	Owner

Creditors

*** No Creditors Reported ***

Lobbyist/Lobbyist's Principal

*** No Lobbyist/Lobbyist's Principal Entries Reported ***

Government Contracts

*** No Government Contracts Reported ***

Gifts

*** No Gifts Reported ***

Travel Reimbursement

*** No Travel Reimbursements Reported ***

General Assembly

*** No General Assembly Entries Reported ***

Print Go Back

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CLERK OF COURT
BROCKTON COUNTY

Exhibit 19-20

7/25/12

SC GOV SC State Ethics Commission Public Disclosure and Accountability Reporting

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting**Individual Reports****Statement of Economic Interests****Selected**

Last Name bennett
 Year, 2011

Click on name to review the report

Search Results

Name	Office	Type	Entity	Date Filed	Version
Bennett, Bennie D	Superintendent	Employee	Newberry	3/21/2011 3 07 00 PM	Original
Bennett, Brenda P	Probate Judge	Elected	Allendale	4/27/2011 2 06 00 PM	Original
Bennett II, Charles S	Chief Administrative Official	Employee	North Augusta	4/12/2011 4 18 00 PM	Original
Bennett, Earle M	Public Member, Trustee, Commission Member, or Board Member	Appointed	Wil Lou Gray Opportunity School	3/3/2011 10 33 00 AM	Original
Bennett, Frankie	City Council	Elected	Estill	1/24/2011 5 59 00 PM	Original
Bennett, Linda	Public Member, Trustee, Commission Member, or Board Member	Appointed	Patriots Point Dev Authority	9/22/2011 3 05 00 PM	Original
Bennett, Sean	Senator	Candidate	Senate	3/19/2012 2 08 00 PM	Original
Bennett, Timothy R	Chief Administrative Official	Employee	Allendale	4/4/2011 4 30 00 PM	Original

[← Back](#) [Start Over](#)

7/25/12

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting

Individual Reports

Statement of Economic Interests

Selected

Last Name bennett
Year 2012

Click on name to review the report

Search Results

Name	Office	Type	Entity	Date Filed	Version
Bennett, Bennie D	Superintendent	Employee	Newberry	3/26/2012 3 06 00 PM	Original
Bennett, Bennie D	Superintendent	Employee	Newberry	3/26/2012 3 07 00 PM	Amendment 1
Bennett, Earle M	Public Member, Trustee, Commission Member, or Board Member	Appointed	Will Lou Gray Opportunity School	3/13/2012 3 45 00 PM	Original
Bennett, Franka	City Council	Elected	Estill	2/20/2012 8 00 00 PM	Original
Bennett, Jeffrey	City Council	Candidate	Clemson	4/19/2012 10 47 00 AM	Original
Bennett, Linda	Public Member, Trustee, Commission Member, or Board Member	Appointed	Patriots Point Dev Authority	1/26/2012 9 10 00 AM	Original
Bennett, Timothy R	Chief Administrative Official	Employee	Allendale	1/24/2012 4 13 00 PM	Original

« Back Start Over

Exhibit I

Cod E of Laws of South Carolina 1976 Annotated Currentness
Regulations

Chapter 52 State Ethics Commission (Refs & Annots)

Article 6 Statement of Economic Interests and Contract Disclosure Forms

→ → 52 601 General

A The Commission's Statement of Economic Interests Form and the Contract Disclosure Form are the official forms required to be filed with the Commission in order to comply with the disclosure requirements required under the Act and this Regulation

B The original and one copy of the form shall be filed as provided in these regulations and the Act

C The Statement of Economic Interests reporting period is the previous calendar year from January 1, through December 31 The first Statement of Economic Interest is required to be filed upon taking the oath of office or being employed with the State or political subdivision Thereafter, an annual updated Statement is required to be filed with the Commission no later than April 15 The Contract Disclosure Form reporting period is for the fiscal year of July 1, through June 30 of each year and is due on June 30 of each year

D A person required to file a Statement who is no longer in office on April 15 of the year following the first filing, is not required to file an updated Statement

HISTORY Added by State Register Volume 21, Issue No 6, Part 2 eff June 27, 1997

S C CODE REGS 52 601 SC ADC 52 601

Current through State Register Volume 36, Issue 6 eff June 22 2012

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END OF DOCUMENT

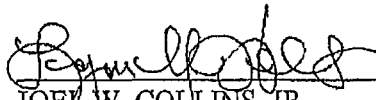
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DOCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
Dorchester County Democratic Party,	)	CIVIL ACTION NUMBER 2012-CP 18-1632
	)	
Plaintiff,	)	
	)	
vs	)	DEFENDANT MIKE ROSE'S MOTION
	)	FOR SANCTIONS FOR SPOILIATION OF
Dorchester County Republican Party	)	EVIDENCE AGAINST DEFENDANTS
(Caitoll Duncan, as Chairman), Colleton	)	SEAN BENNETT AND TONY
County Republican Party, Berkeley County	)	PISCATELLA
Republican Party, Charleston County	)	
Republican Party, South Carolina	)	
Republican Party (Matt Moore as Executive	)	
Director & Chad Connolly as Chairman),	)	
Dorchester County Election Commission	)	
(Joshua Dickard as Executive Director),	)	
Colleton County Election Commission,	)	
Berkeley County Election Commission,	)	
Charleston County Election Commission,	)	
South Carolina State Election Commission	)	
(Marc Andino, as Executive Director &	)	
Chris Whitman as Director of Public	)	
Information and Training), Mike Rose, and	)	
Tony Piscatella,	)	
	)	
Defendants	)	

Defendant Mike Rose hereby moves this Court for an order sanctioning Defendants Sean Bennett and Tony Piscatella for spoliation of evidence for altering the contents of Mr. Bennett's official Dorchester County Republican Party candidate file. This motion is based upon the grounds that the unexplained and deliberate spoliation of relevant, documentary, or other evidence, or the mutilation or alteration of such evidence, gives rise to an inference that the matter destroyed, mutilated, or altered is unfavorable to the spoliator. See, e.g., Wisconsin Motor Corp. v. Green, 224 S.C. 460, 79 S.E.2d 718 (1954), Pungle v. SLR, Inc. of Summerton, 382 S.C. 397, 675 S.E.2d 783 (Cl. App. 2009), Gathers v. S.C. Elec. & Gas Co., 311 S.C. 81, 427

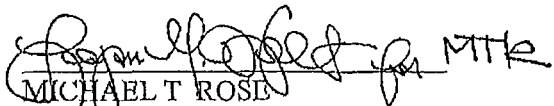
S E 2d 687 (Ct App 1993), 31A C J S Evidence § 251 (West 2012) In support of this motion, Defendant Mike Rose relies on all matters of record, including the pleadings, affidavits, and exhibits, as well as the memorandum of law in support of this motion, and such oral argument as may be heard by the Court

Respectfully submitted,

COLLINS & LACY, P C

By 
JOEL W COLLINS, JR
LOGAN M WELLS
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660
(803) 771-4484 (f)

ALL ORNEYS FOR DEFENDANT
MIKE ROSE

By 
MICHAEL T ROSE
Pro se

Columbia, South Carolina
August 1, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DOCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
Dorchester County Democratic Party,	)	CIVIL ACTION NUMBER 2012-CP-18-1632
	)	
Plaintiff,	)	
	)	
vs	)	MEMORANDUM IN SUPPORT OF
	)	DEFENDANT MIKE ROSE'S MOTION
Dorchester County Republican Party	)	FOR SANCTIONS FOR SPOLIATION OF
(Carroll Duncan, as Chairman), Colleton	)	EVIDENCE AGAINST DEFENDANTS
County Republican Party, Berkeley County	)	SEAN BENNETT AND TONY
Republican Party, Charleston County	)	PISCATELLA
Republican Party, South Carolina	)	
Republican Party (Matt Moore as Executive	)	
Director & Chad Connolly as Chairman),	)	
Dorchester County Election Commission	)	
(Joshua Dickard as Executive Director),	)	
Colleton County Election Commission,	)	
Berkeley County Election Commission,	)	
Charleston County Election Commission,	)	
South Carolina State Election Commission	)	
(Marc Andino, as Executive Director &	)	
Chris Whitmire as Director of Public	)	
Information and Training), Mike Rose, and	)	
Tony Piscatella,	)	
	)	
Defendants	)	

STATEMENT OF THE CASE

Plaintiff Dorchester County Democratic Party filed this action on June 29, 2012. On July 9, 2012, Defendant Sean Bennett filed a Motion to Intervene, and on July 12, 2012, Defendant Mike Rose filed a Motion to Intervene. On July 20, 2012, Plaintiff filed the First Amended Verified Complaint for Declaratory Judgment, Writ of Mandamus, and Injunctive Relief, adding, *inter alia*, Sean Bennett, Mike Rose, and Tony Piscatella as defendants. Defendant Mike Rose now moves this Court for an order sanctioning Defendants Sean Bennett and Tony Piscatella for

spoliation of evidence in altering the contents of Mr. Bennett's Dorchester County Republican Party candidate file and offers this memorandum in support.

STATEMENT OF FACTS

Filing for the Dorchester County Republican Primary opened on March 16, 2012, and closed March 30, 2012. Defendant Tony Piscatella was the individual in charge of the candidate filing process (Ex. A, Aff. of Carol Duncan, at ¶3). Mr. Piscatella also acted as the Dorchester County Republican Party ("DCRP") records custodian during the 2012 primary election (Stipulation of Facts at ¶4). Defendant Mike Rose is the current Senator for District 38, and was the incumbent candidate in the Dorchester County Republican Primary (Stipulation of Facts at ¶1). Defendant Sean Bennett is seeking election to the South Carolina Senate District 38 seat, and was the non-incumbent candidate in the Dorchester County Republican Primary (Stipulation of Facts at ¶2).

Prior to the opening of the filing period for the Dorchester County Republican Primary, the South Carolina Republican Party ("SCRP") provided candidate filing instructions and a checklist to the County Republican Parties based on information provided to the SCRP by the South Carolina State Election Commission and the South Carolina State Ethics Commission (Ex. A, Aff. of Carol Duncan, at ¶5). The SCRP's instructions explained the various documents which needed to be filed by the candidates (Id. at ¶6). With respect to the SEI filing requirement, the SCRP instructed that candidates bring a proof of online filing showing that the SEI form had been filed with the South Carolina State Ethics Commission rather than a paper copy of the SEI itself (Id.). The checklist provided by the SCRP also required a "proof of online filing" rather than a paper copy of the SEI itself (Id. at ¶8), see also (Ex. B, Checklist Example). On March 12, 2012, the DCRP sent an email to all elected officials and announced candidates

who it was believed intended to file with the DCRP to run in the June 12, 2012 Primary setting forth the instructions of the SCRP (Id. at ¶7)

Mr. Piscatella apparently avers that, rather than comply with the instructions of the South Carolina State Election Commission, the South Carolina State Ethics Commission, the SCRP, and the checklist provided, he required the candidates to file a paper SEI for the preceding calendar year at the same time and with the same official with whom the candidates filed a SIC, (Ex. A, Aff. of Carol Duncan, at ¶12), however, the statements of numerous candidates indicate that Mr. Piscatella's averment is, at best, inaccurate. The details of the aforementioned candidates' statements are set forth in the Statement of Facts of Defendant Mike Rose, and therefore, so as not to burden the Court, are not reproduced here, but instead are incorporated herein by reference. See (Statement of Facts of Mike Rose at pp. 3-5)

Despite the statements of the aforementioned candidates regarding their similar experiences, Mr. Piscatella states that, on March 20, 2012, Sean Bennett, non-incumbent candidate for South Carolina Senate District 38, filed in front of a female witness (1) his SIC and pledge, (2) his SEI together with proof of filing, (3) a Candidate Support Committee Declaration Statement, and (4) his CDF (Ex. C, Supp. Aff. of Tony Piscatella). Contrary to Mr. Piscatella's averment, Ann Shields and Janette Chipas state that the woman who accompanied Mr. Bennett to the DCRP Headquarters was not a witness to Mr. Piscatella's filing (Ex. D, Aff. of Ann Shields), (Ex. E, Aff. of Janette Chipas re Affidavit of Ann Shields). The SEI Mr. Piscatella avers is a part of Mr. Bennett's filing is on a form for the year 2011 (reporting period January 1, 2010, to December 31, 2010), not a form for the year 2012 (reporting period January 1, 2011, to December 31, 2011, i.e., the year "preceding" the 2012 elections) (Ex. F, Sean Bennett's SEI),

(Ex G, Public Reporting Name Results 2011), (Ex H, Public Reporting Name Results 2012),
see also (Ex I, Aff of Mike Rose, ¶¶ 35-40)

On May 2, 2012, the South Carolina Supreme Court issued its decision in Anderson, 397 S C 551, 725 S E 2d 704, finding that individuals not exempt who were seeking nomination by political party primary to be a candidate for office had to file a paper copy of a SEI at the same time and with the same official with whom the individual filed a SIC, and further, that the requirement could not be satisfied by filing an SEI electronically with the South Carolina State Ethics Commission. The Court ordered the political parties to remove any non-incumbent candidate who had not legally filed. Thereafter, the SCRP required county party chairmen to put together a certified list of candidates who had lawfully filed under Anderson. (Ex A, Aff of Carol Duncan, at ¶11) Carol Duncan, Chairman of the DCRP, asked Mr Piscatella to review the files and determine who had filed paper SEIs and who had not (Id. at ¶11) Mr Piscatella reported that all but one candidate had filed a paper SEI with a paper SIC, indicating he had deviated from the instructions he had been given and had required all candidates to file a paper SEI (Id. at ¶11) Based on Mr Piscatella's representations, on May 4, 2012, Ms Duncan prepared and hand-delivered a letter to the Dorchester County Election Commission certifying all Dorchester County Republican candidates but one, and sent the letter to the SCRP via email (Id. at ¶13)

On June 5, 2012, the Supreme Court issued its decision in Florence County Democratic Party, 727 S E 2d 418, holding that candidates who had filed a SIC were not exempt from filing a SEI. Thereafter, Ms Duncan asked Mr Piscatella to again verify whether any candidates needed to be decertified (Id. at ¶14) Mr Piscatella again stated that no candidates needed to be decertified (Id.)

The Primary election occurred on June 12, 2012. Following the election questions again arose regarding the proper certification of candidates, and Ms. Duncan asked Mr. Piscatella again to check the candidates' filings (Id. at ¶¶15-16), see also (Ex. C, Supp. Aff. of Tony Piscatella, at ¶13). Mr. Piscatella then reported that all paper SEIs except Sean Bennett's were in the candidates' files (Id. at ¶16).

On June 13, 2012, after receiving an unexpected and unsolicited telephone call which raised doubts as to Mr. Bennett's filings, Senator Rose asked Mr. Piscatella for a copy of the paperwork filed with the DCRP by all DCRP candidates, especially by Mr. Bennett (Ex. I, Aff. of Mike Rose, ¶¶6-7). Although Mr. Piscatella agreed to give Senator Rose a copy of the requested paperwork that day, he did not do so (Id. at ¶7). Instead, Senator Rose received emails from Mr. Piscatella and Matt Moore, Executive Director of the SCRP, on June 15, 2012, indicating that, at the direction of the SCRP, such information was not going to be provided (Id. at ¶¶9-11).

Unbeknownst to Senator Rose, at the time he requested a copy of the paperwork filed with the DCRP by all DCRP candidates, particularly Mr. Bennett, and at the time Mr. Piscatella and Mr. Moore responded to that request, there was no SEI in Mr. Bennett's file (Id. at ¶12), see also (Ex. C, Supp. Aff. of Tony Piscatella, at ¶¶13-14).¹ Mr. Piscatella has offered no plausible explanation for the mysterious absence of Mr. Bennett's SEI (Ex. A, Aff. of Carol Duncan, at ¶¶17-23), see also (Ex. J, Duncan Press Statement), cf. (Ex. C, Supp. Aff. of Tony Piscatella). Instead, Mr. Piscatella has twice acted to alter the contents of Mr. Bennett's official DCRP candidate file. On June 13, 2012, Mr. Piscatella simply printed and added to Mr. Bennett's official DCRP candidate file a copy of Mr. Bennett's SEI previously filed electronically by Mr.

¹ Mr. Piscatella and Mr. Moore were aware that there was no SEI in Mr. Bennett's official DCRP candidate file (Ex. I, Aff. of Mike Rose, ¶12).

Bennett on March 19, 2012 (Ex I, Aff of Mike Rose, ¶¶16-17, 20-21, 23, 27-29) Also, in or around June 20, 2012, Mr Piscatella and Mr Bennett acted to “supplement” Mr Bennett’s official DCRP candidate file with personal documents of Mr Bennett (Ex C, Supp Aff of Tony Piscatella, at ¶14), (Ex I, Aff of Mike Rose, at ¶¶13, 19-21, 27-34)

Mr Piscatella has continued to deny requests to provide copies of the candidates’ files for verification (Ex I, Aff of Mike Rose, at ¶¶16-18), see also (Ex A, Aff of Carol Duncan, at ¶22) This lawsuit was commenced on June 29, 2012 On July 11, 2012, Mr Piscatella was removed as the DCRP candidate filing officer/records custodian and directed to provide the DCRP documents to the newly appointed records custodian, Dr Tim Huber (Ex K, Duncan Letter) Mr Piscatella still refused to produce the records (Ex A, Aff of Carol Duncan, at ¶22) On July 23, 2012, Judge Howard P King ordered Mr Piscatella to file by 5 p.m. on July 24, 2012, with the Dorchester County Clerk of Court three affidavits by Mr Piscatella and the DCRP documents Mr Piscatella had previously refused to produce The documents produced to the Court cast doubt on the accuracy of Mr Piscatella’s representations as to the completeness and accuracy of the candidates’ files, and, further, on Mr Bennett’s representations as to the contents of his original DCRP candidate file An analysis of the inconsistencies and discrepancies revealed by the aforementioned documents is set forth in the Affidavit of Mike Rose, attached hereto as Exhibit I, and encompasses the following categories (1) the intermingling of Mr Bennett’s personal documents (“Bennett Version #2”) with the documents in the official DCRP candidate file for Mr Bennett (“Bennett Version #1”) (Id. at ¶27), (2) a comparison of the differences/inconsistencies between the Bennett Version #1 documents and the Bennett Version #2 documents (Id. at ¶28), (3) a comparison of the differences/inconsistencies between the Bennett Version #1 documents and the Bennett Version

#2 documents with the campaign documents of the other DCRP candidates (Id at ¶29), (4) inconsistencies between DCRP candidates' documents produced to the Court by Mr Piscatella and the Candidate Packet Checklists (Id at ¶30), and (5) Mr Piscatella's prior inconsistent representations as to the file of Mr Mondo (Id at ¶31)

ARGUMENT

The unexplained and deliberate spoliation of relevant, documentary, or other evidence, or the mutilation or alteration of such evidence, gives rise to an inference that the matter destroyed, mutilated, or altered is unfavorable to the spoliator or to one who was privy to the spoliation 31A CJS Evidence § 251 (West 2012) The party seeking a spoliation inference must be prepared to make a showing that the document or evidence might reasonably have supported whatever presumption is being requested of the fact finder Pringle v SLR, Inc of Summerton, 382 S C 397, 675 S E 2d 783 (Ct App 2009)

In Keishaw County Bd of Educ v U S Gypsum Co, 302 S C 390, 394, 396 S E 2d 369, 372 (1990), our Supreme Court upheld a jury charge which advised that "when evidence is lost or destroyed by a party an inference may be drawn by the jury that the evidence which was lost or destroyed by that party would have been adverse to that party" (Relying on Welsh v. Gibbons, 211 S C 516, 46 S E 2d 147 (1948), distinguished by Ex parte Goodyear Tire & Rubber Co, 248 S C 412, 415 16, 150 S E 2d 525, 526-27 (1966)) In Keishaw, the school board sued the manufacturer of the ceiling plaster that had been installed in many of Keishaw County's schools, alleging the plaster contained asbestos The trial court issued an order requiring the manufacturer be notified prior to any asbestos being removed Despite this order, the school board did not notify the manufacturer before asbestos abatement was conducted at one of its schools, so the manufacturer moved for judgment in its favor on the claims related to that

school. The trial court denied the motion, but charged the jury as described above. In upholding the charge, the South Carolina Supreme Court stated “[T]he trial court’s decision was proper under the facts of this case.” Id.

Here, Mr. Piscatella and Mr. Bennett had control over the evidence at issue and an obligation to preserve it. Mr. Piscatella was the DCRP records custodian during the 2012 primary election (Stipulation of Facts at ¶ 4). Presumably, Mr. Bennett was in control of his personal records. Nonetheless, Mr. Piscatella and Mr. Bennett corrupted the integrity of Mr. Bennett’s official DCRP candidate file by intermingling the Bennett Version #2 documents personal to Mr. Bennett with the Bennett Version #1 documents, which were the official DCRP candidate documents for Bennett. Further comparison of those documents also reveals that it was not only the contents of the official DCRP candidate file that was altered, but also the face of the documents contained within (Ex. I, Aff. of Mike Rose, at ¶¶27-31). In addition, on June 13, 2012, Mr. Piscatella simply printed and added to Mr. Bennett’s official DCRP candidate file a copy of Mr. Bennett’s SEI previously filed electronically by Mr. Bennett on March 19, 2012 (Id. at ¶¶16-17, 20-21, 23, 27-29).

These “supplementations” of Mr. Bennett’s official DCRP candidate file were done with the knowledge that the Plaintiff had raised concerns and demanded to see Mr. Bennett’s file, not to mention the knowledge that Senator Rose had specifically requested that he be provided copies of the candidates’ files, especially Mr. Bennett’s file. Indeed, it is the absence of a paper SEI in a candidate’s file that is the central issue in this litigation, and, similarly, was the primary issue in both Anderson v. South Carolina Election Commission, 397 S.C. 551, 725 S.E.2d 704 (2012), and Florence County Democratic Party v. Florence County Republican Party, 727 S.E.2d 418 (S.C. 2012). As in Keishaw, Mr. Piscatella and Mr. Bennett altered the evidence in this case

with the knowledge that it was relevant and the subject of a potential claim at the time of its alteration. Accordingly, Mr. Piscatella and Mr. Bennett's actions give rise to an inference that Mr. Bennett's official DCRP candidate file is unfavorable to them.

Further, neither Mr. Piscatella nor Mr. Bennett can contend that the official DCRP candidate file would refute the requested presumption. By Mr. Piscatella's own admission, on June 13, 2012, Mr. Bennett's SEI was not contained in the Bennett Version #1 documents (Ex. C, Supp. Aff. of Tony Piscatella, at ¶¶13-14). Still, neither Mr. Piscatella nor Mr. Bennett has provided any plausible explanation for the absence of Mr. Bennett's paper SEI from the Bennett Version #1 documents.

Even if Mr. Piscatella and Mr. Bennett did attempt to explain the mysterious disappearance of Mr. Bennett's paper SEI from the Bennett Version #1 documents, such an explanation does not mean that their actions should not result in an adverse inference. In Stokes v. Spartanburg Regional Hospital, 368 S.C. 515, 629 S.E.2d 675 (Ct. App. 2006), a personal representative of the estate of a patient who died following surgery brought a medical malpractice action against the hospital and others. During trial the estate pointed out two pieces of medical documentation that were missing from the patient's medical records, results from a blood test and the floor nurse's chart detailing the patient's vital signs on the evening of his death, and requested a spoliation charge. The trial court charged the jury as to spoliation. Following the trial, the hospital appealed and argued the charge was improper. The court of appeals disagreed, indicating as follows:

In the case at hand, there was evidence that two pieces of medical evidence were missing from [the patient's] record: results from a blood test and the floor nurse's chart detailing [the patient's] vital signs on the evening of his death. Rebutting that evidence, the Hospital suggested the blood drawn from [the patient's] artery on the night of his death may never have been sent to the laboratory for testing. As for the missing chart, the Hospital speculated it may have been lost during the

code While the jury may well have accepted the Hospital's explanations, it was also in its province to draw a negative inference from the Hospital's failure to produce those pieces of evidence

Id. at 521, 629 S E 2d at 678 79 Therefore, here, as in Stokes, the Court may consider any attempted explanation by Mr Piscatella and Mr Bennett, however, such explanation is to be considered together with the negative inference drawn from Mr Piscatella and Mr Bennett's actions with respect to the Bennett Version #1 and Bennett Version #2 documents See also Wisconsin Motor Corp v Green, 224 S C 460, 79 S E 2d 718 (1954)

CONCLUSION

Mr Piscatella and Mr Bennett altered the contents of Mr Bennett's official DCRP file despite having knowledge that the material was relevant to and the subject of a potential claim at the time of its alteration Accordingly, Mr Piscatella and Mr Bennett's actions give rise to an inference that Mr Bennett's official DCRP candidate file is unfavorable to them

Therefore, for the foregoing reasons, Defendant Mike Rose respectfully requests this Court issue an order sanctioning Defendants Sean Bennett and Tony Piscatella for spoliation of evidence for altering the contents of Mr Bennett's official Dorchester County Republican Party candidate file

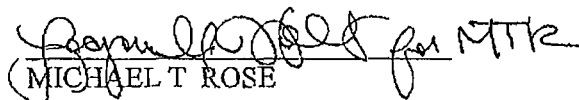
[Signature Page to Follow]

Respectfully submitted,

COLLINS & LACY, P C

By 
JOEL W. COLLINS, JR.
LOGAN M. WELLS
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660
(803) 771 4484 (f)

ATTORNEYS FOR DEFENDANT
MIKE ROSE

By 
MICHAEL T. ROSE
Pro se

Columbia, South Carolina
August 1, 2012

Exhibit A

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

Dorchester County Democratic Party,
Plaintiff,

Civil Action No 2012-CP-18-1632

v

Dorchester County Republican Party
(Carroll Duncan as Chairman), South
Carolina Republican Party (Matt Moore as
Executive Director & Chad Connelly as
Chairman), Dorchester County Board of
Elections (Joshua Dickard as Executive
Director), South Carolina State Election
Commission (Marc Andino as Executive
Director & Chris Whitmire as Director of
Public Information and Training),

Defendants

**AFFIDAVIT OF
CARROLL S DUNCAN,
DORCHESTER COUNTY
REPUBLICAN PARTY
CHAIRMAN**

The undersigned Carroll S Duncan, first being duly sworn, hereby deposes and
says

1 My name is Carroll S Duncan, and I am Chairman of the Dorchester County
Republican Party. In addition, I filed to run for the Republican nomination for Dorchester
County Council District 5 in the June primaries. No other candidate filed for the office
with the Republican Party or any other entity.

2 I provide this affidavit to give a factual accounting of what I know regarding
candidate filing by the Dorchester County Republican Party, the basis of my prior
candidate certifications, and facts that have come to light since the election on June 12,
2012.

3 Tony Piscatella, Dorchester County Republican Party Treasurer, was the
individual in charge of the candidate filing process.

4 Outside of submitting my own filing for County Council, my direct involvement
in the candidate filing process was very limited. I suffered a serious ankle injury as a
result of a fall in bad lighting at the Sotille Theater in Charleston on January 14 during an
event for SCGOP Presidential Primary candidates. I could not move around very well and
was still recuperating during the candidate filing period in March.

5 The SCGOP provided candidate filing instructions and a checklist to the County
Republican Parties based on information provided to them by the South Carolina State
Election Commission and South Carolina State Ethics Commission.

6 The SCGOP's instructions explained the various documents which needed to be
filed by candidates. With respect to the Statement of Economic Interest ("SEI") filing
requirement, the SCGOP instructed that candidates bring a proof of online filing showing
that the SEI form had been filed with the South Carolina State Ethics Commission rather
than a paper copy of the SEI form itself.

7 On March 12, 2012, I sent an email to all elected officials and announced
candidates who I believed would be filing with the Dorchester County Republican Party
to run in the June 12 primary elections. This email consisted of filing instructions based
on those given to us by the SCGOP.

8 With regard to the SEI filing requirement, the checklist sent to Dorchester County
Republican candidates required a "proof of online filing" rather than a paper copy of the
SEI itself. This mirrored the filing instructions sent out by the SCGOP.

9 Filing ended on March 30 and was, so far as anyone knew at the time, uneventful.

10 However, just over a month later, the South Carolina Supreme Court issued its
decision in Anderson v. South Carolina Election Commission and found that, for non-

incumbent candidates, a paper copy of the SEI had to be filed at the same time as a paper copy of the SIC. The Supreme Court ordered the political parties to remove any non-incumbent candidate who had not legally filed according to the Anderson case.

11 The SCGOP required county party chairmen to put together a certified list of candidates who had lawfully filed under Anderson. As Tony Piscatella had been the filing official and was the document custodian in charge of the files, I immediately asked him to review the files and determine who had filed paper SEIs and who had not.

12 Tony quickly reported back that all but one candidate had filed a paper SEI along with a paper SIC. I was absolutely shocked and excited, as I had expected that most candidates had not filed a paper SEI given that the instructions did not require a paper SEI. I asked Tony how it was possible that all but one of our candidates had managed to file correctly. Tony responded that he had deviated from the instructions he had been given and required all candidates to file a paper SEI. I had no reason to doubt him because I had filed a paper SEI during my filing.

13 The Supreme Court had ordered that amended candidate certifications be provided by noon on May 4th. The morning of May 4th, I prepared and hand-delivered a letter to the Dorchester County Election Commission certifying all Dorchester County Republican Party candidates except for the one referenced above. I sent the same letter by email to the South Carolina Republican Party.

14 The election proceeded. Then, on June 5th, the South Carolina Supreme Court issued its decision in the Florence County case. Because Tony had represented to me that all remaining certified non-incumbents had filed paper copies of their SEIs, I did not believe the Florence County decision would have any effect on our certifications because

it only applied to situations where a non-incumbent did not file a paper SEI but had an electronic SEI on file with the State Ethics Commission. Nonetheless, I asked Tony to again verify whether any candidates needed to be decertified. Tony responded that no candidates needed to be decertified, so none were.

15 The election occurred on June 12th. After the election, a number of rumors began circulating around the state that various non-incumbent candidates had not lawfully filed according to the Supreme Court's recent decisions. Dorchester County was no exception.

16 Shortly after the election, Sen. Mike Rose asked Tony Piscatella to provide a copy of Sean Bennett's paper SEI on file with the Dorchester County Republican Party. Tony told Sen. Rose that he would provide it, but Piscatella told me that Bennett's paper SEI was not in the file. Piscatella told me that every other paper SEI for the previously-certified candidates was in the file except for Bennett's.

17 I was shocked to hear Bennett's paper SEI was not in the file after Piscatella had repeatedly represented to me that it was in the file. Tony suggested various theories as to how the form had gone missing, but I became concerned that Tony had not been truthful with me about the filing process and that Bennett had not actually filed a paper SEI.

18 I continued to try to learn more about what had actually happened during the Dorchester County Republican Party filing process. John Hull and Roger Goodman have stated under oath that they have not filed paper SEIs. Other candidates have stated under oath that Piscatella did not require paper SEIs but instead was resistant to receiving them because the checklist required a proof of filing and not the actual paper SEI itself.

19 Though I deeply regret coming to this conclusion, I now believe that Tony Piscatella was not truthful with me with regard to his filing practices of the Dorchester

County Republican Party I do not believe I can, in good faith, come to any other conclusion

20 Further, it has been deeply troubling that Mr Piscatella has refused to turn over the Dorchester County Republican Party candidate filing documents

21 When word came that the Dorchester County Democratic Party was planning a lawsuit, Mr Piscatella told news media that any lawsuit would be defeated by the records in his possession He reportedly stated "Once they go through discovery, they will come back to my records and they'll say stop there "

22 After this lawsuit was filed, I repeatedly requested that Mr Piscatella provide the records or copies of them so that I could defend against the lawsuit Mr Piscatella has so far refused to turn them over I removed Mr Piscatella as records custodian pursuant to my authority as Chairman of the Dorchester County Republican Party and appointed Tim Huber as the new records custodian I directed Mr Piscatella to turn the records over to Mr Huber, but he refused I understand Mr Huber also requested the records from Mr Piscatella directly, but he refused.

23 The only reasonable conclusion that can be drawn from this is that the records do not support Mr Piscatella's representations about them

24 I regret decertifying any candidates The candidates who filed incorrectly generally did so through no fault of their own They simply relied on erroneous instructions given to them by the political parties which the parties had, in turn, received from government agencies

25 However, my obligation is to follow the law and the Supreme Court has said in no uncertain terms that candidate certifications must be properly made in good faith Given

what I now know about the Dorchester County Republican Party filing process, I do not believe that Mr. Piscatella required paper copies of SEIs from candidates. Instead, I believe he followed the checklist he was given and required proofs of filing rather than the paper SEI forms themselves. Because Mr. Piscatella did not have a practice of requiring paper SEIs, and because Mr. Bennett's paper SEI was not in the file, I am forced to conclude it is more likely than not that Mr. Bennett did not file a paper SEI. I believe it is more likely than not that Mr. Bennett filed the paperwork on the checklist he was given and, therefore, did not file correctly. I understand Mr. Bennett claims to have filed a paper copy of his SEI, but I believe the best evidence of what Mr. Bennett filed is what was actually in the file. I must therefore decertify Mr. Bennett.

26 With regard to Mr. Hull and Mr. Goodman, they admit they did not file paper copies of their SEIs. Obviously, I must also decertify them.

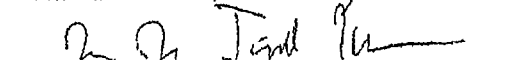
27 Given what I now know, I must decertify every other non-incumbent candidate as well, but I will reconsider that decision if and when I gain access to the files in Mr. Piscatella's possession.

28 Further affiant sayeth not.


CARROL S. DUNCAN

Sworn to and subscribed before me this

18th day of July, 2012


Notary Public for South Carolina

My Commission Expires 7-9-2017

Exhibit B

DORCHESTER COUNTY REPUBLICAN PARTY

CANDIDATE PACKET CHECKLIST

2012-CP-18-1632

Name as it will appear on the ballot Goodman, Roger W.

Candidate for office of County Council District #6

Paid DCRP Membership Y N

Filing Fee Amount \$ 100 Paid Date 3/16/2012

Make checks payable to DCRP

☒

Statement of Intention of Candidacy (SIC) and Pledge

☒

Statement of Economic Interests (SEI) ~ proof of online filing

☒

Candidate Support Committee Declaration Statement

☐

Affidavit - (Requirements for Coroner and Sheriff)

☐

Campaign Disclosure - Not required at time of filing

file online within 10 days of raising or spending \$500, copy to office

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2012 JUL 24 PM 12:17
CLERK OF COURT
DORCHESTER COUNTY

STATEMENT I hereby acknowledge that I have received all of the forms and information needed to file for the above office and state that I have accurately and honestly completed the documents

Candidate signature [Signature] Date 3/16/2012

Received by [Signature] Date 3/16/2012

Exhibit C

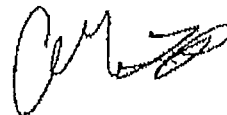
STATE OF SOUTH CAROLINA }
 }
 COUNTY OF DORCHESTER }

SUPPLEMENTAL
 AFFIDAVIT OF TONY PISCATELLA

PERSONALLY APPEARED BEFORE ME, TONY PISCATELLA, who after being duly sworn, deposes and says as follows

- 1 I am a volunteer member of the Dorchester County Republican Party and serve as Treasurer for the Party I am also a member of the County Executive Committee
- 2 I was designated by the County Party Chairwoman, Carroll Duncan, to be the person to receive candidate filings for the 2012 Republican Primary
- 3 The Republican Party HQ located at 89B Old Trolley Road, Suite 203A, Summerville, South Carolina 29485 was designated as the location to receive the filings
- 4 On Tuesday, March 20, 2012, Sean Bennett, a person known to me, appeared and announced that he was going to file as a candidate for Senate District 38.
- 5 Mr Bennett, who appeared with a female witness, filed the following documents with me
 - a Statement of Intention of Candidacy (SIC) and Pledge,
 - b Statement of Economic Interest (SEI) and Proof of filing,
 - c Candidate Support Committee Declaration Statement,
 - d a Campaign Disclosure
- 6 We both acknowledged receipt of the documents by signing a Candidate Packet Checklist attached hereto as Exhibit A.
- 7 Mr Bennett also paid his filing fee in the amount of \$416.00 made payable to the Dorchester County Republican Party
- 8 I asked Mr Bennett if he would like a copy of his filing documents and he stated he did. A copy was made of his entire packet for him.
- 9 On May 4th, 2012, after the SC Supreme Court decision in Anderson, I was directed by Carroll Duncan to go to Party HQ and verify which non exempt candidates filed paper copies of their SEI at the time of their filing. I proceeded to Party HQ and pulled the candidate files and matched up the candidate files with the paper SEI that we had

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 CLERK OF COURT
 DORCHESTER COUNTY



- received Only one non exempt candidate, John Mondo, did not simultaneously file a paper SEI at the time he filed for office
- 10 After matching the SEIs with each candidate's file, the files were placed back into the filing cabinet drawer located in the back room I then left
 - 11 When I left party HQ that morning, Sean Bennett's file contained his SEI along with all of his other documents
 - 12 On Thursday, June 7, 2012 after the court decision was handed down regarding Florence County, I was directed again by Carroll Duncan to re verify the files again because the candidates had to be re-certified At that time, all files were intact with complete documentation to include SEIs for those non-exempt candidates
 - 13 On June 13, 2012, I was asked by Carroll Duncan to again check the files because there was talk in the community regarding the ineligibility of candidates I went to party HQ and discovered that the files were intact with the exception of Sean Bennett's file which was missing his SEI and initial campaign disclosure forms but not the confirmations
 - 14 On June 21, 2012, I requested attorney Chris Murphy to obtain a copy of Mr Bennett's candidate documents that I knew he received from me on March 20, 2012 I have supplemented Mr Bennett's candidate file with those documents These documents are true and accurate copies of the original documents that Mr Bennett filed with me on March 20, 2012

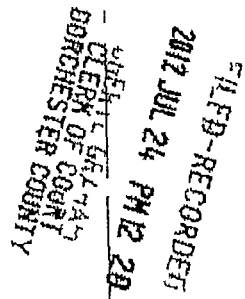
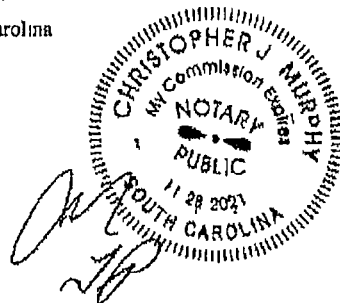
FURTHER AFFIANT SAYETH NOT

SWORN TO AND SUBSCRIBED BEFORE ME
this 22nd day of June 2012

Notary Public for the State of South Carolina

My Commission expires 11 28 2021

By Tony Piscatella
Tony Piscatella



DORCHESTER COUNTY REPUBLICAN PARTY

CANDIDATE PACKET CHECKLIST

Name as it will appear on the ballot Sean BennettCandidate for office of State Senator District 38Paid DCRP Membership ☒ Y ☐ NFiling Fee Amount \$ 416 Paid Date 3/20/2012

Make checks payable to DCRP

- ☒ Statement of Intention of Candidacy (SIC) and Pledge
- ☒ Statement of Economic Interests (SEI) – proof of online filing
- ☒ Candidate Support Committee Declaration Statement
- ☒ Affidavit – (Requirements for Coroner and Sheriff)
- ☒ Campaign Disclosure Not required at time of filing

file online within 10 days of raising or spending \$500, copy to office

STATEMENT I hereby acknowledge that I have received all of the forms and information needed to file for the above office and state that I have accurately and honestly completed the documents

Candidate signature [Signature] Date 3/20/2012Received by [Signature] Date 3/20/2012

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2012 JUL 24 PM 12:28
CLERK OF COURT
DORCHESTER COUNTY

SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES
DRIVER'S LICENSE

PISCATELLA, ANTHONY L JR
203 HUNT CLUB DR
SUMMERVILLE SC 294854803

DL# 002168484
Expires 01 22-2017

Class D Hgt: 5-08 Wgt: 210
Sex M DOB: 01 22 1942
Issued 01-18-2007 18081 R 1

Anthony L. Piscatella

Red ions A

Do error



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2012 JUL 24 PM 12:20
CLERK OF COURT
ROCHESTER COUNTY

Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

Dorchester County Democratic Party,

Plaintiff,

Civil Action No 2012-CP-18-1632

v

Dorchester County Republican Party
(Carroll Duncan as Chairman), South
Carolina Republican Party (Matt Moore as
Executive Director & Chad Connelly as
Chairman), Dorchester County Board of
Elections (Joshua Dickard as Executive
Director), South Carolina State Election
Commission (Mauri Ardino as Executive
Director & Chris Whitmire as Director of
Public Information and Training),

**AFFIDAVIT OF ANN SHIELDS,
VOLUNTEER FOR THE
DORCHESTER COUNTY
REPUBLICAN PARTY RE
CANDIDATE FILING**

Defendants

The undersigned Ann Shields, first being duly sworn, hereby deposes and says

- 1 My name is Ann Shields I am a volunteer for the Dorchester County Republican Party ("DCRP") I am also the Precinct President of the Coastal 2 precinct
- 2 My duties are to work in the DCRP office performing administrative tasks such as database management, handling walk-ins, answering the phone, and collecting the mail
- 3 I was at the DCRP office when Sean Bennett filed.
- 4 I was in the small reception area where the outside door is located The filing took place in another room, a conference room in the rear of the office I could not see what was taking place in the conference room
- 5 When Bennett filed, the only individuals associated with the DCRP who were present were myself, Janette Chipas, and Tony Piscatella Janette and Tony were in the back room handling the filing

6 When Bennett arrived, he walked in the front door of the reception area. He was accompanied by a lady who I later learned worked for him in some capacity

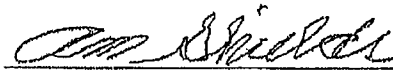
7 I announced he had arrived and John Mondo, who had just completed his filing, left the back room and exited the office. Tony Piscatella walked out of the back room and invited Bennett back to file. Bennett and Piscatella walked to the back room. The employee who accompanied Bennett remained in the reception area and did not accompany Bennett back to the filing room.

8 Bennett's employee and I struck up a pleasant conversation while Bennett was filing. We discussed the Tea Room at St. Paul's Episcopal Church in Summerville, a fundraiser event the church puts on. She described the Tea Room at Bethany, which I believe is a Methodist Church, and I gathered—though I am not certain—that she is a member at Bethany.

9 The conversation then moved to what her relationship was with Sean Bennett. She indicated that she worked for Mr. Bennett and believed in him as a candidate. We had a little bit more small talk and then Bennett emerged from the back room. Bennett and his employee then left the office.

10 At no point in time did Bennett's employee go to the filing room to observe or witness Mr. Bennett's filing. The entire time Mr. Bennett was filing, she and I were having a conversation as described above.

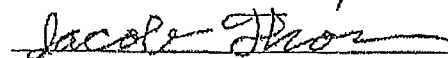
11 Further, affiant sayeth not.



ANN SHIELDS

Sworn to and subscribed before me this

26th day of July, 2012

 Jacob Thompson
Notary Public for South Carolina

My Commission Expires 05/15/22

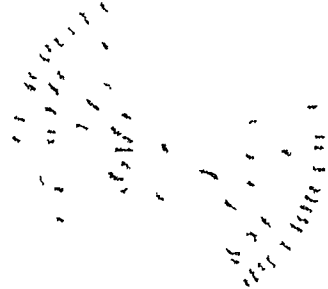


Exhibit E

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

Dorchester County Democratic Party,

Civil Action No 2012 CP 18-1632

Plaintiff,

v

Dorchester County Republican Party
(Carroll Duncan as Chairman), South
Carolina Republican Party (Matt Moore as
Executive Director & Chad Connelly as
Chairman), Dorchester County Board of
Elections (Joshua Dickard as Executive
Director), South Carolina State Election
Commission (Marc Andino as Executive
Director & Chris Whitmire as Director of
Public Information and Training),

Defendants.

**AFFIDAVIT OF
JANETTE CHIPAS,
ASSISTANT FILING OFFICIAL
FOR THE DORCHESTER COUNTY
REPUBLICAN PARTY RE
AFFIDAVIT OF ANN SHIELDS**

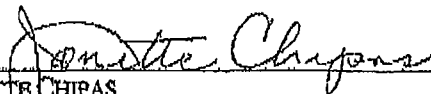
The undersigned Janette Chipas, first being duly sworn, hereby deposes and says

1 My name is Janette Chipas. I was an assistant filing official for the Dorchester
County Republican Party.

2 I have been presented with the Affidavit of Ann Shields regarding Sean Bennett's
filing and whether or not a second individual accompanied him into the filing room.

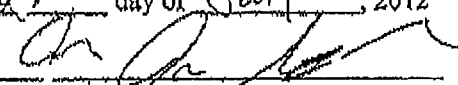
3 As the Shields Affidavit states, I was in the filing room during Sean Bennett's
filing. No one accompanied him into the filing room. In fact, I did not even know that
anyone had accompanied Bennett to the Dorchester County Republican Party office that
day until all the controversy started about the candidate filings.

4 Further affiant sayeth not.


JANETTE CHIPAS

Sworn to and subscribed before me this

27th day of July, 2012


Notary Public for South Carolina

My Commission Expires JAN 23 2017

Exhibit F

SC GOV SC State Ethics Commission Public Disclosure and Accountability
Reporting

Electronic Filing

Statement of Economic Interests Filing confirmation

Your report has been filed successfully on 3/19/2012 2 08 11 PM Your confirmation number is
SEI11867 R33162 378da468

Your confirmation has been sent to the email address on record Please print this page for your records Click 'Continue' to return
to your Statement of Economic Interests Filings or logout if you are finished

Continue

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CLERK OF COURT
BERKELEY COUNTY

SC GOV SC State Ethics Commission Public Disclosure and Accountability
Reporting
Electronic Filing
Statement of Economic Interests Review

Filing Report Review

Name Sean Bennett
Year 2011
Filing Type Original

Demographic Information

Name	Address	Phone	County
Sean Bennett	1422 Peninsula Pointe Summerville SC 29485	843 442 3009	Dorchester

Positions

Position/Title	Entity	Type	Term of Office	Date Filed
Senator	Senate	Candidate	1/2013 1/2017	3/2017

Income and Benefits

*** No Income and Benefits Reported ***

Family Income and Benefits

*** No Family Income and Benefits Reported ***

Regulated Business Associations

*** No Regulated Business Associations Reported ***

Real or Personal Property Interests

*** No Property Interests Reported ***

Real or Personal Property Interests II

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 CLERK OF COURT
 DORCHESTER COUNTY

*** No Sold, Leased or Rented Property Interests Reported ***

Business Interests

Name of Business	Relationship
Asset Integration Consultants Inc	Owner

Creditors

*** No Creditors Reported ***

Lobbyist/Lobbyist's Principal

*** No Lobbyist/Lobbyist's Principal Entries Reported ***

Government Contracts

*** No Government Contracts Reported ***

Gifts

*** No Gifts Reported ***

Travel Reimbursement

*** No Travel Reimbursements Reported ***

General Assembly

*** No General Assembly Entries Reported ***

Print Go Back

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CLERK OF COURT
BORCHESIER COUNTY

Exhibit G

7/28/12

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting**Individual Reports****Statement of Economic Interests****Selected**

Last Name bennett
Year 2011

Click on name to review the report

Search Results

Name	Office	Type	Entity	Date Filed	Version
<u>Bennett, Bennie D</u>	Superintendent	Employee	Newberry	3/21/2011 3 07 00 PM	Original
<u>Bennett, Brenda P</u>	Probate Judge	Elected	Allendale	4/27/2011 2 06 00 PM	Original
<u>Bennett II, Charles S</u>	Chief Administrative Official	Employee	North Augusta	4/12/2011 4 18 00 PM	Original
<u>Bennett, Earle M</u>	Public Member, Trustee, Commission Member, or Board Member	Appointed	Wil Lou Gray Opportunity School	3/3/2011 10 33 00 AM	Original
<u>Bennett, Frankie</u>	City Council	Elected	Estill	1/24/2011 5 59 00 PM	Original
<u>Bennett, Linda</u>	Public Member, Trustee, Commission Member, or Board Member	Appointed	Patriots Point Dev Authority	9/22/2011 3 05 00 PM	Original
<u>Bennett, Sean</u>	Senator	Candidate	Senate	3/19/2012 2 08 00 PM	Original
<u>Bennett, Timothy R</u>	Chief Administrative Official	Employee	Allendale	4/4/2011 4 30 00 PM	Original

[↩ Back](#) [Start Over](#)

Exhibit H

7/26/12

SC GOV SC State Ethics Commission Public Disclosure and Accountability Reporting

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting**Individual Reports****Statement of Economic Interests****Selected**

Last Name bennett
Year 2012

Click on name to review the report

Search Results

Name	Office	Type	Entity	Date Filed	Version
<u>Bennett, Bennie O</u>	Superintendent	Employee	Newberry	3/26/2012 3 06 00 PM	Original
<u>Bennett, Bennie O</u>	Superintendent	Employee	Newberry	3/26/2012 3 07 00 PM	Amendment 1
<u>Bennett, Earls M</u>	Public Member, Trustee, Commission Member, or Board Member	Appointed	Will Lou Gray Opportunity School	3/13/2012 3 45 00 PM	Original
<u>Bennett, Frankie</u>	City Council	Elected	Estill	2/20/2012 8 00 00 PM	Original
<u>Bennett, Jeffrey</u>	City Council	Candidate	Clemson	4/19/2012 10 47 00 AM	Original
<u>Bennett, Linda</u>	Public Member, Trustee, Commission Member, or Board Member	Appointed	Patriots Point Dev Authority	1/26/2012 9 10 00 AM	Original
<u>Bennett, Timothy R</u>	Chief Administrative Official	Employee	Allendale	1/24/2012 4 13 00 PM	Original

[← Back](#) [Start Over](#)

Exhibit I

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS

Dorchester County Democratic Party,

Plaintiff,

v

Dorchester County Republican Party
(Carroll Duncan as Chairman), Colleton
County Republican Party, Berkeley
County Republican Party, Charleston
County Republican Party, South Carolina
Republican Party (Matt Moore as
Executive Director & Chad Connelly as
Chairman), Dorchester County Board of
Elections (Joshua Dickard as Executive
Director), Colleton County Election
Commission, Berkeley County Election
Commission, Charleston County Election
Commission, South Carolina State
Election Commission (Marc Andino as
Executive Director & Chris Whitmire as
Director of Public Information and
Training), Sean Bennett, Mike Rose, and
Tony Piscatella

Defendants

Civil Action No 2012-CP-18 1632

**AFFIDAVIT OF
MIKE ROSE,
INCUMBENT CANDIDATE
FOR THE REPUBLICAN
NOMINATION FOR SENATE
DISTRICT 38**

The undersigned Michael T. Rose a/k/a Mike Rose, first being duly sworn, hereby
deposes and says

1 My name is Mike Rose. I live at 409 Central Ave., Summerville, SC
29483

2 I was a candidate in the June 12, 2012 Republican Primary for Senate
District #38

3 I am a member of the South Carolina Senate representing Senate District
#38

4 I am submitting this affidavit in connection with the above captioned lawsuit

5 I gave Tony Piscatella ("Piscatella"), in his then capacity as candidate filing officer/records custodian of the Dorchester County Republican Party ("DCRP"), my Statement of Intention of Candidacy-Partisan on March 16, 2012 at or about 12 36 pm, at the Dorchester County Republican Party Headquarters at 89B Old Trolley Road, Summerville, SC 29483

6 On June 13, 2012 I received an unexpected and unsolicited telephone call during which I was told that Sean Bennett ("Bennett"), my opponent in the June 12, 2012 Republican Primary for Senate District #38, may not have been a legitimate candidate in that Primary because Bennett may not have filed his required SEI with the DCRP properly. I replied to the caller that Piscatella and Carroll Duncan ("Chauman Duncan"), Chauman of the DCRP, had assured me before the Primary that all individuals certified by the DCRP as candidates for that Primary had filed their paperwork properly. The caller replied by expressing doubt that the paperwork had been filed properly and by urging me to look at the paperwork myself to determine if it had been filed properly.

7 Upon ending that call I promptly called Piscatella, told him what had been said to me during the telephone call as described above and asked him to let me see a copy of the paperwork filed with the DCRP by all DCRP candidates, especially by Bennett. Piscatella told me he would get and let me see that paperwork. He called me a few hours later and told me he had located all DCRP candidates' paperwork at DCRP headquarters, including that of Bennett. I asked him to give me a copy of Bennett's

paperwork because I wanted to see it myself, and he agreed to give me a copy of that paperwork that day. I told him that he could scan and e-mail the paperwork to me, fax it to me, or let me come pick it up from him. He stated that he would get Bennett's paperwork to me that day, but did not tell me how he would do so. Piscatella did not provide me any of Bennett's candidate paperwork that day and has not done so on any other day. Piscatella did not inform me that any of Bennett's paperwork was missing but led me to believe, incorrectly, that all of Bennett's candidate paperwork, including Bennett's SEI, was in the official DCRP candidate file for Bennett. I later learned that in truth Piscatella could not find a SEI in Bennett's DCRP file because no SEI was in Bennett's file.

8 On June 14, 2012, I unexpectedly was informed by telephone by a Republican that the Dorchester County Democratic Party ("DCDP") was about to publish, or had just published, that day a press release demanding that the DCRP make public its candidate paperwork filed with the DCRP by House District #97 GOP candidate Ed Carter ("Carter"), because the DCDP believed that Carter had been improperly certified as a candidate in the June 12, 2012, Republican Primary because Carter had not filed properly his SEI with the DCRP. That person also informed me during that telephone conversation that the DCDP believed that Bennett and other Republican candidates had not submitted SEIs to the DCRP as required by law, that, therefore, those individuals had been improperly certified as Republican Primary candidates by the DCRP, and that, as a result, the DCDP was going to file a lawsuit against the DCRP challenging the certification of all non incumbent DCRP candidates. That DCDP press release was published that day in the *Summerville Patch*. Prior to that

telephone call to me I had no knowledge of any of these past or anticipated future actions by the DCDP

9 By nearly the end of Thursday, June 14, 2012, Piscatella had not given me a copy of Bennett's paperwork, despite his representations on June 13 that he would do so, had not informed me that he was not going to provide me that paperwork, and had given me no explanation as to why he had not provided me that paperwork. Further, based on Piscatella's representations to me on June 13, I believed that Piscatella had possession of all of Bennett's paperwork filed with the DCRP, including a SEI for Bennett, and would give me a copy of all of that paperwork. Therefore, on June 14 at 11:24 pm I sent Piscatella an e-mail, attached hereto as Exhibit #1, stating the following

"Tony, As we discussed yesterday, please give a copy of all the paperwork regarding Sean Bennett's paperwork [sic] that you filed on behalf of the DCRP. I want to review it.

Please confirm where you filed that paperwork, and when. Thank you.

Mike Rose"¹

10 On June 15, 2012, at 9:42 am I received an e-mail, attached hereto as Exhibit #2, from Piscatella stating as follows:

"Mike The SCGOP has advised the county parties not to provide any information except through them. Apparently several issues have been raised by people and the state wants to control the flow of information. We are bound by that ruling and can't provide the information I had agreed to give you. It doesn't look like this is going to go away any time soon. I'm sorry for the inconvenience this may have caused you."² (Emphasis added.)

11 On June 15, 2012, at 9:47 am, I received an e-mail, attached hereto also as Exhibit #3, from Matt Moore ("SCRP ED Moore"), Executive Director of the South

¹ E-mail dated June 14, 2012, from Mike Rose to Tony Piscatella, attached as Exhibit #1.

² E-mail dated June 15, 2012, from Tony Piscatella to Mike Rose, attached as Exhibit #2.

Carolina Republican Party ("SCRP"), stating the following

"Senator – please understand this has been our policy due to the Democrats trying to beat down our doors and rifle through our filing cabinets. We've made the same requests of them, and they're not budging. Matt Moore, Executive Director, South Carolina Republican Party"³

Below that e-mail from Matt Moore is the e-mail to me from Piscatella referenced in Paragraph 10 above and below that is my e-mail to Piscatella referenced in Paragraph 9 above. Until I received that e-mail from Matt Moore I had no idea that Piscatella had been communicating with the SCGOP about my request to see Bennett's paperwork.

12 As shown in paragraph 13 below, on July 5, 2012 I learned, for the first time, that when SCRPE Moore sent me the e-mail dated June 15, 2012 described in paragraph 11 above, SCRPE Moore, DCRP Chairman Duncan and Piscatella all knew that there was no SEI in Bennett's DCRP candidate file on June 13, 2012. Piscatella and SCRPE Moore have never revealed to me the fact that there was no SEI in Bennett's DCRP candidate file on June 13. Instead, on July 5, 2012, Chairman Duncan informed me of that fact, through her attorney. On June 18, 2012 the DCDP issued another press release, published in the *Summerville Patch*, demanding the public release by the DCRP of candidate documents of all candidates certified by the DCRP and threatening that the DCDP would sue the DCRP to get those documents if the DCRP did not promptly publicly release those documents.

13 On June 19, 2012, I communicated to Chairman Duncan and DCRP Vice Chairman Dr. Jim Huber ("Vice Chairman Huber") by e-mail (a true copy of which is attached as Exhibit #4) that, given the circumstances, I wanted to appeal Bennett's victory in the June 12, 2012 Republican Primary for Senate District #38, and asked how

³ E-mail dated June 15, 2012, from Matt Moore to Mike Rose, attached as Exhibit #3

to do so⁴ On June 20, 2012 I sent Tim Huber, Vice Chairman of the DCRP, and Chairman Duncan an e mail stating the following

"A lawyer told me this afternoon that Tony Piscatella needs to be told that there are computerized records of all computer transactions regarding the paperwork in question, that those records will reveal the truth, and that Tony better not alter in any way the records because if he does he could be indicted"⁵

In response to that e mail from me, Chairman Duncan responded not directly to me but by sending SCRP ED Moore an e-mail dated June 20, 2012, stating in its entirety as follows

"Answer him or not?

For you, Tony has not and will not alter any records He's added a copy of the SEI to the file but with note that it's a copy and what day he added and why"⁶
(Emphasis added)

I received a copy of that e mail above, attached hereto as Exhibit 6, from Chairman Duncan to SCRP ED Moore via her attorney on July 5, 2012 That e-mail and subsequent conversations and documents evidence to me that Piscatella had added a SEI to Bennett's DCRP candidate file, that Chairman Duncan and SCRP ED Moore had been aware that Piscatella had added an SEI to Bennett's DCRP candidate file, that Chairman Duncan, Piscatella and SCRP ED Moore had been aware that no SEI had been in Bennett's DCRP candidate file on June 13, 2012, that Chairman Duncan and SCRP ED Moore had been discussing what to do about my requests to see the DCRP candidate documents, and that all of those facts had been withheld and concealed from me by them

14 I had not protested that election and had not inquired previously about

⁴ See E mail dated June 19 2012, from Mike Rose to Dr Tim Huber and DCRP Chairman Duncan attached as Exhibit #4

⁵ E mail dated June 20 2012 from Mike Rose to Dr Tim Huber and Carroll S Duncan attached as Exhibit 5

⁶ E mail dated June 20, 2012 from Carroll S Duncan to SCRP ED Matt Moore , attached as Exhibit 6

filing a protest of that election because (1) the DCRP had lured and caused me to believe, incorrectly, that Bennett had filed his candidate paperwork properly and, until June 15, 2012, that Piscatella would give me a copy of Bennett's paperwork so I could see myself whether Bennett had filed his paperwork properly, and (2) because the DCRP and the SCGOP had failed to disclose to me that Bennett's SEI in fact was missing, even when they knew there was no SEI in Bennett's DCRP candidate file and that I was asking the DCRP to show me Bennett's SEI in his DCRP candidate file. Without seeing Bennett's paperwork myself, and without knowing that Bennett's SEI was missing from his DCRP file, I could not reasonably determine whether or not I had a valid ground for protesting the Primary election. Ultimately I learned that the cutoff date for my filing a protest of the Primary election with the SCRP was June 18, 2012, which already had passed by the time I asked for an election protest on June 19 as stated above. I do not believe that I should be in any way prejudiced in the above captioned lawsuit by my not having filed an election protest with the SCGOP by June 18, 2012, for the following reasons: (1) due to the doctrine of equitable tolling, because the DCRP and the SCGOP wrongfully concealed and prevented me from obtaining sufficient facts to enable me reasonably to know I had a reasonable grounds for a protest and misled and lured me into believing, and caused me to believe, that I did not have a reasonable grounds for a protest, and (2) because the basis for this lawsuit is different than, and totally independent of, the statutory procedure for a candidate to file a protest of an election.

15 On June 29, 2012 the DCDP filed the above captioned lawsuit with the
Dorchester County Clerk of Court. On July 9, 2012 Bennett filed a Motion to Intervene
in that lawsuit. On July 12, 2012 I also filed a Motion to Intervene. On July 23, 2012,

these Motions to Intervene were granted by the Court

16 Chairman Duncan sent a letter, attached hereto as Exhibit #7, dated July 9, 2012 to Piscatella directing that Piscatella provide her a copy of all DCRP candidate filings in his possession, and announcing that she was going to make those documents public. That same information was provided, along with a copy of that letter from Chairman Duncan, by Chairman Duncan's attorney, Todd Kincannon, to Piscatella's attorney, Chris Murphy, by an e mail dated July 9, 2012. A copy of that e mail is attached as Exhibit #8. Murphy replied with an e mail dated July 10, 2012, a copy of which is attached hereto as Exhibit #9, to Kincannon which said that Piscatella, his client, refused, as advised by Murphy, to provide Chairman Duncan or any other person a copy of any of the paperwork of DCRP candidates, and that Piscatella was going to retain personal possession of those documents until ordered by a Court to cease doing so. That e mail from Murphy to Kincannon states in part as follows

"On Thursday, June 21, 2012, I was retained by Tony Piscatella to represent him with regards [sic] to his potential testimony as it relates to the pending lawsuit filed by the Dorchester County Democratic Party whereby they have challenged all non-incumbent Republican candidates. As Mr Piscatella's attorney, I have advised him to safeguard the filing documents of all the 2012 Republican candidates in Dorchester County. Absent a Court Order directing Mr Piscatella or my office to turn over the files, they will remain in his custody. This will help to ensure the chain of custody and the integrity of any potential evidence as the case makes its way through the judicial process."⁷ (Emphasis added)

17 Chairman Duncan sent a letter, attached hereto as Exhibit #10, dated July 11, 2012, to Piscatella stating as follows

"Dear Mr Piscatella

You are hereby removed as candidate filing officer/records custodian of the Dorchester County Republican Party ("DCRP") DCRP First Vice Chairman Tim

⁷ E mail dated July 10, 2012 from Chris Murphy to Todd Kincannon, attached as Exhibit #9

Hubei is hereby appointed as the new DCRP candidate filing officer/records custodian. You are directed to immediately provide all DCRP documents in your possession to Dr. Hubei including but not limited to all candidate filings

I take this action pursuant to my authority under Article VII Section 1 of the DCRP Bylaws, which vests appointment – and therefore removal – authority in the Chairman. While I have the unilateral authority to remove for any reason or no reason, I believe the DCRP should know why I have taken this action.

On July 9, 2012 I requested in writing that you provide copies of all candidate filing documents to me. Through your attorney, you refused to provide the documents to me despite the fact that I have a right to these documents as a member of the DCRP under Article VII Section 2 of the DCRP Bylaws

I have no alternative but to take this step given your refusal to provide the documents. Again, please immediately provide all DCRP documents in your possession to Dr. Hubei including but not limited to all candidate filings. Sincerely, Carroll S. Duncan, Chairman, Dorchester County Republican Party”⁸ (Emphasis added.)

18 Piscatella has failed to provide me a copy of Bennett’s candidate paperwork, including any SEI for Bennett, at any time, and has refused to give either the original or a copy of any DCRP candidate’s paperwork to Chairman Duncan or to Dr. Tim Huber, the new DCRP candidate filing officer/records custodian appointed by Chairman Duncan.⁹ Further, Piscatella removed all the DCRP candidate records from the DCRP headquarters and unlawfully retained them in his personal possession at Piscatella’s home.¹⁰ As a result, I was not able to see the paperwork of Bennett and the other DCRP candidates until Piscatella filed the original of all those documents with the Clerk of the Dorchester County District Court on July 24, 2012, as ordered by Judge Howard P. King verbally on July 23, 2012. Further, until my Motion to Intervene was

⁸ Letter dated July 11, 2012 from DCRP Chairman Carroll S. Duncan to Tony Piscatella, attached as Exhibit #10.

⁹ See paragraphs 16-17, *supra*.

¹⁰ See paragraphs 16-17, *supra*, Exhibits 5, 6, 7 and 8. Murphy volunteered during a telephone conference with attorneys and Judge Howard P. King on July 23, 2012 that Piscatella, as advised by Murphy, had removed the DCRP candidate documents from DCRP headquarters and taken those documents to Piscatella’s home.

granted on July 24, 2012, joining me as a party defendant in the lawsuit as referenced in Paragraph 14 above, I could not use a legal process to compel production of those documents as discovery

19 As a result of the above, three and a half weeks passed after the filing of the lawsuit referenced in Paragraph 15 above, and six weeks passed after I first asked Piscatella to let me see the DCRP candidate records, including the SFIs of Bennett and others, during which time I could not gain access to those DCRP candidate records to enable me to analyze the facts regarding those documents, to determine whether I had grounds to file an election protest and to prepare my position in this lawsuit. In contrast, during most of that period – since June 21, 2012¹¹ Chris Murphy has had access to view the documents via his client, Piscatella, thereby giving information to Murphy that could help the non incumbent candidates, including Bennett, whom Murphy supported politically for the Primary¹² and has been supporting politically since the Primary¹³. As one example of Murphy's and Piscatella's attempts to help Bennett, Murphy acquired from Bennett and gave Piscatella a copy of documents, including an SFI for Bennett, in Bennett's personal possession and thereafter commingled¹⁴ those personal documents of Bennett with the official documents in the official DCRP candidate file for Bennett¹⁵. As another example, Murphy advised Piscatella to remove the official DCRP candidate

¹¹ Murphy began representing Piscatella on June 21, 2012. See paragraph 16 supra.

¹² Murphy gave money and a public endorsement to Carter. Murphy encouraged voters to support Bennett.

¹³ Murphy obtained documents from Bennett which in turn Murphy had Piscatella add to Bennett's official DCRP candidate file, without authority and in violation of law. In addition, upon information and belief Murphy has conferred and met with, and has been working for the benefit of, Bennett since the June 12 Primary. Instead of providing advice solely for the benefit of Murphy's client, Piscatella, Murphy has been, upon information and belief, providing Piscatella advice for the benefit of Carter and Bennett. To accomplish that Murphy arranged, upon information and belief, that Murphy represent Piscatella as an attorney regarding, as stated by Murphy, Piscatella's potential testimony" in the above captioned lawsuit. See paragraph 16, supra.

¹⁴ See Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14 ("I have supplemented Mr. Bennett's candidate file with those documents"), attached as Exhibit #13.

¹⁵ See Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14.

filing documents, including those of Bennett, from the DCRP headquarters, to not allow Chairman Duncan, myself and the public to see or have a copy of them, and to keep the DCRP candidates files at Piscatella's home instead of at DCRP headquarters¹⁶ Piscatella's hoarding of those DCRP official documents in Piscatella's home not only kept the documents from me, Chairman Duncan, Vice Chairman Huber and other members of the public, but also gave Piscatella, and perhaps others, ample opportunity to alter the documents. The fact that those documents could have been altered by Piscatella or other persons very easily is particularly significant given that, as verified by a qualified digital and computer forensics expert who also is an attorney licensed in South Carolina, alteration of the printed date on SEIs printed from the State Ethics Commission website was so easy that the printed date on any candidate's SEI is not reliable evidence of when the form was actually printed. As attested to by attorney and digital/computer expert Steven Marc Abrams

“ [I]t is my conclusion to a scientific certainty that the printed date shown on the lower right hand corner of any candidate's Statement of Economic Interests that was printed from the SC gov website is not reliable evidence of when the form was actually printed. It is my opinion therefore that the date appearing on the lower right hand corner of the Statement of Economic Interests reports that are proposed as evidence in this matter is not reliable evidence as to when the reports were printed. ”¹⁷

20 I believe it is outrageous that Bennett, Piscatella and Murphy unlawfully added and conspired to add – to “supplement”¹⁸ – personal documents obtained from Bennett to Bennett's official DCRP candidate file when they had no authority to do so. I

¹⁶ See paragraphs 16-17 supra, Exhibits 5, 6, 7 and 8. Murphy volunteered during a telephone conference with attorneys and Judge Howard P. King on July 23, 2012 that Piscatella, as advised by Murphy, had taken the DCRP candidate documents to his home and refused to return them to the DCRP when requested to do so by Chairman Duncan.

¹⁷ Affidavit dated July 30, 2012, from Steven Marc Abrams, J.D., M.S., attached as Exhibit #11.

¹⁸ See Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14 (“I have supplemented Mr. Bennett's candidate file with those documents”) para 16-17 supra, Exhibits 5, 6, 7 and 8.

believe it is outrageous that Piscatella, upon the advice of Murphy, took and retained personal possession of those official DCRP documents, as least some of which were public documents by law,¹⁹ hoarded and secreted them, covered up the fact that Bennett's SEI was missing from his official DCRP file, and led me to believe, falsely, that Bennett's DCRP file contained a proper SEI. That tampering with and hoarding of evidence is an obstruction of justice having the effect and apparent purpose of preventing the public and even the Chairman of the DCRP from learning and proving whether candidates had been certified illegally. All of this spoliation of evidence should require construing as evidence against Bennett and Piscatella any of the supplemental documents from Bennett added to the DCRP file for Bennett. Bennett should not be able to participate in supplementing and mixing the official DCRP file with his own inaccurate,²⁰ different²¹ and self-serving personal version of the documents and reap the benefit of a SEI form he inserted into that file.

21. Piscatella claims in an affidavit that the documents with which Piscatella "supplemented Mr. Bennett's candidate file"²² "are true and accurate copies of the original documents that Mr. Bennett filed with [Piscatella] on March 20, 2012."²³ Evidence shows that claim by Piscatella is false. The personal Bennett documents obtained by Murphy from Bennett that Piscatella, as advised by Murphy, used to "supplement", commingle and pollute Bennett's official DCRP candidate file were not identical to the documents that Bennett filed with the DCRP on March 20, 2012. One reason that is true is that the official DCRP file for Bennett contains a NOTICE OF

¹⁹ See paragraph 22-23 infra.

²⁰ See paragraphs 25-32 infra.

²¹ See paragraphs 25-32 infra.

²² Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14 paras 16-17 supra Exhibits 5, 6, 7, 8.

²³ Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 14 paras 16-17 supra Exhibits 5, 6, 7, 8.

CANDIDACY AND PLEDGE form signed by Bennett that does NOT appear among the documents Bennett gave Murphy which Murphy gave Piscatella which Piscatella added to the official DCRP file for Bennett. Further, the CANDIDATE PACKET CHECKLIST in the file Bennett gave Murphy which Murphy gave Piscatella which Piscatella added to the official DCRP file for Bennett is not identical to the CANDIDATE PACKET CHECKLIST already in the official DCRP file for Bennett before Piscatella added documents to the official DCRP file for Bennett²⁴

22 I believe Murphy's and Piscatella's withholding of the DCRP candidate documents was an illegal conversion of DCRP property, in addition to being harmful to me, the DCDP, the DCRP and the public. Neither Murphy nor Piscatella had legal authority to withhold any of the DCRP candidate filing documents from Chairman Duncan. That is true because of the clear language in Article VII Section 1 of the DCRP Bylaws giving the DCRP's Chairman, Chairman Duncan, the authority to appoint, and therefore to remove and to replace, the DCRP's candidate filing officer/records custodian. In addition, neither Murphy nor Piscatella had legal authority to withhold the SEI of Bennett or of any other DCRP candidate from Chairman Duncan, Vice Chairman Huber, me or any other member of the public, because all SEIs of candidates are public documents according to Section 8-13-1356(C) of the Code of Laws of South Carolina. Piscatella's illegal actions did not become legal because Murphy gave Piscatella legal advice to obstruct justice and engage in these unlawful concealment actions that benefitted Bennett.

23 Section 8-13-1356 is titled "Filing of statement of economic interests by candidates for public office" (Emphasis added). Subsection (C) states that "[t]he official

²⁴ See Paragraphs 2 / 29 infra

with whom the candidate files a declaration of candidacy or petition for nomination, no later than five business days after the candidacy books close, must file a copy of the statement with the appropriate supervisory office” (Emphasis added.) Thus, Piscatella, the DCRP official with whom Bennett and all other DCRP candidates filed a declaration of candidacy, was required, within five business days of the closing of the candidacy books on March 30, 2012, to file a copy of their statement of economic interests, or SEI, with the appropriate supervisory office for their respective statements of economic interest. The appropriate supervisory office where the SEI of Senate candidate Bennett was required to be filed was the Senate Ethics Committee. Leonard Odom, Research Director for the Senate Ethics Committee, has confirmed in an affidavit, attached hereto as Exhibit #10, dated June 11, 2012, filed with the Charleston County Clerk of Court that — as of June 11, 2012, that no Statement of Economic Interests had been filed with the Senate Ethics Committee regarding a candidate for the SC Senate.²⁵ If Piscatella had filed a SEI for Bennett with the Senate Ethics Committee as he was required to do by Section 8-13-1356(C), Piscatella would not have been able to prevent, as he did, Bennett’s two²⁶ purported SEIs from being seen by me, the DCDP and other members of the public during the six week period of June 13-July 24, 2012. Further, Piscatella and Murphy should not have prevented the public, including me, from viewing and obtaining a copy of Bennett’s two purported SEIs since they are public records according to Section 8-13-1356(C).

24 In addition to Piscatella’s unlawful withholding of DCRP paperwork as

²⁵ See Affidavit dated June 11, 2012, by Leonard Odom, attached hereto as Exhibit #12

²⁶ Bennett had no SEI in his DCRP file on June 13, 2012. Subsequently Piscatella, in concert with Bennett and Murphy with regard to at least one of the SEIs, put two different substitute SEIs in Bennett’s DCRP file to make up for the absence of any SEI in Bennett’s file. See paragraphs 16, 17, 20, 21 supra and paragraphs 27-29 infra

described above, for the more than three week period June 13-July 5, 2012 the DCRP and the SCRP both misled me, as did Piscatella, into believing that there was a valid SEI in Bennett's DCRP candidate file when in fact they knew there was no SEI in that file on June 13, 2012, and withheld from me – concealed and “covered up” - the fact known to them that an SEI for Bennett had been found by Piscatella to be missing on June 13, 2012 from the DCRP Bennett file

25 On July 23, 2012 Judge Howard P King ordered, on a telephone conference with me and other attorneys in this lawsuit, Chris Murphy and Piscatella to file by 5 pm on July 24, 2012, with the Dorchester County Clerk of Court three affidavits by Piscatella and the original of all DCRP documents Murphy and Piscatella had been secreting/withholding at Piscatella's house. On July 24, 2012 the Dorchester County Clerk of Court e-mailed me those three affidavits by Piscatella and the respective documents (collectively “Candidate Documents”) for each of the nineteen DCRP candidates that Piscatella had filed that day with the Court as had been ordered by Judge Howard P King on July 23, 2012. A copy of those three affidavits are attached as Exhibits 13, 14 and 15

26 My review and inspection of those Candidate Documents reveal numerous inconsistencies and discrepancies that lead me to disbelieve and doubt the legality, accuracy, integrity, credibility, reliability and completeness of those Candidate Documents and statements made about those Candidate Documents, including the following

27 Two Sets of Intermingled Bennett Candidate Documents Created by Bennett, Murphy and Piscatella Shockingly the DCRP documents filed with the Court

by Piscatella regarding Bennett contain in reality not one but two different sets of documents that Piscatella intermingled, as advised by Murphy, and with the cooperation and assistance of Murphy and Bennett Piscatella attests in one²⁷ of his affidavits the following

- A Paragraph 8 On March 20, 2012 Piscatella asked Bennett if Bennett wanted a copy of all of the paperwork that Bennett had filed that day with Piscatella at DCRP Headquarters Bennett said he did want a copy, so Piscatella made a copy and gave it to Bennett, who left DCRP headquarters with that copy²⁸
- B Paragraph 13 On June 13, 2012 Piscatella discovered that Bennett's official DCRP file did not contain a SEI or a Campaign Disclosure form²⁹
- C Paragraph 14 Murphy obtained from Bennett personal documents in the possession of Bennett and gave those personal documents to Piscatella In turn, Piscatella added those personal Bennett documents to, and intermingled those personal Bennett documents with, the official DCRP candidate file for Bennett³⁰ Piscatella says those personal Bennett documents added and intermingled by Piscatella to the DCRP's official candidate file for Bennett "are true and accurate copies of the original documents that Mr Bennett filed with me on March 20, 2012"³¹

Thus, as shown above, Bennett, Murphy and Piscatella conspired, cooperated and acted, unlawfully and without authority, to add Bennett's personal documents (hereinafter sometimes "Bennett Version #2 documents") to, and to intermingle Bennett's personal documents with, the documents already in the official DCRP candidate file for Bennett (hereinafter sometimes "Bennett Version #1 documents") Thus, Bennett, Murphy and Piscatella added Bennett Version #2 documents to, and intermingled Bennett Version #2 documents with, the official DCRP Bennett Version #1 documents, to come up with a completely new version of Bennett DCRP candidate filing documents

²⁷ Supplemental Affidavit of Tony Piscatella, June 22, 2012 attached as Exhibit #15

²⁸ Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 8 attached as Exhibit #15

²⁹ Supplemental Affidavit of Tony Piscatella, June 22, 2012, para 13, attached as Exhibit #15

³⁰ Supplemental Affidavit of Tony Piscatella, June 22, 2012 para 14 attached as Exhibit #15

³¹ Supplemental Affidavit of Tony Piscatella, June 22, 2012 para 14, attached as Exhibit #15

28 A comparison of Bennett Version #2 documents with Bennett Version #1 documents shows that the representation attested to by Piscatella that the Bennett Version #2 documents are "true and accurate copies of original documents Mr. Bennett filed with [Piscatella] on March 20, 2012", ³² is not accurate. Specifically, the Bennett Version #2 documents added by Bennett, Murphy and Piscatella to Bennett Version #1 documents differ from the Bennett Version #1 documents in at least the following important respects:

- A. Bennett Version #1 documents contain a Notice of Candidacy and Pledge form signed by Bennett. However, Bennett Version #2 documents do not contain a Notice of Candidacy and Pledge form. That difference alone proves that Bennett Version #2 documents are not a complete copy of Bennett Version #1 documents.
- B. Bennett Version #1 documents contain a Candidate Packet Checklist that has near the top (1) the handwritten words "District 38" next to the typewritten words "State Senator" on one line and (2) the handwritten term "3/20" next to the typewritten words "Paid Date" on another line. Bennett Version #2 documents do not contain a Candidate Packet Checklist with either the words "District 38" or the term "3/20" referenced above. Those differences alone prove that Bennett Version #2 documents are not a complete copy of Bennett Version #1 documents.
- C. Bennett Version #2 documents contain a "Campaign Disclosure" form for Bennett. Bennett Version #1 documents do not contain a "Campaign Disclosure" form for Bennett. That difference alone proves that the Bennett Version #2 documents are not the same as the Bennett Version #1 documents.
- D. Bennett Version #2 documents contain a different SEI for Bennett than the SEI contained in the Bennett Version #1 documents. Specifically, the SEI in the Bennett Version #2 documents contains "3/19/2012 2:07 pm" at the bottom right of each of the three pages of the SEI as the only date and time on each page of that SEI. However, the SEI in the Bennett Version #2 documents do not contain that date or time and, instead, contain the date "6/13/12" at the upper left of each page as the only date on each of the three pages of that SEI. Further, a handwritten note attached to the first page of the SEI in the Bennett Version #1 documents states that it was "downloaded 6/13/12", which means it was not provided by Bennett to the DCRP or Piscatella when Bennett submitted his SIC to Piscatella and the DCRP on March 20, 2012 but, instead, was added by Piscatella to the Bennett Version #1 documents on June 13, 2012.

³² Supplemental Affidavit of Tony Piscatella, June 22, 2012, page 14, attached as Exhibit #13

29 In addition to the differences between the Bennett Version #1 documents and the Bennett Version #2 documents, there are differences between both the Bennett Version #1 documents and the Bennett Version #2 documents, on the one hand, and similar campaign documents submitted by each of the eighteen other DCRP candidates, on the other hand, including the following

- A A NOTICE OF CANDIDACY AND PLEDGE form, along with a packet of other forms, was given by DCRP candidate filing officials Piscatella or Janette Chipas at DCRP Headquarters to every person signing up to become a DCRP candidate. Those forms were filled out by each candidate applicant in his or her own handwriting at the time of filing with the DCRP to become a candidate. The NOTICE OF CANDIDACY AND PLEDGE of each of the eighteen DCRP candidates other than Bennett was filled out in his or her own handwriting, not typewritten, at no less the five locations on that form. However, the NOTICE OF CANDIDACY AND PLEDGE signed by Bennett was typewritten, not handwriting. The fact that Bennett, alone, has a typewritten form while eighteen other candidates have a handwritten form, when all nineteen candidates followed the same DCRP procedure to become a candidate, itself evidences the unreliability of the DCRP documents for Bennett.
- B The DCRP candidate file for each of the nineteen DCRP candidates for the June 12, 2012 Republican Primary contains a "CANDIDATE PACKET CHECKLIST" ("Checklist"). The first question at the top of each of those nineteen Checklists is worded as follows: "Name as it will appear on the ballot." The name "Sean Bennett" is typewritten as Bennett's answer to that question at the top of the Checklist in both the Bennett Version #1 documents and the Bennett Version #2 documents. However, the name of all of the other eighteen candidates stated to answer that question is handwritten, not typed.
- C The second question at the top of each of those nineteen Checklists is worded as follows: "Candidate for office of." The name "State Senator" is typewritten as Bennett's answer to that question at the top of the Checklist in both the Bennett Version #1 documents and the Bennett Version #2 documents. However, the name of all of the other eighteen candidates as their answer to that question is handwritten, not typed.

The fact that Bennett's DCRP paperwork differs from the paperwork of all eighteen other DCRP candidates in the respects stated above evidences the unreliability of, and some kind of tampering with, the DCRP documents for Bennett.

30 In addition to all of the differences and discrepancies regarding the DCRP documents regarding Bennett described above, numerous additional discrepancies regarding the DCRP candidate paperwork for DCRP candidates also evidence the lack of, and cast doubt on the, truthfulness and reliability of those other DCRP candidate documents

For example, all nineteen candidates signed a CANDIDATE PACKET CHECKLIST ("Checklist") with either Piscatella or Janette Chipas, Assistant Filing Officer for the DCRP, showing which of five specific documents on the Checklist the parties agreed were in the candidate's DCRP file at the time they signed the Checklist. Inexplicably, for twelve of those candidates the DCRP documents provided by Piscatella to the Court on July 24, 2012 are not the same as and are not consistent with what is listed on the CANDIDATE PACKET CHECKLIST signed by the DCRP and each of those twelve respective candidates. Those discrepancies/ inconsistencies include the following

- A. Bennett Bennett Version #1 documents did not include a Campaign Disclosure Form among the documents submitted to the Court on July 23, 2012, even though the Checklists for both the Bennett Version #1 documents and the Bennett Version #2 documents state that a "Campaign Disclosure Form" was among the Bennett Version #1 documents on March 20, 2012.
- B. Bennett The Checklists for both the Bennett Version #1 documents and the Bennett Version #2 documents stated at one time that an "Affidavit" was among the Bennett Version #1 documents and Bennett Version #2 documents. However, no affidavit appears in either version of those documents submitted to the Court on June 23, 2012, and the word "Affidavit" has been crossed out on both version's Checklist.
- C. Byngelson His Checklist says a Campaign Disclosure form was in his file on March 28, 2012, but no Campaign Disclosure form was in his file submitted to the Court on July 23, 2012.

- D Duncan Her Checklist says a Campaign Disclosure form was in her file on March 28, 2012, but no Campaign Disclosure form was in her file submitted to the Court on July 23, 2012
- E Goodman His Checklist says a Campaign Disclosure form was in his file on March 28, 2012, but no Campaign Disclosure form was in his file submitted to the Court on July 23, 2012
- F Hargett His Checklist says a Campaign Disclosure form and an affidavit were in his file on March 20, 2012, but no Campaign Disclosure form or affidavit was in his file submitted to the Court on July 23, 2012
Inexplicably, there are two paper SEIs in his file
- G Hearn His Checklist says a Campaign Disclosure form was in his file on March 28, 2012, but no Campaign Disclosure form was in his file submitted to the Court on July 23, 2012
- II Hull His Checklist says a Campaign Disclosure form and an affidavit were in his file on March 20, 2012, but no Campaign Disclosure form or affidavit was in his file submitted to the Court on July 23, 2012
- I Knight His Checklist says a Campaign Disclosure form was in his file on March 16, 2012, but no Campaign Disclosure form was in his file submitted to the Court on July 23, 2012
- J Mondo His Checklist shows that at one time a "Statement of Economic Interests (SEI) – proof of online filing" was in his file, but no SEI was among his documents submitted to the Court on July 23, 2012
- K Nisbet His Checklist says a Campaign Disclosure form was in his file on March 16, 2012, but no Campaign Disclosure form was in his file submitted to the Court on July 23, 2012
- L Pearson Her Checklist says a Campaign Disclosure form was not in her file on March 16, 2012, but a Campaign Disclosure form was in her file submitted to the Court on July 23, 2012. In addition, the following note appeared attached at the upper right corner of her SEI in her file on July 23, 2012 "3/26/12 Per your request. Thanks to all at the office for what you do Mary"
- M Turner The Checklist says a Campaign Disclosure form was in his file on March 28, 2012, but no Campaign Disclosure form is was in his file submitted to the Court on July 23, 2012

31 Based on a representation by Piscatella that John Mondo ("Mondo") had filed properly as a candidate, the DCRP certified Mondo in April, 2012, as a properly qualified DCRP candidate for the June 12 Primary. However, the DCRP later decertified Mondo, in May, 2012, as a Primary candidate after Piscatella determined Mondo had not submitted his SEI as required after the SC Supreme Court decision on May 2, 2012, in Anderson v. South Carolina Election Commission, 397 S.C. 551, 725

S E 2d 704 (May 2, 2012) The fact that Piscatella caused the certification of Mondo who later was decertified as unqualified for failure to have submitted a proper SEI evidences that Piscatella did not understand or require compliance with the SEI requirements for becoming a candidate when Bennett signed up with the DCRP to become a candidate on March 20, 2012

32 The above stated facts make me doubt and disbelieve the legality, accuracy, integrity, credibility, reliability and completeness of all the DCRP candidate documents for Bennett I believe that all documents in the DCRP candidate file for Bennett should be construed against both Bennett and Piscatella due to spoliation of evidence because of (a) the illegal, surreptitious and unreliable manner in which the DCRP documents regarding Bennett were commingled and wrongfully maintained outside the control of the DCRP, with the active cooperation and participation of Bennett, and (b) the confusion, inaccuracies, uncertainty and unreliability of those documents resulting from the wrongful manner in which those documents have been intermingled and maintained It is outrageous that Piscatella, Murphy and Bennett surreptitiously conspired to add to – to “supplement”³³ – the official DCRP file for Bennett with personal documents maintained by Bennett when they had no authority to do so It is outrageous that Piscatella, at the direction of Murphy, wrongfully was secreting and possessing those documents and withholding even a copy of those documents from me, the DCRP Chairman and members of the public as we all were trying, as they all well knew, to determine whether the non-incumbent DCRP candidates’ paperwork had been submitted to the DCRP properly as the August 15, 2012 deadline for finally certifying

³³ See Supplemental Affidavit of Tony Piscatella, June 22 2012, para 14 (“I have supplemented Mr Bennett’s candidate file with those documents”)

candidates was approaching. The secretion and withholding of these public documents by Piscatella and Murphy from the DCRP Chairman, me and other members of the public whom they knew wanted a copy of them was done, I believe, for the purpose of helping Bennett, Carter and possibly other candidates Piscatella and Murphy supported, instead of Piscatella fulfilling his duties as a DCRP appointed custodian of records and instead of their neutrally allowing the truth to be ascertained by releasing a copy of the documents. I believe that that Bennett, Murphy, Piscatella and the SCGOP were trying to “run out the clock” by withholding even a copy of those documents from me, the DCRP Chairman and the public until it would be too late to litigate the validity of those documents before the August 15, 2012 certification deadline. It was only the demand of Chairman Duncan on July 9, 2012³⁴ followed by the order by Judge King on July 23, 2012, that finally got these wrongfully withheld public documents released to DCRP Chairman Duncan, me and the public. I believe that Bennett and Piscatella should not reap any benefit from any DCRP document about Bennett as evidence in this litigation given that they have participated in a scheme to supplement the official DCRP file about Bennett with their own inaccurate, different personal documents of Bennett and have helped withhold/secret those documents.

33 The paper SEI Bennett claims to have filed with Piscatella is attached to Bennett’s motion to intervene and is a printed copy of a South Carolina State Ethics Commission SEI that was filed online on March 19, 2012 at 2:08 p.m. A copy of that SEI is attached as Exhibit #14.

34 Section 8-13-1356(B) of the Code of Laws of South Carolina states that

“A candidate must file a statement of economic interests for the preceding

³⁴ See paragraphs 16-17 supra.

calendar year at the same time and with the same official with whom the candidate files a declaration of candidacy ” (Emphasis added)

I believe that, by a preponderance of the evidence, Bennett did not file a paper copy of his SEI “at the same time and with the same official with whom” Bennett filed his “declaration of candidacy”, as required by Section 8-13-1356(B) and the Anderson and Florence County cases. I believe that the best evidence of whether Bennett filed an SEI as required by Section 8-13-1356(B) is the fact that there was no SEI in Bennett’s DCRP candidate file on June 13, 2012, even though the DCRP had a routine business practice of maintaining a copy of all documents submitted by a candidate to the DCRP.

35 Even if Sean Bennett did file a SEI with Piscatella properly, Bennett must be decertified. Section 8-13-1356(B) requires that the SEI filed with the party official be “for the preceding calendar year” and Bennett has failed to do so.

36 Stated another way, even if Bennett did file a paper copy of his SEI “at the same time and with the same official with whom” he filed his “declaration of candidacy”, Bennett did not file a statement of economic interests “for the preceding year”, as required by Section 8-13-1356(B). That is shown conclusively by the following facts:

- A Both of the SEIs contained in the Bennett Version #1 documents and the Bennett Version #2 documents filed with the Court on July 23, 2012, show “2011”, not “2012”, as the “Year” of his “Statement of Economic Interests Report”.³⁵
- B The SEI Bennett attached to his Motion to Intervene and claimed to have filed properly was for the 2011, not the 2012, report year.³⁶
- C Go to the State Ethics Commission website at <http://ethics.sc.gov/Pages/default.aspx>. Click in sequence “Public Reporting”,

³⁵ See Exhibits #17 and #18 attached.

³⁶ See Exhibit #16 attached.

"Individual Financial Reports", "Statement of Economic Interests Reports", Filing Year 2012, Search by Last Name, and Next, Enter "Bennett", Click Next. You will NOT see "Sean Bennett" listed with the seven other persons there having the last name of "Bennett"

D Go to the State Ethics Commission website at <http://ethics.sc.gov/Pages/default.aspx>. Click in sequence "Public Reporting", "Individual Financial Reports", "Statement of Economic Interests Reports", Filing Year 2011, Search by Last Name, and Next, Enter "Bennett", Click Next. You will see "Sean Bennett" listed with seven other persons having the last name of "Bennett". You will see there that "Sean Bennett" filed on March 19, 2012 at 2:08:00 pm as a "Candidate Senate". As shown by the attached copy of Bennett's SEI printed at that website, the year of Bennett's "Statement of Economic Interests Report" is "2011", not "2012"

E In order to file a Statement of Economic Interests Report for the year of 2011, Bennett was required to file his SEI in the 2012 Report Year, not in the 2011 Report Year

F Because Bennett filed his SEI in the 2011 Report Year, Bennett in fact filed his SEI for the year 2010, which is not the year preceding the year (2012) he became a DCRP candidate

G Thus, because Bennett filed his SEI "for" the year 2010 and not "for the preceding year", which was 2011, Bennett did not comply with Section 8-13-1356(B)

37 The fact that Bennett had to have filed his SEI on the Report form for 2012 instead of on the Report form for 2011 in order to have filed his SEI "for the preceding year" 2011 is shown by the following

A Instructions on how to "start a new filing" of a SEI appear on Page 7 of the user guide of the State Ethics Commission at the following website: <http://ethics.sc.gov/PDFs/Statement%20of%20Economic%20Interest%20User%20Guide%20VI%200.pdf>. That page at that website states that to do a new SEI filing, "Please select the filing year for this report." (Emphasis added).³⁷ It indicates that the year of the form is the filing year. As a result, in 2012 one is supposed to file a 2012 SEI to report for the year 2011.

B The only way to file a SEI for the first time, as Bennett did on March 19,

³⁷ See South Carolina State Ethics Commission Public Disclosure and Accountability Reporting System Electronic Filing Statement of Economic Interest User Guide, at 7 (Version 1.01.01)

2012, is to click "Start a New Filing", which Bennett did on March 19, 2012. Upon clicking "Start a New Filing" Bennett saw, and one would see now, the following message:

"Electronic Filing"

Statement of Economic Interests

Please select the filing year for this report The information in this report is for the previous calendar year

Note

April 15, 2011 deadline is the 2011 report for information from 1/1/10 to 12/31/2010
April 15, 2012 deadline is the 2012 report for information from 1/1/11 to 12/31/2011" (Emphasis added)

38 Bennett's SEI he claims to have given the DCRP covers the year 2010, not 2011. Bennett did not file a SEI for the year 2011. Therefore, Bennett did not comply with Section 8-13-1356(B)'s requirement that to become a candidate Bennett must have filed a SEI "for the preceding year", which is 2011.

39 Every non incumbent DCRP candidate (i.e., Byngelson, Carter, Duncan, Goodman, Hull, Turner) except Bennett filed his or her SEI on the 2012 Report form, and thereby filed a SEI "for the preceding year", which was 2011. Further, every person with the last name of "Bennett" other than Sean Bennett filed properly on a 2012 or a 2011 report as was required.³⁸ By looking at Exhibit #17 one can see that everyone on the 2011 Bennett list filed a SEI on a 2011 form in 2011 for the year 2010. Similarly, Exhibit #18 shows that everyone on the 2012 Bennett list filed a 2012 form in 2012 for the year 2011. Only Sean Bennett filed his SEI incorrectly, by filing in 2012 on a 2011 form for the year 2010, instead of in 2012 on a 2012 form for the year 2011.

40 The Candidate Campaign Disclosure forms candidates, including Bennett,

³⁸ See attached Exhibits 19 and 20

were required to complete and did complete work the same way as SEIs. Specifically, the “2012 January 10th” filing for the Campaign Disclosure form that Bennett and other candidates filed electronically with the State Election Commission covers the preceding quarter from October 1 to December 31 of 2011. Bennett completed correctly his “2012, January 10th” “Candidate Campaign Disclosure form” covering the period from October 1 to December 31 of 2011. That exact form completed by Bennett was contained among his Bennett Version #2 documents. Bennett had no trouble figuring out the Ethics Commission form dating system for Candidate Campaign Disclosures. The same form dating system is used for SEIs, i.e., the “filing date” of the SEI form is the date the form is filed, but the SEI form covers activity from a prior time period.

40 Regulations of the State Ethics Commission can be found at

<http://www.scstatehouse.gov/coderegs/c052.php>

According to S.C. Code Regs. 52-204, the State Ethics Commission approves its official forms,³⁹ including the Statement of Economic Interests form,⁴⁰ pursuant to properly promulgated Ethics Commission regulations. The Statement of Economic Interests form has been officially adopted by the State Ethics Commission as part of its regulatory authority. The State Ethics Commission deliberately considers the “filing year” for a Statement of Economic Interests to be the year in which one files a SEI, not the year for which one files a SEI.

³⁹ See S.C. Code Regs. 52-204A.

⁴⁰ S.C. Code Regs. 52-204B(13).

Michael T. Rose
MICHAEL T ROSE

Sworn to and subscribed before me this

30th day of July, 2012

Susan D Rose
Notary Public for South Carolina

My Commission Expires 8-23-21

EXHIBITS

AFFIDAVIT of MICHAEL T ROSE

- 1 E-mail dated June 14, 2012, from Mike Rose to Tony Piscatella
- 2 E mail dated June 15, 2012, from Tony Piscatella to Mike Rose
- 3 E mail dated June 15, 2012, from Matt Moore to Mike Rose
- 4 E-mail dated June 19, 2012, from Mike Rose to Dr Tim Hubei and DCRP Chairman
Carroll S Duncan
- 5 E-mail dated June 20, 2012, from Mike Rose to Dr Tim Humber and DCRP Chairman
Carroll S Duncan
- 6 E-mail dated June 20, 2012, from DCRP Chairman Carroll S Duncan to SCGOP ED
Matt Moore
- 7 Letter dated July 9, 2012, from DCRP Chairman Carroll S Duncan to Tony Piscatella
- 8 E-mail dated July 9, 2012, from Todd Kincannon to Chris Murphy
- 9 E-mail dated July 10, 2012, from Chris Murphy to Todd Kincannon
- 10 Letter dated July 11, 2012, from DCRP Chairman Carroll S Duncan to Tony Piscatella
- 11 Affidavit dated July 30, 2012, of Steven Marc Abrams, J D , M S
- 12 Affidavit dated June 11, 2012, of Leonard Patrick Odom
- 13 Affidavit of Tony Piscatella, dated June 21, 2012
- 14 Affidavit of Tony Piscatella, dated June 21, 2012
- 15 Supplemental Affidavit of Tony Piscatella, dated June 22, 2012
- 16 Statement of Economic Interest of Sean Bennett, filed with State Ethics Commission
March 29, 2012, attached to Motion to Intervene of Sean Bennett
- 17 Statement of Economic Interest of Sean Bennett in Bennett Version #1 Documents
- 18 State of Economic Interest of Sean Bennett in Bennett Version #2 Documents
- 19 Persons having last name "Bennett" who filed on 2011 Report Form on State Ethics
Commission website

20 Persons having last name "Bennett" who filed on 2012 Report Form on State Ethics
Commission website

Exhibit 1-10

From Michael Rose [mailto:mrose5@sc.rr.com]
Sent Thursday, June 14, 2012 11:24 PM
To 'Me', tpiscatella@gmail.net
Cc 'mrose5@sc.rr.com'
Subject Tony Piscatella Bennett paperwork

Tony,

As we discussed yesterday, please give me a copy of all of the paperwork
Regarding Sean Bennett's paperwork that you filed on behalf of the DCRP. I want
To review it.

Please confirm where you filed that paperwork, and when.

Thank you

Mike Rose

Michael Rose

From Matt Moore <matt@scgop.com>
Sent Friday, June 15, 2012 9:47 AM
To Tony Piscatella
Cc mrose5@scrr.com
Subject Re: Tony Piscatella Bennett paperwork

Senator please understand this has been our policy due to the Democrats trying to beat down our doors and rifle through our filing cabinets. We've made the same requests of them, and they're not budging.

Matt Moore
Executive Director
South Carolina Republican Party
email matt@scgop.com
twitter @MattMooreSC
phone 803 988 8440

On Jun 15, 2012, at 9:42 AM, Tony Piscatella wrote

Mike

The SCGOP has advised the county parties not to provide any information except through them. Apparently several issues have been raised by people and the state wants to control the flow of information. We are bound by that ruling and can't provide the information I had agreed to give you. It doesn't look like this is going away any time soon.

I'm sorry for the inconvenience this may have caused you.

Tony Piscatella

Treasurer
<Image007.jpg>Dorchester County Republican Party
P O Box 2625
Summerville SC 29484
Phone 843 871 7311
Fax 843 821 2405
Cell 843 670 7537
E-Mail tpiscatella@scrr.com
E-Mail2 dc1plony@gmail.com
Delivery Address for UPS & FedEx
203 Hunt Club Drive
Summerville SC 29185

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and are intended solely for the use of the individual or entity to which they are addressed. If you are not the intended recipient of this e-mail and the information it contains or if you are not the employee or agent responsible for delivering this e-mail and the information it contains to the intended recipient, be advised that you have received this e-mail in error and that any use

On Jun 19, 2012, at 1 16 PM, "Michael Rose" <mrose5@sc.rr.com> wrote

Carroll and Tim,

Given the present circumstances, I want to appeal the certification of Shaun Bennett as
The Republican Party's candidate in the upcoming General Election for Senate District #38

Please tell me what I need to do to process this appeal

Thank you

Mike Rose

-- -- Forwarded message -- --

From: Carroll S. Duncan <carrollsduncan@gmail.com>
Date: Wed, Jun 20, 2012 at 5:06 PM
Subject: Fwd: Appeal Rose vs Bennett Senate District 38
To: Matt Moore <matt@scgop.com>

Answer him or not?

For you, Tony has not and will not alter any records. He's added a copy of the SEI to the file but with note that it's a copy and what day he added and why.

Sent from my iPad

Begin forwarded message:

From: "Mike Rose" <mrose5@sc.rr.com>
Date: June 20, 2012 4:48:21 PM EDT
To: "Tim Huber" <trh61054@aol.com>

Cc: "Carroll Duncan" <carrollsduncan@gmail.com>, <mrose5@sc.rr.com>

Subject: RE: Appeal Rose vs Bennett Senate District 38

Tim and Carroll,

A lawyer told me this afternoon that Tony Piscatella needs to be told that there are computerized records of all computer transactions regarding the paperwork in question, that those records will reveal the truth, and that Tony better not alter in any way the records because if he does he could be indicted.

Mike Rose

Dorchester County Republican Party

89 B Old Trolley Road | Suite 203A | Summerville, South Carolina 29485

July 9, 2012

Tony Piscatella, Candidate Filing Officer
Dorchester County Republican Party
89-B Old Trolley Road, Suite 203A
Summerville, South Carolina 29485

Dear Mr. Piscatella,

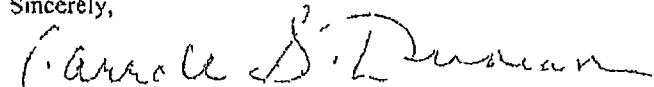
Under direction from the South Carolina Republican Party, the decision was made to keep confidential all Dorchester County Republican Party documents related to candidate filing for the June Primary Elections. I believe this decision was made in error and in my authority as Chairman of the Dorchester County Republican Party, I am reversing it. Accordingly, you are hereby requested to take the following steps:

Please scan as individual PDFs all documents filed with the Dorchester County Republican Party by candidates for the June Primary Elections including but not necessarily limited to statements of intention of candidacy, statements of economic interest, filing receipts for statements of economic interest, pledges, etc. Please email these PDFs to me in a series of emails not exceeding 5 MB in total attachment size. Please verify that no scans cut off any information whatsoever from the header or footer of the documents.

I will provide these documents to anyone who requests them as I believe the public has a right to see them. Further, it is necessary that I obtain them in connection with the litigation we are now facing as well. I am in the process of choosing a member of the South Carolina Bar who is not a resident of Dorchester County to safeguard the documents for the remainder of this election cycle. As soon as they are scanned, please let me know, and I will advise you to deliver all such documents to the Bar member who will serve as the document custodian.

Please see to this as soon as possible.

Sincerely,



Carroll S. Duncan

Chairman

Dorchester County Republican Party

From Chris Murphy [mailto:chris@MURPHYLAWFIRM.LLC.COM]
Sent Tuesday, July 10, 2012 3:31 PM
To Todd Kincannon
Subject RE: DCGOP Filing Documents

Todd

Thank you for your email and I apologize for not getting back to you earlier but I have been running around catching up

First I would like to know under what authority you believe you have the capacity to represent the Dorchester County Republican Party (DCRP) or demand the return of any documents maintained by the custodian appointed by the Chairman. I am not aware of any action by the DCRP Executive Committee in which you were retained to represent the interest of the DCRP. I believe it is a conflict of interest for you (under any authority) to represent Candidate Carroll Duncan and the DCRP. Additionally, your attempt to enter into a Consent Order with the Democratic party to decertify Republican Candidates, without the knowledge and agreement of those candidates directly affected, was in my view improper to say the least.

Tony Piscatella, was appointed by Carroll Duncan to oversee the 2012 candidate filing process and as such he is entrusted with maintaining and safeguarding the files. I have taken the liberty of cutting and pasting Article VIII of the DCRP by laws for your review.

ARTICLE VIII

Records

Section 1 All records shall be kept in written or printed hard copy as well as on computer discs. These records shall be maintained and controlled by a custodian appointed by the County Chairman. They shall be filed in accordance with the approved filing system and stored in locked file cabinets before the close of business on any day the office has been opened.

Section 2 Party records shall be made available only to party members. No copies of party records, in any form, may be distributed without established fees being paid in cash or by check at the time of distribution. Fees will be set by the Executive Committee.

Section 3 Party computer records shall be stored on two separate storage devices. All storage devices, floppy discs or other, are to be kept in locked cabinets when not in use.

Section 4 Party records shall be kept from scrutiny by the public or the news media.

Section 5 The County Chairman shall be responsible to ensure that all records, including lists of any kind, minutes of meetings, correspondence sent and received, etc., shall be kept as permanent party records, and shall be formally turned over to the succeeding County Chairman immediately upon his taking office.

On Thursday, June 21, 2012, I was retained by Tony Piscatella to represent him with regards to his potential testimony as it relates to the pending lawsuit filed by the Dorchester County Democratic Party whereby they have challenged all non-incumbent Republican candidates. As Mr. Piscatella's attorney, I have advised him to safeguard the filing documents of all the 2012 Republican candidates in Dorchester.

County Absent a Court Order directing Mr Piscatella or my office to turn over the files, they will remain in his custody This will help to ensure the chain of custody and the integrity of any potential evidence as the case makes its way through the judicial process

Sincerely,

Christopher J Murphy, Esq
Murphy Law Firm, L.L.C.
136 West Richardson Avenue
Summerville, SC 29483
Phone (843) 832-1120
Fax (843) 832-5969
www.murphyllawfirmllc.com



This communication, together with any attachments, may contain information that is confidential, proprietary, legally privileged or otherwise exempt from disclosure. If you are not the intended recipient of this communication, you are hereby notified that the distribution, reading, copying or other use of this communication and any attachments hereto is strictly prohibited. If you have received this in error, please reply immediately to the sender or destroy this communication. Thank you for your cooperation.

From: Todd Kincannon [<mailto:todd@thekincannonfirm.com>]
Sent: Monday, July 09, 2012 5:11 PM
To: Chris Murphy
Subject: DCGOP Filing Documents

Rep. Murphy

Tony Piscatella has directed that all communication relating to the Dorchester County Republican Party go through you as his attorney. I have not heard back from you regarding my email of last week seeking a convenient time to meet regarding matters relating to the Dorchester County Democratic Party's lawsuit against the DCGOP. Accordingly, please see the attached letter to your client, Tony Piscatella, from my client, Chairman Carroll Duncan.

The letter requests that Mr. Piscatella scan and email all Dorchester County Republican Party filing documents to Chairman Duncan, though you can send them directly to me as well. Upon receiving them, Chairman Duncan will make them available for public inspection. Given the persistent questions about

these documents and the Dorchester County Republican Party filing process, there is no question but that Dorchester County Republican Party members and the general public should be able to see the contents of the documents

The originals should be maintained in a manner that will prevent tampering, and as explained in the letter, I am looking for a member of the South Carolina Bar not from Dorchester County to perform that service. It will also be important to establish a complete chain of custody of these documents for this litigation.

Chairman Duncan and I wish none of this was necessary, but given the Supreme Court's recent rulings, the pending litigation against the Dorchester County Republican Party and Chairman Duncan, and the public perception surrounding this matter, I simply see no other way to handle this. Please let me know if you have any questions.

Todd Kincannon

NOTE NEW ADDRESS BELOW

PLEASE UPDATE RECORDS



THE KINCANNON FIRM

P O Box 7901

COLUMBIA, SC 29202

THEKINCANNONFIRM.COM

OFFICE 877 99 COURT

FAX 888 704 2010

Dorchester County Republican Party

89 B Old Trolley Road | Suite 203A | Summerville, South Carolina 29485

July 11, 2012

Tony Piscatella, Candidate Filing Officer/Records Custodian
Dorchester County Republican Party
89-B Old Trolley Road, Suite 203A
Summerville, South Carolina 29485

Dear Mr. Piscatella

You are hereby removed as candidate filing officer/records custodian of the Dorchester County Republican Party ("DCRP"). DCRP First Vice Chairman Tim Huber is hereby appointed as the new DCRP candidate filing officer/records custodian. You are directed to immediately provide all DCRP documents in your possession to Dr. Huber including but not limited to all candidate filings.

I take this action pursuant to my authority under Article VIII Section 1 of the DCRP Bylaws, which vests appointment—and therefore removal—authority in the Chairman. While I have the unilateral authority to remove for any reason or no reason, I believe the DCRP should know why I have taken this action.

On July 9, 2012, I requested in writing that you provide copies of all candidate filing documents to me. Through your attorney, you refused to provide the documents to me despite the fact that I have a right to these documents as a member of the DCRP under Article VIII Section 2 of the DCRP Bylaws.

I have no alternative but to take this step given your refusal to provide the documents. Again, please immediately provide all DCRP documents in your possession to Dr. Huber including but not limited to all candidate filings.

Sincerely,
Carroll S. Duncan
Carroll S. Duncan
Chairman
Dorchester County Republican Party

cc Tim Huber, DCRP First Vice Chairman

Exhibit
11

digital forensics. My office address is 1558 Ben Sawyer Blvd, Suite D, Mount Pleasant, SC 29464. My business phone number is (843) 216-1100. I am a member of the South Carolina Electronic Crime Task Force and a contractor to the United States government to provide digital forensics services to the Department of Justice and Department of Defense. I have been qualified numerous times in state and federal court as an expert on digital and computer forensics at trial. I have been qualified as an expert by the court on every occasion in which I have been offered as such. My CV is attached to this affidavit as Appendix A.

II Materials Reviewed as Basis of My Opinion

- 2 I was retained in this matter to examine a series of computer generated documents that are to be offered as evidence in this above captioned matter, and to opine on the evidentiary value of those documents.
- 3 I have reviewed the following documents in connection with this matter:
 - a) Attachments Affidavit Larry Hargett pdf
 - b) Attachments to Supplemental Affidavit R Goodman pdf
 - c) Bryngelson Affidavit pdf
 - d) Chipas Affidavit Exhibits pdf
 - e) Chipas Affidavits - signed - two 208230812698 pdf
 - f) Duncan Affidavit pdf
 - g) Goodman Affidavit pdf
 - h) Goodman Supplemental affidavit pdf
 - i) Hargett Affidavit signed pdf
 - j) Hull Affidavit pdf

k) Shields-GOP Affidavit pdf

l) Turner Affidavit pdf

m) Sean Bennett SEI Backdating Experiment pdf

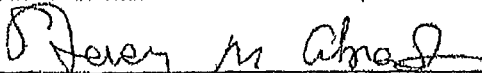
- 4 In the affidavits listed above there are repeated references to a date which appears in the lower right hand corner of the reports of the candidate's Statement of Economic Interests that were printed from the SC Ethics Commission's Public Disclosure and Accountability Reporting system on the SC gov website
- 5 The aforementioned affidavits rely on the date printed in the lower right hand corner of the reports as the actual date on which the reports were printed
- 6 For reasons shown below I disagree that this printed date is reliable evidence of when the report was actually printed

III Experimental evidence and conclusions

- 7 On July 28, 2012, I performed an experiment that involved printing the Statement of Economic Interests Report for a randomly selected candidate in the 2012 election cycle from the SC Gov – SC State Ethics Commission Public Disclosure and Accountability Reporting system. I performed this experiment using two different Internet browsers, Microsoft Internet Explorer, and Google Chrome. I printed the economic interest report with the computer's system date set correctly at 7/28/2012, and again after resetting the system date to 6/16/2012. The date shown in the lower right hand side of the printed page each time reflected the system date that was currently set in the machine at the time of the printing. Thus I easily produced a copy of the economic interest form on July 28, 2012, that showed the printed date (in the lower right hand corner of the page) as June 16, 2012. (See Appendix B.)

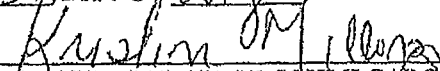
- 8 Tests on both browsers showed the same results, that the printed date on the form was not the actual date the form was printed, but in reality was only the system date set in the computer at the time of printing
- 9 The only reliable forensic evidence that can be used to determine to a scientific certainty when these reports were printed is located on the hard drive of the computer(s) that printed the forms in question. That digital evidence is fragile, and once it is overwritten there is no means of accurately determining the date and time that the forms were printed
- 10 Thus it is my conclusion to a scientific certainty that the printed date shown on lower right hand corner of any candidate's Statement of Economic Interests that was printed from the SC gov website is not reliable evidence of when the form was actually printed
- 11 It is my opinion therefore that the date appearing on the lower right hand corner of the Statement of Economic Interests reports that are proposed as evidence in this matter is not reliable evidence as to when the reports were printed

FURTHER THE AFFIANT SAYETH NOT


Steven Marc Abrams, J.D., M.S.

SWORN TO AND SUBSCRIBED BEFORE ME THIS

30 DAY OF July 2012


NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES 12/31/2017

APPENDIX A

**Steven M. Abrams, J.D., M.S.
Curriculum Vitae**

Steven M. Abrams, J.D., M.S
Attorney, Digital Forensics Examiner and Instructor
1558 Ben Sawyer Blvd , Suite D
Mount Pleasant, SC 29464
843-216 1100
Steve@AbramsForensics.com

Curriculum Vitae

My key practice areas are Computer Forensics, e Discovery, and Computer Law

Education

- 2012 -Techno Security 2012, Computer Forensics Training Seminar, Myrtle Beach, SC, June 3-6, 2012
- 2011 -November 9-12 EnCase 7 Certification Training, Salt Lake City, UT
-November 6-9 Paraben Forensics Innovations Conference, Park City, UT
- April 7, 2011 SC Electronic Crime Task Force Quarterly Meeting and Training
- 2010 - Techno Security 2010, Computer Forensics Training Seminar, Myrtle Beach, SC, June
- SCALI Annual Training Seminar, May 2010
- 2009 - Celebrity Mobile Device Forensics Certification (CCMDE), SEMAR, Mexico City, Mexico
-SCALI Annual Training Seminar, May 2009
- 2008 - South Carolina Basic Constable Training, Tri County Technical College / SC Criminal Justice Academy, October – November 2008
Commissioned as a South Carolina State Constable (LEO) on November 20, 2008
- Techno Security 2008, Computer Forensics Training Seminar, Myrtle Beach, SC, June
- 2007 - Charleston School of Law, Charleston, SC, Juris Doctor (J.D. - Magna Cum Laude)
- GMU2007 Computer Forensics Symposium, Regional Computer Forensic Group of the High Technology Crime Investigation Association, Fairfax VA, Aug 2007 (40 CEU HICIA)
- Techno Security 2007, Computer Forensics Training Seminar, Myrtle Beach, SC, June
- 2006 - University of Aberdeen, School of Law, Kings College, Old Aberdeen, Scotland in collaboration with the University of Baltimore Law School
Summer Law Program in Comparative Criminal Procedure and UK Business Entities & Taxation
Techno Security 2006, Computer Forensics Training Seminar, Myrtle Beach, SC, June
- SCALI Annual Training Seminar, May 2006
- 2005 - SCALI Annual Training Seminar, May 2005
- SCALI Fall Training Seminar, October 2005

- 2004 - Access Data Advanced Windows Forensics, June 23-25, 2004, New York City (24 Credit Hours)
- SCALI Annual Training Seminar, May 2004 (10 CEU)
- 2003 - GMU2003 Computer Forensics Symposium, Regional Computer Forensic Group of the High Technology Crime Investigation Association, George Mason University, Fairfax, VA Aug 2003, (40 CEU HTCIA)
- Techno Security 2003, Computer Forensics and Security Conference (24 CEU)
- SCALI Annual Training Seminar & PI Training Seminar (16 CEU SLED)
- 2002 - SCALI Annual & Fall Training Seminars (16 CEU SLED)
- GMU2002 Computer Forensics Symposium, Regional Computer Forensic Group of the High Technology Crime Investigation Association, Fairfax VA, Aug 2002, (40 CEU HTCIA)
- Access Data Computer Forensic Boot Camp, North Carolina Justice Academy, Edneyville, NC (24 CEU)
- 1992-1994 Microsoft Internet Developer Workshops NY, NY
- 1992-1993 Novell NetWare CNE Training, IBM Skills Discovery, Jericho NY
- 1984-1985 Microcomputer and Electronics Engineering, Hofstra University, Hempstead NY
- 1982-1983 Ph.D. Studies, Faculty Fellowship, Columbia University, Graduate School of Arts & Sciences
- 1981-1982 Columbia University, College of Physicians & Surgeons, Master of Science (M.S.)
- 1977-1981 Allegheny College, Meadville PA, Bachelor of Arts (B.A.) (Psychology - Computer Science)

Professional Licenses

Current

Licensed Attorney in South Carolina
Licensed Attorney in District of Columbia

Previous

Licensed as a Private Investigator in South Carolina and New York (2002-2008)

Experience (Selected)

- 2011 - Digital Forensics Instructor / Investigator, H 11 Digital Forensics / United States Embassy, Tirane, Albania
- 2010 - Facilitator, Instructor, Annual In Service Legals and CDV Training (SLED), Lowcountry Constable Association
- 2009 - Speaker, South Carolina Association for Justice, Hilton Head, SC (August 6, 2009) Topic: Civil Discovery of E-mails after *O'Grady*
- 2009 - Digital Forensics Instructor/Investigator, H 11 Digital Forensics / United States Embassy, Mexico City, Mexico

2008 – Digital Forensics Instructor/Investigator, H-11 Digital Forensics / United States Embassy, Mexico City, Mexico

2008 – Faculty, SC Bar Convention – Family Law Section CLE

2008 - Shareholder, Abrams Millonzi Law Firm, P C , Mount Pleasant, SC 29464

2007 - Presenter, “E-Discovery Definition, FRCP Changes and Application CLE”, NBI, Charlotte, NC, December 19, 2007

2007 Digital Forensics Instructor/Investigator, H 11 Digital Forensics, United States Embassy, Mexico City, Mexico

2007 Presenter, “Civil to Criminal Collaborative Computer Forensics Investigations between PIs and Law Enforcement”, GMU2007, August 9th & 10th, 2007

2007 - Presenter – “A South Carolina Lawyer’s Roadmap to Navigating the New Federal E Discovery Rules,” The South Carolina Bar (CLE Division), April 13, 2007

2006 - Presenter – “Typical Internet Sexual Activity and its Detection”, Family Law CLE, The South Carolina Bar (CLE Division), November 2006

2006 Instructor, ‘3 day Hands on Computer Forensics Workshop’, Trident Technical College, N Charleston, SC, CLE accredited by The South Carolina Bar, January 2006

2006 – Present International Journal of Cyber Criminology, Editorial Advisory Board

2005 Lecturer, “Computer Forensic Introduction”, Trident Technical College, CLE accredited by South Carolina Bar and CEU / In-Service hours for PIs / LE by SLED

2001 - Present Steve Abrams & Company, Ltd (dba Abrams Computer Forensics) Licensed Private Investigator, Computer Forensics Examiner

1998 2001 Steve Abrams & Company, Ltd Mt Pleasant, SC, President

1996 - Democratic National Committee, Instructor - Southeast and Northeast Regional Schools for Congressional Campaign Managers

1995 – 1999 Direct Marketers of Charleston Mt Pleasant, SC, Partner
Co owner of Political Database Marketing Company and full service political print shop

1994 - 1995 The Software Studio Mt Pleasant, SC, Owner
Owner of software development company that developed database applications for the Newspaper publishing industry

1992-1993 Town of North Hempstead, Manhasset, NY, Deputy Commissioner of Finance

1986 1992 Dignition Telecommunications, Inc , Huntington, NY, Director of R&D

1984 - 1986 Computer Associates International, Islandia, NY, Senior Systems Programmer

1983 Contel Information Systems Division Great Neck NY, Software Engineer
(Developed the first Network Forensics Applications for the DoD)

Recent Publications

Steven M. Abrams, Knowledge of Computer Forensics Is Becoming Essential for Attorneys in the Information Age, 75 N.Y. St. B. Assn. J. 8, 15 (Feb. 2003)

Steven M. Abrams, Knowledge of Computer Forensics, Essential for 21st Century Private Investigators, 16 PI Mag. 46, 59 (October 2003)

Professional Awards & Honors

2008 - Member, SLED Ad Hoc Committee on Computer Forensics

2007 - CALI Excellence for the Future Award, Aviation Law, Charleston School of Law, Fall 2006

- CALI Excellence for the Future Award, Interviewing, Counseling & Negotiation, Charleston School of Law, Fall 2006
- CALI Excellence for the Future Award, Insurance Law, Charleston School of Law, Fall 2006

- Dean's List, Charleston School of Law, Fall 2006, Spring 2007

2006 - Editorial Advisory Board, International Journal of Cyber Criminology

2004 "2004 SCALI Investigator of the Year"

2003 - Member, SLED Private Investigations Business Advisory Committee

Professional Associations

Member, Institute of Electrical and Electronics Engineers - IEEE
Member, South Carolina Association of Legal Investigators - SCALI
Member, Lowcountry Constables Association - LCA

Bar Association Memberships

Admitted to practice in South Carolina
and the District of Columbia

Compensation

I receive \$250 per hour, plus mileage, travel and lodging expenses, for all Computer Forensics services and for depositions and trial testimony

Previous Expert Testimony

I have completed over 800 computer forensics investigations, the overwhelming majority of cases were settled and did not require me to testify

South Carolina cases in which I was qualified in court as an expert are

Hillburn v Hillburn, (2001-DR-08-2354),
Smith v Smith, (2001-DR-22-212),
Natale v Natale, (2003-DR-10-775)
Berda v Berda, (2003-DR-10-1899),
Murphy v Murphy (2004-DR-10 1510) and
Overstolz v Fountain of Youth Wellness Centers LLC (2003-CP-10-000761)
Gitter v Gitter (2008-DR-10-2865)
Ricighano v Ricighano, (2009 DR-18-0102)
Edwards v Junevicius, (2010-DR-10-4736)

I was qualified as a testifying expert on digital forensics in federal court in

UHLIG, LLC, V JOHN ADAM SHIRLEY, (CIVIL ACTION NO 6 08-1208 HFF)

I have also prepared expert's reports under Federal Rule 26(a)(2)(B) for the following federal civil suits filed in the United States District Court for the District of South Carolina

Lumpkin v Bennam, (Civil Action No 2 03-2904 23), and
Miller v American LaFrance Corp (Civil Action No 2 04-1668-23)
Microsoft v BWC Products Inc (Civil Action No 2 06-CV-2023-CWH)
Quala Systems, Inc, et al , v Bulkhaul USA, Inc , et al (Civil Action No 2 07 CV-00673-PMD)
Mainfreight v John Marco, et al , (Civil Action No 9 cv00563 JFA)

I was appointed the Court's Expert in US District Court, District of South Carolina, Rock Hill Division

The Travelers Home and Marine Ins Co v Pope, C/A No 0 10 cv-1688-JFA

I was qualified as a computer forensics expert in North Carolina courts in
Hollins v Lightfoot

In addition I have been deposed in the following matters over the past five years

Calandra v Calandra (2004-DR-10-2675)

McLernon v McLernon (DR10 2003 003090)

White v Cassidy (2004-DR-08-256)

Khoury v Noce (2006-CP-10-001830)

Quala Systems, Inc, et al , v Bulkhaul USA, Inc , et al (Civil Action No 2 07-CV-00673-PMD)

Mainfreight v John Marco, et al , (Civil Action No 9 cv00563 JFA)

Beard v Dunn & Dixon-Hughes et al, (Case No 2010-CP-08-0776)

UHLIG, LLC, V JOHN ADAMSHIRLEY, (CIVIL ACTION No 6 08-1208-HFF)

(Revised July 28, 2012)

Appendix B – Experimental evidence that date in lower right corner of Statement of Economic Interests (“SEI”) Reports from SC GOV is not reliable evidence as to when the SEI report was printed

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting

Individual Reports

Statement of Economic Interests

Statement of Economic Interests Report

Name: Jeffrey Bennett
 Year: 2012
 Filing Date: 4/19/2012
 Version: Original

Demographic Information

Name	Address	Phone	County
Jeffrey Bennett	105 Ashley Road Clemson, SC 29631	864 654 8436	Pickens

Positions

Position/Title	Entity	Type	Term of Office	Date Filed
City Council	Clemson	Candidate	6/2012 11/2012	4/2012

Income and Benefits

*** Filer does not have any personal income and benefit items to disclose ***

Family Income and Benefits

*** Filer does not have any family income and benefit items to disclose ***

Regulated Business Associations

*** Filer does not have any regulated business items to disclose ***

Real or Personal Property Interests

*** Filer does not have any property interest items to disclose ***

Real or Personal Property Interests II

*** Filer does not have any sold, leased, or rented property interest items to disclose ***

Business Interests

*** Filer does not have any business interest items to disclose. ***

Creditors

*** Filer does not have any creditor items to disclose. ***

Lobbyist/Lobbyist's Principal

*** Filer does not have any lobbyist/lobbyist's principal items to disclose. ***

Government Contracts

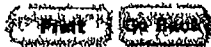
*** Filer does not have any government contract items to disclose. ***

Gifts

*** Filer does not have any gift items to disclose. ***

Travel Reimbursement

*** Filer does not have any travel items to disclose. ***



SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting

Individual Reports
Statement of Economic Interests

Statement of Economic Interests Report

Name Jeffrey Bennett
 Year: 2012
 Filing Date 4/19/2012
 Version Original

Demographic Information

Name	Address	Phone	County
Jeffrey Bennett	105 Ashley Road Clemson, SC 29631	864 654 8486	Pickens

Positions

Position/Title	Entity	Type	Term of Office	Date Filed
City Council	Clemson	Candidate	6/2012 - 11/2012	4/2012

Income and Benefits

*** Filer does not have any personal income and benefit items to disclose ***

Family Income and Benefits

*** Filer does not have any family income and benefit items to disclose ***

Regulated Business Associations

*** Filer does not have any regulated business items to disclose ***

Real or Personal Property Interests

*** Filer does not have any property interest items to disclose ***

Real or Personal Property Interests II

*** Filer does not have any sold, leased, or rented property interest items to disclose ***

Business Interests

*** Filer does not have any business interest items to disclose ***

Creditors

*** Filer does not have any creditor items to disclose ***

Lobbyist/Lobbyist's Principal

*** Filer does not have any Lobbyist/Lobbyist's principal items to disclose. ***

Government Contracts

*** Filer does not have any government contract items to disclose ***

Gifts

*** Filer does not have any gift items to disclose ***

Travel Reimbursement

*** Filer does not have any travel items to disclose. ***

Print **or PDF**

Exhibit
12-15

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2012 CP 18- 1632

STATE OF SOUTH CAROLINA }
COUNTY OF DORCHESTER } **AFFIDAVIT OF TONY PISCATELLA**

PERSONALLY APPEARED BEFORE ME, TONY PISCATELLA, who after being duly sworn, deposes and says as follows

- 1 I am a volunteer member of the Dorchester County Republican Party and serve as Treasurer for the Party I am also a member of the County Executive Committee.
- 2 I was designated by the County Party Chairwoman, Carroll Duncan, to be the person to receive candidate filings for the 2012 Republican Primary
- 3 The Republican Party HQ located at 89B Old Trolley Road, Suite 203A, Summerville South Carolina 29485 was designated as the location to receive the filings
- 4 On Tuesday, March 20, 2012, Sean Bennett, a person known to me, appeared and announced that he was going to file as a candidate for Senate District 38
- 5 Mr. Bennett, who appeared with a female witness, filed the following documents with me
 - a. Statement of Intention of Candidacy (SIC) and Pledge,
 - b. Statement of Economic Interest (SEI) and Proof of filing,
 - c. Candidate Support Committee Declaration Statement,
 - d. a Campaign Disclosure
- 6 We both acknowledged receipt of the documents by signing a Candidate Packet Checklist attached hereto as Exhibit A
- 7 Mr. Bennett also paid his filing fee in the amount of \$416.00 made payable to the Dorchester County Republican Party

FURTHER AFFIANT SAITH NOT!

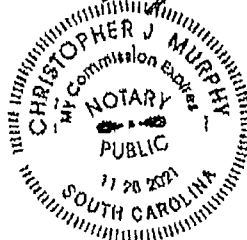
SWORN TO AND SUBSCRIBED BEFORE ME
this 21st day of June 2012

Notary Public for the State of South Carolina

My Commission expires 11/28/2021

By

Tony Piscatella
Tony Piscatella



ROA 694

DORCHESTER COUNTY REPUBLICAN PARTY

CANDIDATE PACKET CHECKLIST

Name as it will appear on the ballot Sean BennettCandidate for office of State Senator District 38Paid DCRP Membership ☒ Y ☐ NFiling Fee Amount \$ 416⁰⁰ Paid Date 3 / 20 / 2012

Make checks payable to DCRP

- ☒ Statement of Intention of Candidacy (SIC) and Pledge
- ☒ Statement of Economic Interests (SEI) – proof of online filing
- ☒ Candidate Support Committee Declaration Statement
- ☒ Affidavit – (Requirements for Coroner and Sheriff)
- ☒ Campaign Disclosure – Not required at time of filing

file online within 10 days of raising or spending \$500, copy to office

STATEMENT I hereby acknowledge that I have received all of the forms and information needed to file for the above office and state that I have accurately and honestly completed the documents

Candidate signature [Signature] Date 3 / 20 / 2012Received by [Signature] Date 3 / 20 / 2012

FILED-RECORDED
2012 JUN 24 PM 12:28
CLERK OF COURT
DORCHESTER COUNTY

SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES
DRIVER'S LICENSE

PISCATELLA, ANTHONY L JR
203 HUNT CLUB DR
SUMMERVILLE SC 294854803

DL# 002168484
Expires 01 22-2017

Class D Hgt: 5-08 Wgt: 210
Sex: M DOB: 01 22 1942
Issued 01-18-2007 18061 R 1

C. J. Randle



Restrain A

For 5
Censor



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2012 JUL 24 PM 12:28
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA }
COUNTY OF DORCHESTER }

2012 CP-18 16.32

AFFIDAVIT OF TONY PISCATELLA

PERSONALLY APPEARED BEFORE ME, TONY PISCATELLA, who after being duly sworn, deposes and says as follows

- 1 I am a volunteer member of the Dorchester County Republican Party and serve as Treasurer for the Party I am also a member of the County Executive Committee
- 2 I was designated by the County Party Chairwoman, Carroll Duncan, to be the person to receive candidate filings for the 2012 Republican Primary
- 3 The Republican Party HQ located at 89B Old Trolley Road, Suite 203A, Summerville, South Carolina 29485 was designated as the location to receive the filings
- 4 On Friday, March 16 2012, Ed Carter, a person known to me, appeared and announced that he was going to file as a candidate for House District 97
- 5 Mr Carter, who appeared with a female witness, filed the following documents with me
 - a Statement of Intention of Candidacy (SIC) and Pledge,
 - b Statement of Economic Interest (SEI) and Proof of filing,
 - c Candidate Support Committee Declaration Statement,
 - d a Campaign Disclosure
- 6 We both acknowledged receipt of the documents by signing a Candidate Acknowledgment attached hereto as Exhibit A
- 7 Mr Carter also paid his filing fee in the amount of \$208.00 made payable to the Dorchester County Republican Party

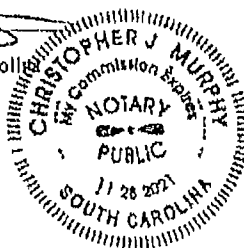
FILED
CLERK OF COURT
DORCHESTER COUNTY
2012 JUL 24 PM 12:28
RECORDED

FURTHER AFFIANT SAYETH NOT

SWORN TO AND SUBSCRIBED BEFORE ME
this 21st day of June 2012

Notary Public for the State of South Carolina

My Commission expires 11/28/2021



By Tony Piscatella
Tony Piscatella

DORCHESTER COUNTY REPUBLICAN PARTY

CANDIDATE PACKET CHECKLIST

Name as it will appear on the ballot Ed Carter
Candidate for office of SC House of Representatives, District 97
Paid DCRP Membership ☒ Y ☐ N
Filing Fee Amount \$ 208 Paid Date 3 / 16 / 2012

Make checks payable to DCRP

☒ Statement of Intention of Candidacy (SIC) and Pledge
☒ Statement of Economic Interests (SEI) — proof of online filing
☒ Candidate Support Committee Declaration Statement
N/A Affidavit — (Requirements for Coroner and Sheriff)
☒ Campaign Disclosure — Not required at time of filing

2012 JUL 24 PM 12:20
- LEG-RECORDED
TERRY L. GAYNOR
CLERK OF COURT
DORCHESTER COUNTY

file online within 10 days of raising or spending \$500, copy to office

STATEMENT I hereby acknowledge that I have received all of the forms and information needed to file for the above office and state that I have accurately and honestly completed the documents

Candidate signature Ed Carter Date 3 / 16 / 2012

Received by Jerry Bennett Date 3 / 16 / 2012

SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES
DRIVER'S LICENSE

PISCATELLA, ANTHONY L JR
203 HUNT CLUB DR
SUMMERVILLE SC 294854803

DL# 002168484
Expires 01-22-2017

Class D Hgt: 5-08 Wgt: 210
Sex: M DOB: 01-22-1942
Issued: 01-18-2007 1M081 R 1

Anthony L. Piscatella



Restraints: A

John S. ...
Commissioner



JOHN L. BISHOP
CLERK OF COURT
BERKELEY COUNTY

2012 JUL 24 PM 12:20

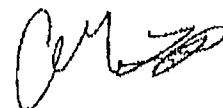
LED-RECORDED

2012-CP-18-1632

STATE OF SOUTH CAROLINA)
) SUPPLEMENTAL
) AFFIDAVIT OF TONY PISCATELLA
COUNTY OF DORCHESTER)

PERSONALLY APPEARED BEFORE ME, TONY PISCATELLA, who after being duly sworn, deposes and says as follows

- 1 I am a volunteer member of the Dorchester County Republican Party and serve as Treasurer for the Party I am also a member of the County Executive Committee
- 2 I was designated by the County Party Chairwoman, Carroll Duncan, to be the person to receive candidate filings for the 2012 Republican Primary
- 3 The Republican Party HQ located at 89B Old Trolley Road, Suite 203A, Summerville, South Carolina 29485 was designated as the location to receive the filings
- 4 On Tuesday, March 20, 2012, Sean Bennett, a person known to me, appeared and announced that he was going to file as a candidate for Senate District 38.
- 5 Mr Bennett, who appeared with a female witness, filed the following documents with me
 - a Statement of Intention of Candidacy (SIC) and Pledge
 - b Statement of Economic Interest (SEI) and Proof of filing,
 - c Candidate Support Committee Declaration Statement,
 - d a Campaign Disclosure
- 6 We both acknowledged receipt of the documents by signing a Candidate Packet Checklist attached hereto as Exhibit A
- 7 Mr Bennett also paid his filing fee in the amount of \$416.00 made payable to the Dorchester County Republican Party
- 8 I asked Mr Bennett if he would like a copy of his filing documents and he stated he did. A copy was made of his entire packet for him
- 9 On May 4th, 2012, after the SC Supreme Court decision in Anderson, I was directed by Carroll Duncan to go to Party HQ and verify which non exempt candidates filed paper copies of their SEI at the time of their filing. I proceeded to Party HQ and pulled the candidate files and matched up the candidate files with the paper SEI that we had



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DORCHESTER COUNTY

received Only one non exempt candidate, John Mondo, did not simultaneously file a paper SEI at the time he filed for office

- 10 After matching the SEIs with each candidate's file, the files were placed back into the filing cabinet drawer located in the back room I then left
- 11 When I left party HQ that morning, Sean Bennett's file contained his SEI along with all of his other documents
- 12 On Thursday, June 7, 2012 after the court decision was handed down regarding Florence County, I was directed again by Carroll Duncan to re verify the files again because the candidates had to be re certified At that time, all files were intact with complete documentation to include SEIs for those non-exempt candidates
- 13 On June 13, 2012, I was asked by Carroll Duncan to again check the files because there was talk in the community regarding the ineligibility of candidates I went to party HQ and discovered that the files were intact with the exception of Sean Bennett's file which was missing his SEI and initial campaign disclosure forms but not the confirmations
- 14 On June 21, 2012, I requested attorney Chris Murphy to obtain a copy of Mr Bennett's candidate documents that I knew he received from me on March 20, 2012 I have supplemented Mr Bennett's candidate file with those documents These documents are true and accurate copies of the original documents that Mr Bennett filed with me on March 20, 2012

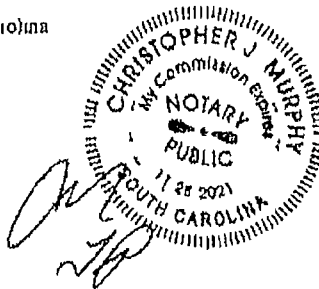
FURTHER AFFIANI SAITH NOT'

SWORN TO AND SUBSCRIBED BEFORE ME
this 22nd day of June 2012

Notary Public for the State of South Carolina

My Commission expires 11 28 2021

By *Vany Piscatella*
Tony Piscatella



FILED-RECORDED
2012 JUL 24 PM 12:28
CLERK OF COURT
BORECHSTER COUNTY

EXHIBIT A

DORCHESTER COUNTY REPUBLICAN PARTY

CANDIDATE PACKET CHECKLIST

Name as it will appear on the ballot Sean Bennett

Candidate for office of State Senator District 38

Paid DCRP Membership ☒ Y ☐ N

Filing Fee Amount \$ 416.00 Paid Date 3 / 20 / 2012

Make checks payable to DCRP

- ☒ Statement of Intention of Candidacy (SIC) and Pledge
- ☒ Statement of Economic Interests (SEI) – proof of online filing
- ☒ Candidate Support Committee Declaration Statement
- ☒ Affidavit – (Requirements for Coroner and Sheriff)
- ☒ Campaign Disclosure – Not required at time of filing

file online within 10 days of raising or spending \$500, copy to office

STATEMENT I hereby acknowledge that I have received all of the forms and information needed to file for the above office and state that I have accurately and honestly completed the documents

Candidate signature [Signature] Date 3 / 20 / 2012

Received by [Signature] Date 3 / 20 / 2012

FILED-RECORDED
2012 JUL 24 PM 12:28
CLERK OF COURT
DORCHESTER COUNTY

SOUTH CAROLINA
DEPARTMENT OF MOTOR VEHICLES
DRIVER'S LICENSE

PISCATELLA, ANTHONY L JR
203 HUNT CLUB DR
SUMMERVILLE SC 294854803

DL# 002168484
Expires: 01 22 2017

Class D Hgt 5-08 Wgt 210
Sex M DOB 01 22 1942
Issued 01-18-2007 15081 R 1

[Signature]



Restrictions A

Signature



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2012 JUL 24 PM 12:20
CLERK OF COURT
BERKESTER COUNTY

Exhibit 16

**SC GOV - SC State Ethics Commission Public Disclosure and Accountability
Reporting****Electronic Filing****Statement of Economic Interests. Review****Filing Report Review**

Name Sean Bennett
Year 2011
Filing Type Original

Demographic Information

Name	Address	Phone	County
Sean Bennett	1422 Peninsula Pointe Summerville, SC 29485	843 442 3009	Dorchester

Positions

Position/Title	Entity	Type	Term of Office	Date Filed
Senator	Senate	Candidate	1/2013 - 1/2017	3/2012

Income and Benefits

*** No Income and Benefits Reported ***

Family Income and Benefits

*** No Family Income and Benefits Reported ***

Regulated Business Associations

*** No Regulated Business Associations Reported ***

Real or Personal Property Interests

*** No Property Interest Entries Reported ***

Real or Personal Property Interests II

*** No Sold, Leased, or Rented Property Interests Reported ***

Business Interests

Name of Business	Relationship
Asset Integration Consultants, Inc	Owner

Creditors

*** No Creditors Reported ***

Lobbyist/Lobbyist's Principal

*** No Lobbyist/Lobbyist's Principal Entries Reported ***

Government Contracts

*** No Government Contracts Reported ***

Gifts

*** No Gifts Reported ***

Travel Reimbursement

*** No Travel Reimbursements Reported ***

General Assembly

*** No General Assembly Entries Reported ***

Print Go Back

GOV - SC State Ethics Commission Public Disclosure and Account . <https://esl.sc.gov/EthicsCandidateFiling/SEL/ReviewPrintReport.aspx>

Exhibit 17

6/13/12

SC GOV SC State Ethics Commission Public Disclosure and Accountability Reporting

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting

Individual Reports

Statement of Economic Interests

Statement of Economic Interests Report

Name Sean Bennett
Year 2011
Filing Date 03/19/2012

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2012 JUL 24 PM 12:12
CLERK OF COURT
DORCHESTER COUNTY

Demographic Information

Name	Address	Phone	County
Sean Bennett	1422 Peninsula Pointe Summerville, SC 29485	843 442 3009	Dorchester

Positions

Position/Title	Entity	Type	Term of Office	Date Filed
Senator	Senate	Candidate	1/2013 1/2017	3/2012

Income and Benefits

*** Filer does not have any personal income and benefit items to disclose ***

Family Income and Benefits

*** Filer does not have any family income and benefit items to disclose ***

Regulated Business Associations

*** Filer does not have any regulated business items to disclose ***

Real or Personal Property Interests

*** Filer does not have any property interest items to disclose ***

Real or Personal Property Interests II

Downloaded
6/13/12

6/13/12

SC GOV SC State Ethics Commission Public Disclosure and Accountability Reporting

*** Filer does not have any sold, leased, or rented property interest items to disclose ***

Business Interests

Name of Business	Relationship
Asset Integration Consultants, Inc	Owner

Creditors

*** Filer does not have any creditor items to disclose ***

Lobbyist/Lobbyist's Principal

*** Filer does not have any Lobbyist/Lobbyist's principal items to disclose ***

Government Contracts

*** Filer does not have any government contract items to disclose ***

Gifts

*** Filer does not have any gift items to disclose ***

Travel Reimbursement

*** Filer does not have any travel items to disclose ***

General Assembly

*** Filer does not have any general assembly items to disclose ***

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CLERK OF COURT
BERKELEY COUNTY

6/13/12

SC GOV SC State Ethics Commission Public Disclosure and Accountability Reporting

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2012 JUL 24 PM 2:12
CLERK OF COURT
BERKELEY COUNTY

Exhibit
18

SC.GOV SC State Ethics Commission Public Disclosure and Accountability
Reporting
Electronic Filing
Statement of Economic Interests Filing confirmation

Your report has been filed successfully on 3/19/2012 2 08 11 PM Your confirmation number is
SEI11867 R33162 378da468

Your confirmation has been sent to the email address on record Please print this page for your records Click 'Continue' to return
to your Statement of Economic Interests Filings or logout if you are finished

Continue

FILED-RECORDED
2012 JUL 24 PM 12
CLERK OF COURT
DORCHESTER COUNTY

SC GOV SC State Ethics Commission Public Disclosure and Accountability
Reporting
Electronic Filing
Statement of Economic Interests Review

Filing Report Review

Name Sean Bennett
Year 2011
Filing Type Original

Demographic Information

Name	Address	Phone	County
Sean Bennett	1422 Peninsula Pointe Summerville, SC 29485	843 442 3009	Dorchester

Positions

Position/Title	Entity	Type	Term of Office	Date Filed
Senator	Senate	Candidate	1/2013 1/2017	3/2012

Income and Benefits

*** No Income and Benefits Reported ***

Family Income and Benefits

*** No Family Income and Benefits Reported ***

Regulated Business Associations

*** No Regulated Business Associations Reported ***

Real or Personal Property Interests

*** No Property Interest Entries Reported ***

Real or Personal Property Interests II

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 2012 JUL 24 PM 12 12
 CLERK OF COURT
 BORCHESTER COUNTY

*** No Sold, Leased, or Rented Property Interests Reported ***

Business Interests

Name of Business	Relationship
Asset Integration Consultants, Inc	Owner

Creditors

*** No Creditors Reported ***

Lobbyist/Lobbyist's Principal

*** No Lobbyist/Lobbyist's Principal Entries Reported ***

Government Contracts

*** No Government Contracts Reported ***

Gifts

*** No Gifts Reported ***

Travel Reimbursement

*** No Travel Reimbursements Reported ***

General Assembly

*** No General Assembly Entries Reported ***

Print Go Back

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CLERK OF COURT
BERKELEY COUNTY

Exhibit 19-20

7/25/12

SC GOV SC State Ethics Commission Public Disclosure and Accountability Reporting

SC GOV - SC State Ethics Commission' Public Disclosure and Accountability Reporting

Individual Reports

Statement of Economic Interests

Selected

Last Name bennett
Year: 2011

Click on name to review the report

Search Results

Name	Office	Type	Entity	Date Filed	Version
Bennett, Bernice D	Superintendent	Employee	Newberry	3/21/2011 3 07 00 PM	Original
Bennett, Brenda P	Probate Judge	Elected	Allendale	4/27/2011 2 06 00 PM	Original
Bennett II, Charles S	Chief Administrative Official	Employee	North Augusta	4/12/2011 4 18 00 PM	Original
Bennett, Earle M	Public Member, Trustee, Commission Member, or Board Member	Appointed	Will Lou Gray Opportunity School	3/3/2011 10 33 00 AM	Original
Bennett, Frankie	City Council	Elected	Lstill	1/24/2011 5 59 00 PM	Original
Bennett, Linda	Public Member, Trustee, Commission Member, or Board Member	Appointed	Patriots Point Dev Authority	9/22/2011 3 05 00 PM	Original
Bennett, Sean	Senator	Candidate	Senate	3/19/2012 2 08 00 PM	Original
Bennett, Timothy R	Chief Administrative Official	Employee	Allendale	4/4/2011 4 30 00 PM	Original

← Back Start Over

7/25/12

SC GOV SC State Ethics Commission Public Disclosure and Accountability Reporting

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting**Individual Reports****Statement of Economic Interests****Selected**

Last Name bennett
 Year 2012

Click on name to review the report

Search Results

Name	Office	Type	Entity	Date Filed	Version
Bennett, Bernie D	Superintendent	Employee	Newberry	3/26/2012 3 06 00 PM	Original
Bennett, Bernie D	Superintendent	Employee	Newberry	3/26/2012 3 07 00 PM	Amendment 1
Bennett, Earle M	Public Member, Trustee, Commission Member, or Board Member	Appointed	Will Lou Gray Opportunity School	3/13/2012 3 45 00 PM	Original
Bennett, Frankie	City Council	Elected	Estill	2/20/2012 8 00 00 PM	Original
Bennett, Jeffrey	City Council	Candidate	Clemson	4/19/2012 10 47 00 AM	Original
Bennett, Linda	Public Member, Trustee, Commission Member, or Board Member	Appointed	Patriots Point Dev Authority	1/26/2012 9 10 00 AM	Original
Bennett, Timothy R	Chief Administrative Official	Employee	Allendale	1/24/2012 4 13 00 PM	Original

[Back](#) [Start Over](#)

Exhibit J

Chairman Carroll S. Duncan, Dorchester County Republican Party

Statement Regarding Non-Incumbent Candidate Decertifications

Fol Immediate Release - July 17, 2012

Contact: CarrollSDuncan@Gmail.com

Carroll Duncan, Chairman of the Dorchester County Republican Party, released the following statement:

It is with deep regret that I have no choice but to formally decertify all non-incumbent Republican candidates in Dorchester County. In its recent rulings relating to candidate filing, the South Carolina Supreme Court has made clear that it expects county political parties to decertify candidates who have not lawfully filed paper copies of their Statements of Economic Interest at the same time as Statements of Intention of Candidacy.

In previously certifying non-incumbent candidates, I relied on representations made by Tony Piscatella, the Dorchester County Republican Party filing officer, that he had, through "dumb luck," required non-incumbents to file paper SEIs despite the filing instructions having no such requirement. I believed Mr. Piscatella and certified all non-incumbents except one who had never filed any SEI anywhere.

After the election, Mr. Piscatella was asked to produce the paper SEI filed by Sean Bennett. He could not do so and privately admitted that Bennett's SEI was not in the file. I grew very concerned and further investigated the situation. Eventually, I learned that Mr. Piscatella's claim that he had required non-incumbents to file paper SEIs was not true. I have since learned that neither Roger Goodman nor John Hull filed paper SEIs either. I am absolutely heartbroken to learn Mr. Piscatella was not truthful with me or with the public. This also explains why Mr. Piscatella has refused to release the filing documents presently in his possession.

Given what I know now, I have no choice whatsoever but to permanently decertify Sean Bennett, Roger Goodman, and John Hull as candidates. In the cases of Goodman and Hull, no election results are affected. But Sean Bennett's situation is obviously far more regrettable. With regard to the remaining non-incumbent candidates, all are decertified until I gain access to the Dorchester County Republican Party filing documents. At that point in time, I will reconsider my decision based upon the documents in the file, though I have grave concerns about whether those documents have remained properly secured since Mr. Piscatella took them—apparently to his house. And in the case of my county council candidacy, I will make no recertification decision whatsoever and will delegate that to the Vice Chairman of the Dorchester County Republican Party, Tim Huber. In the meantime, I too remain decertified.

This outcome is extremely unfortunate. But I cannot ignore the decisions of the South Carolina Supreme Court. Once it became clear that I could no longer rely on the representations of Mr. Piscatella, I had an obligation to investigate the matter myself as the individual responsible for certifying candidacies. Having investigated the matter, I cannot in good faith certify any non-incumbents whatsoever without access to our files. And because of the facts relating to Mr. Bennett, Mr. Hull, and Mr. Goodman, those decertification decisions are not subject to re-evaluation if and when I gain access to the files.

I deeply regret this, but the rule of law requires that I follow orders of the South Carolina Supreme Court in good faith. I cannot certify candidates for the ballot if I do not honestly believe they filed in compliance with the Supreme Court's recent decisions.

###

5

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DOCHESTER	)	FIRST JUDICIAL CIRCUIT
	)	
Dorchester County Democratic Party,	)	CIVIL ACTION NUMBER 2012-CP-18 1632
	)	
Plaintiff,	)	
	)	
vs	)	MOTION FOR LEAVE TO
	)	CROSS CLAIM
	)	
Dorchester County Republican Party	)	
(Carroll Duncan, as Chairman), Colleton	)	
County Republican Party, Berkeley County	)	
Republican Party, Charleston County	)	
Republican Party, South Carolina	)	
Republican Party (Matt Moore as Executive	)	
Director & Chad Connolly as Chairman),	)	
Dorchester County Election Commission	)	
(Joshua Dickard as Executive Director),	)	
Colleton County Election Commission,	)	
Berkeley County Election Commission,	)	
Charleston County Election Commission,	)	
South Carolina State Election Commission	)	
(Marcia Andino, as Executive Director &	)	
Chris Whitmore as Director of Public	)	
Information and Training), Mike Rose, and	)	
Tony Piscatella,	)	
	)	
Defendants	)	

Defendant Mike Rose hereby moves this Court to be allowed to re-designate and have considered his Answer to the Amended Complaint as an Answer and Cross claim against all other Defendants or, in the alternative, to file an Amended Answer and Cross claim to the Plaintiff's First Amended Complaint. This motion is based upon the following grounds:

1. On July 25, 2012, following the entry of the Court's Order on July 23, 2012, the Plaintiff, the Dorchester County Democratic Party, filed with the Court its First Amended Complaint. In that Amended Complaint, Mike Rose was named as a Defendant.

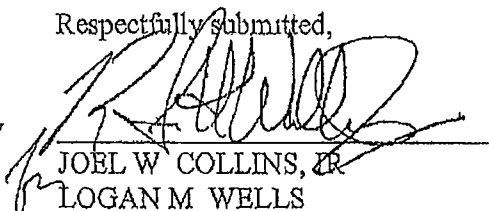
- 2 Earlier, on July 13, 2012, Rose had moved to intervene in the case. Attached as part of
Rose's Motion to Intervene was a Complaint containing averments which challenged the
candidacy of Sean Bennett. The Court's Order granted that Motion.
- 3 In accordance with the Court's accelerated Scheduling Order, on July 27, 2012, Rose
filed his Answer to the Amended Counterclaim. In the Answer, he set forth averments
which challenged the candidacy of Co-Defendant, Sean Bennett.
- 4 On July 23, 2012 the Court ordered Defendant Piscatella and his attorney to file with the
Court candidate files and affidavits in the possession of Piscatella. Upon obtaining a
copy of those documents on July 24, 2012, Defendant Rose learned additional facts that
support an additional ground not previously specifically pled for challenging the
candidacy of Co-Defendant, Sean Bennett.
- 5 On August 1, 2012, Defendant Bennett filed a Motion for Summary Judgment, asserting,
among other things, that Plaintiff, the Dorchester County Democratic Party, lacks
standing.
- 6 To the extent this Court may be persuaded by that position, Defendant Rose wishes to
ensure that this lawsuit is not dismissed in its entirety if the Dorchester County
Democratic Party is dismissed for reasons of lack of standing or for any other reason, and
that a Motion for Summary Judgment is not granted without due consideration being
given to the averments of Defendant Rose.
- 7 Because Rose was a candidate in the Dorchester County Republican Party Primary, and
because his candidacy clearly gives him standing, Defendant Rose hereby moves to be
allowed to re-designate and have considered his Answer to the Amended Complaint as an

Answer and Cross claim against all other Defendants or, in the alternative, to file an Amended Answer and Cross claim to the Plaintiff's First Amended Complaint

- 8 Given the pace and complexity of this litigation, Defendant Rose respectfully submits that the granting of this Motion is in the interests of justice and should be liberally allowed

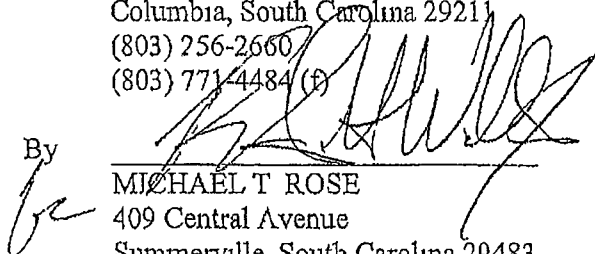
Respectfully submitted,

By


JOEL W. COLLINS, JR.
LOGAN M. WELLS

Collins & Lacy, P.C.
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660
(803) 771-4484 (F)

By


MICHAEL T. ROSE
409 Central Avenue
Summerville, South Carolina 29483
(843) 871-1821
(843) 478-7595 (cell)
Miose5@sc.rr.com
PRO SE

ATTORNEYS FOR MICHAEL T. ROSE

Columbia, South Carolina
August 2, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

IN THE FIRST JUDICIAL CIRCUIT

DORCHESTER COUNTY DEMOCRATIC)
PARTY,)

Civil Action No 2012-CP-18-1632

Plaintiff,)

vs)

DORCHESTER COUNTY REPUBLICAN)
PARTY (*Carroll Duncan, as Chairman*),)
COLLETON COUNTY REPUBLICAN)
PARTY, BERKELEY COUNTY)
REPUBLICAN PARTY, CHARLESTON)
COUNTY REPUBLICAN PARTY, SOUTH)
CAROLINA REPUBLICAN PARTY (*Matt)
Moore as Executive Director & Chad)
Connolly, as Chairman*), DORCHESTER)
COUNTY ELECTION COMMISSION)
(*Joshua Dickard as Executive Director*),)
COLLETON COUNTY ELECTION)
COMMISSION, BERKELEY COUNTY)
ELECTION COMMISSION,)
CHARLESTON COUNTY ELECTION)
COMMISSION, SOUTH CAROLINA)
STATE ELECTION COMMISSION (*Marci)
Andino, as Executive Director & Chris)
Whitmire as Director of Public Information)
and Training*), SEAN BENNETT, MIKE)
ROSE, TONY PISCATELLA,)

Defendants)

**MEMORANDUM IN OPPOSITION TO
DEFENDANT ROSE'S MOTION TO AMEND
HIS ANSWER TO ADD A CROSS-CLAIM**

Defendant Sean Bennett respectfully submits this Memorandum in Opposition to Defendant Rose's "Motion for Leave To Cross Claim" Rose's motion, filed in the late afternoon of August 2nd, could have been filed prior to the June 23rd conference call, should have been filed by June 27th, at the latest, and would, if granted, inflict great prejudice on Bennett now that the hearing on the merits is less than two full business days away. Accordingly, the motion should be denied.

PROCEDURAL HISTORY RELEVANT TO ROSE'S MOTION

According to Rose's affidavit, he received "an unexpected and unsolicited" (but apparently not anonymous) telephone call, the day after he lost the primary election (See Rose Affidavit ¶6) Rose alleges that the caller suggested to him that Bennett's filings with the Dorchester County Republican Party did not comply with the Supreme Court's opinions in *Anderson v South Carolina State Election Commission*, Op No 27120 (S C Sup Ct filed May 2, 2012) (rehearing denied by way of clarification on May 3, 2012) and *Florence County Democratic Party v Florence County Republican Party*, Op No 27128 (S C Sup Ct filed June 5, 2012) (rehearing denied on June 6, 2012) Despite receiving this call, Rose did not file a protest with the Republican Party or a lawsuit with this Court Instead, it was the Dorchester County Democratic Party that filed this lawsuit, on June 29, 2012 The Dorchester County Democratic Party's lawsuit seeks to disqualify Bennett and other non-incumbent victors of the Republican Primary from the General Election in November

On July 9, 2012, Bennett's counsel, Robert Robbins, e-mailed Circuit Judge Diane Goodstein to inform her he would be filing a Motion to Intervene on behalf of Bennett (See Timeline prepared by Robbins (**attached as Exhibit A**)) Minutes later, Rose's counsel, Joel Collins e-mailed Judge Goodstein to advise that Rose also intended to intervene On July 12, Rose formally moved to intervene as a Plaintiff, alleging Bennett should be disqualified based on his failure to file a paper copy of his SEI simultaneously with his SIC (See Motion to Rose's Intervene) A draft order granting Rose's motion to intervene was submitted to The Honorable Diane Schaefer Goodstein on July 20, 2012 (See E-mail from Liz Crum with proposed consent order) Judge Goodstein, however, recused herself from the matter, and this Order was never signed by a judge On this same day, the Dorchester County Democratic Party filed an Amended Complaint adding Rose, Bennett, and Ed Carter, among other parties, as defendants to the case

Then, on July 23, 2012, this Court initiated a conference call with the parties. During this conference call Rose consented to being added as a Defendant and abandoned his motion to intervene as a Plaintiff. No one objected, and he was so added as a Defendant.

Pursuant to the July 23rd conference call, a scheduling order was agreed upon, imposing aggressive deadlines on the parties to resolve this matter in an expedited fashion. Like a game of dominoes, subsequent deadlines were dependent upon previous deadlines being met. The first requirement was imposed on Tony Piscatella, who was required to release his records and affidavits to the Dorchester County Clerk by 5 p.m. on July 24th, a deadline he honored. Three days later, on July 27th, all Answers were due. Unlike the other defendants in the case, who served their Answer via e-mail as a courtesy to the other attorneys in light of the tight deadlines, Rose mailed his Answer to Bennett. As a result, Bennett did not receive this Answer until Monday, July 30th. Indeed, even though Rose's Answer was signed on July 27, the original was not filed with the Dorchester County Clerk of Court until 1:03 p.m. on Monday, July 30th.

On that same day, July 30th, the parties were to submit a Statement of Agreed upon Facts and a Statement of Facts not agreed upon, but provable. Due to a server malfunction, Rose sought and was granted a one-day extension to submit his Statement of Facts. He submitted his Statement, this time via e-mail, after 5 p.m. on July 31st. Motions from all parties were due the next day, on August 1st. Bennett timely filed his Motion to Dismiss, or in the Alternative, for Summary Judgment. In it, he argued, *inter alia*, that the Dorchester County Democratic Party lacked standing to pursue this action and that summary judgment was appropriate because the Dorchester County Democratic Party failed to submit any affidavits, any evidence, or a Statement of Facts in support of its allegation that Bennett's SEI had not been filed simultaneously with his SIC. On August 2nd, after more than a week had passed since this

Court added Rose as a Defendant (with Rose's consent), and after Answers from the parties had been due five days earlier, and after the deadline for filing motions had passed, Rose belatedly moved to amend his pleadings

In his motion, Rose asks that his Answer to the Amended Complaint be construed as an Answer and Cross-Claim against all Defendants, or in the alternative, he asks to be allowed to amend his pleading to add a cross-claim. The reason he seeks this relief is two-fold: (1) Bennett has filed a compelling motion to dismiss based on the Plaintiff's lack of standing, and (2) Rose alleges that new information came to light once Tony Piscatella produced Bennett's file, and Rose should be able to conform his pleadings to incorporate this new information. Neither of these reasons is compelling, especially in light of the great prejudice the addition of a cross-claim would inflict upon Bennett's defense.

APPLICABLE LAW

Rule 15(a) of the South Carolina Rules of Civil Procedure provides that "leave [to amend pleadings] shall be freely given when justice so requires and does not prejudice any other party." As our appellate courts have explained, "[t]he prejudice that Rule 15 envisions is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it." *Collins Entm't, Inc. v. White*, 363 S.C. 546, 562, 611 S.E.2d 262, 270 (Ct. App. 2005). While South Carolina courts liberally allow amendments, "this power should not be used indiscriminately or to prejudice or surprise another party." *Berry v. McLeod*, 328 S.C. 435, 450, 492 S.E.2d 794, 802 (Ct. App. 1997). In other words, despite our judicial system's generous policy with regard to amending pleadings, "sandbagging" will not be tolerated.

Here, while the parties have feverishly prepared for Monday's expedited hearing by filing their pleadings, preparing their statements of facts, collecting their affidavits, making their

motions, and responding to those motions pursuant to the schedule set forth in this Court's July 24, 2012 scheduling order, Rose has engaged in a strategy of hiding and/or moving the target every time a shot is fired at his desire to remain a Senator, regardless of his failure to garner even forty percent of the vote

Hints of this strategy can be seen even in his affidavit, which fails to reveal the "Republican caller" who allegedly suggested that Bennett's SEI might be missing. Considering all three witnesses to Bennett's filing – Bennett himself, Tony Piscatella, the receiving official from the Dorchester County Republican Party, and Rebecca Hyer Woods, who reviewed Bennett's submissions and accompanied him to the Republican Party headquarters when he filed his paperwork – have sworn under the penalty of perjury that a hard copy of Bennett's SEI was filed along with his SIC, it would seem that the "unexpected and unsolicited" caller ought to be identified in order to get to the bottom of why the SEI was later found missing from Piscatella's file. This "moving target" strategy is further underscored by Rose's decision not to file a protest of the election even after receiving this mysterious phone call, and then later moving to intervene as a Plaintiff when the Dorchester County Democratic Party filed this suit.

Bennett, having received the Summons and Complaint that accompanied Rose's Motion to Intervene, began drafting an Answer, only to learn on July 23rd that Rose had changed positions and would consent to being named as a Defendant. With Rose as a Defendant, Bennett answered only the Amended Complaint filed by the Dorchester County Democratic Party.

After having successfully moved the target, Rose next hid it altogether when he seemingly chose not to file a responsive pleading on Friday, June 27th when the other Defendants e-mailed their Answers. While Rose had the benefit of reviewing Bennett's Answer

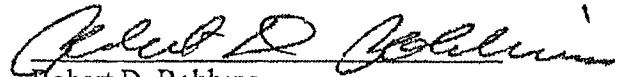
over the weekend, Bennett only became aware of the Answer filed by Rose when the mail arrived on Monday, June 30th

With the next deadline on Wednesday, August 1st, Bennett researched, drafted, and filed motions attacking the only Complaint filed against him, that of the Dorchester County Democratic Party. Only now, when there is literally no time to Answer and no time to file a pre-trial motion, does Rose seek to change his position again, this time *back* to being a Plaintiff. Having asked to become a Defendant, and having been granted that request, Rose should not be allowed to complain about the posture in which he finds himself, especially when changing at this late juncture would result in Bennett having no time to respond. *Cf. Estes v. Grav*, 319 S.C. 551, 554, 462 S.E.2d 561, 562 (Ct. App. 1995) ("Having asked for the relief and having received it, the moving party is bound.")

Furthermore, to the extent Rose argues that his motion to amend is based on newly discovered evidence, the purportedly new evidence is that Bennett's SEI, which was filed simultaneously with his SIC, states that it is for the year 2011, not 2012. Notwithstanding the fact that the substance of this argument has no merit (as addressed in a separate memorandum), the allegation that this notation of 2011 is somehow "newly discovered" is also specious. The electronic version of Bennett's SEI has been publicly available since he filed it in March. Furthermore, Piscatella turned over his file to the Court by the 5 p.m. deadline of July 24th, some three days before the Answers were due and a week before motions were due. Rose provides no plausible explanation for having waited until all deadlines have passed to file this motion. Accordingly, Bennett implores this Court to deny it.

[Signature Block on the Following Page]

Respectfully submitted,



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-and-

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***ATTORNEYS FOR SEAN MICHAEL
BENNETT***

August 3, 2012

DCDP v DCRP, et al
Litigation Timeline

Defendant Sean Bennett hereby responds to the Motion of the Defendant Mike Rose Leave to File Cross Claim as follows

1 On June 29, 2012, the Dorchester County Democratic Party filed suit against the Dorchester County Republican Party, South Carolina Republican Party, Dorchester County Election Commission, and South Carolina Election Commission

2 On the morning of July 9, 2012 counsel for the Dorchester County Democratic Party, James Smith, and counsel for the Dorchester County Republican Party, Todd Kincannon, attempted to enter into a Consent Order that would have decertified all non-incumbent candidates during the balance of this litigation

3 Sean Bennett, the non incumbent winner of the June 12 primary for Senate Seat 38 was forced to file a Motion to Intervene to prevent Attorneys Smith and Kincannon from entering into the aforementioned Consent Order

4 At 12 45 p m Robert D Robbins, attorney for Sean Bennett, e mailed Circuit Judge Diane Goodstein to inform her that he would be filing a Motion to Intervene on behalf of Mr Bennett At 1 51 p m , attorney Joel Collins then e-mailed Judge Goodstein to advise that Senator Mike Rose had retained him to represent him and to file a Motion on his behalf to intervene Thus, Defendant Rose has been involved in this litigation as far back as July 9, 2012

5 On July 12, 2012 Defendant Rose mailed a Motion to the Dorchester County Clerk of Court seeking to Intervene in this litigation as a Plaintiff

6 Elizabeth Crum, counsel for the South Carolina Election Commission, also filed a Motion to Expedite the hearing given the August 15 deadline for certification of all candidates for the November

6, 2012 general election. In that Order, she included the consent of all parties to the Motions of Bennett and Rose to intervene in the case.

7 Before Ms. Crum could get this Order before the Court, Judge Goodstein notified all parties that she was forced to recuse herself from the case.

8 On July 20, 2012, Chief Justice Jean Toal signed an Order appointing the Honorable Howard P. King to preside over this matter. Judge King then scheduled a status phone conference for Monday, July 23, 2012.

9 Also on July 20, 2012, Attorney James Smith, on behalf of the Dorchester County Democratic Party, amended his Complaint to add additional parties. In his Amended Complaint, he named both Sean Bennett and Mike Rose as Defendants. At no time since Mr. Smith amended the Complaint of the Plaintiff, has Defendant Rose raised an objection to being named as a Defendant in this litigation.

10 In fact, Judge King scheduled a status phone conference on Monday, July 23, 2012, at which time he noted that the Plaintiff had amended its Complaint to add Bennett and Rose as parties Defendants. He further noted that Mr. Bennett and Mr. Rose had previously filed Motions to Intervene, that he found it appropriate for each of these to be a party Defendant, each was represented by counsel on the telephone conference, and counsel did not object to their being added as parties Defendant.

11 Judge King also granted the Motion of the South Carolina Election Commission to expedite the schedule for a final hearing. As such, he required the answers to the first Verified Amended Complaint to be filed with the Dorchester County Clerk of Court on or before July 27, 2012. Thus, Defendant Rose had a full week after the amendment of the Complaint by the Plaintiff to file a motion challenging his status as a Defendant and he also had the opportunity to file a cross claim against any other Defendant.

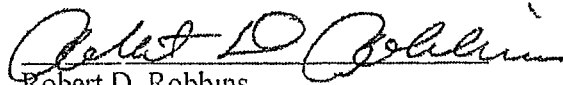
12 Defendant Rose mailed an Answer to the Dorchester County Clerk of Court on July 27, 2012 and did not raise an objection to be named as a Defendant and did not file a cross claim against any other Defendant. The Answer was received by the Clerk of Court and Bennett on July 30, 2012.

13 The Scheduling Order stated that all Motions had to be filed with the Dorchester County Clerk of Court on or before August 1, 2012. As of August 1, 2012 Defendant Rose had not filed any motion to challenge his status as a Defendant, nor had he filed any motion for leave to cross claim.

14 Accordingly, Defendant Rose has failed to protect his own position in this litigation. Defendant Sean Bennett would respectfully submit to the court that there is no basis for granting Defendant Rose's request for leave to file a cross claim after the pleadings have been joined and deadlines have expired.

I, Robert D. Robbins, as counsel for Defendant, Sean Bennett, do certify that the aforementioned timeline is an accurate history of this litigation.

August 3, 2012


Robert D. Robbins

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DOCHESTER	)	FIRST JUDICIAL CIRCUIT
Dorchester County Democratic Party,	)	CIVIL ACTION NUMBER 2012-CP-18-1632
	)	
Plaintiff,	)	
	)	
vs	)	AMENDED ANSWER OF MIKE ROSE
	)	TO THE FIRST AMENDED VERIFIED
Dorchester County Republican Party	)	COMPLAINT, AND CROSS CLAIM
(Carroll Duncan, as Chairman), Colleton	)	AGAINST ALL OTHER DEFENDANTS
County Republican Party, Berkeley County	)	
Republican Party, Charleston County	)	
Republican Party, South Carolina	)	
Republican Party (Matt Moore as Executive	)	
Director & Chad Connolly as Chairman),	)	
Dorchester County Election Commission	)	
(Joshua Dickard as Executive Director),	)	
Colleton County Election Commission,	)	
Berkeley County Election Commission,	)	
Charleston County Election Commission,	)	
South Carolina State Election Commission	)	
(Marc Andino, as Executive Director &	)	
Chris Whitmire as Director of Public	)	
Information and Training), Mike Rose, and	)	
Tony Piscatella,	)	
	)	
Defendants	)	

FILED
 2012 AUG -3 PM 3 26
 CLERK OF COURT
 DOCHESTER COUNTY

Defendant Mike Rose, answering the First Amended Verified Complaint of the Dorchester County Democratic Party and by way of Cross Claim against all Defendants would show unto this Court as follows

FOR A FIRST DEFENSE AND BY WAY OF ANSWER

- 1 Paragraph 1 is a preliminary statement which requires no answer
- 2 Admits the allegations of paragraphs 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 & 15

3 The allegations of paragraph 16 are denied. Further answering paragraph 16, this Defendant would show that Defendant Tony Piscatella was lawfully and properly relieved of his duties by the Chair of the Dorchester County Republican Party (DCRP), Carroll Duncan, because of his misconduct in office, his untruthful statements, his failure to comply with statutory requirements, his failure to abide by instructions and his refusal to turn over party records when instructed to do so.

4 Admits the allegations of paragraphs 17, 18, 19, 20, 21, 22, 23 and 24. Further answering paragraph 22, Mike Rose would show that the Dorchester County Republican Party has properly performed its duty by decertifying earlier certified candidates, including Defendant Bennett. This decertification was warranted by facts gathered by DCRP Chair Carroll Duncan. She determined there had been non compliance with statutory filing requirements. She proceeded to certify other candidates, including Defendant Mike Rose, in accordance with the requirements of South Carolina statutory election law. Mike Rose would further show that the South Carolina Republican Party, upon receipt of this latest certification from the Dorchester County Republican Party, has not yet certified those same candidates to the State Election Commission because the South Carolina Republican Party claims it is uncertain of its authority and awaits a ruling of this Court. Mike Rose would further show the South Carolina Republican Party is authorized, empowered and required in accordance with Section 8-13-1356 of the South Carolina Code of Laws to certify those candidates, including Mike Rose, which are now duly certified by the Dorchester County Republican Party. Such certification is also required by the rulings of the South Carolina Supreme Court in the cases of Anderson v. SC Election Commission, Op. No. 27120 (S.C. Sup. Ct.), filed May 2, 2012 and the case of Florence County

Democratic Party v. Florence County Republican Party, Op. No. 27128 (S.C. Sup. Ct.), filed June 5, 2012.

5 Further answering paragraph 27, Mike Rose would show that Defendant Tony Piscatella was required by Dorchester County Republican Party Bylaws to keep all candidate files in a locked file cabinet. Mike Rose would further show that Defendant Tony Piscatella could not produce a paper copy of candidate Bennett's SEI when requested to do so by Mike Rose and also by DCRP Chair, Carroll Duncan, that on June 13, 2012, no paper copy of a SEI for candidate Bennett existed in the possession of the DCRP, and that the DCRP never received or possessed a paper copy of a SEI for candidate Bennett. Further answering paragraph 27, Mike Rose would show the Statement of Economic Interest later claimed to exist in candidate Bennett's file and to have been given by Bennett to the DCRP was a SEI for the year 2010, not for the year 2011.

6 Admits the allegations of paragraphs 28 and 29. Further answering paragraph 29, Mike Rose would show that the checklist used by the Dorchester County Republican Party while processing candidate paperwork for the 2012 Dorchester County Republican Primary made reference to an electronically filed SEI which did not meet the requirement for a proper SEI to be filed simultaneously as clearly required by the statute and by the two recent South Carolina Supreme Court decisions referenced in paragraph 4 of this Answer.

7 Admits the allegations of paragraphs 30, 31, 32, 33, 34, 35, 36, 37, 38 and 39. Further answering paragraph 31, as instructed by the SCRP the DCRP specifically instructed in writing that each non-incumbent candidate filing for office with the DCRP provide the DCRP a receipt of electronic filing of each candidate's SEI instead of giving to the DCRP a paper copy of that SEI.

- 8 Paragraph 40 requires no response
- 9 Admits the allegations of paragraphs 41 and 42 which make reference to the
South Carolina Uniform Declaratory Judgments Act
- 10 Paragraph 43 requires no response
- 11 Admits the allegations of paragraph 44
- 12 Paragraph 45 requires no response
- 13 Admits the allegations of paragraphs 46 and 47
- 14 Paragraph 48 requires no response
- 15 Lacks sufficient knowledge upon which to form a belief about the allegations of
paragraph 49 and therefore denies the same
- 16 Admits the allegations of paragraph 50
- 17 Lacks sufficient knowledge upon which to form a belief about the allegations of
paragraph 51 and therefore denies the same
- 18 Admits the allegations of paragraphs 52 and 53

**FOR A SECOND DEFENSE AND BY WAY OF CROSS-CLAIM
AGAINST ALL OTHER DEFENDANTS**

- 19 Defendant Mike Rose incorporates herein the allegations of his first defense not
inconsistent herewith
- 20 By way of Cross-Claim against all other Defendants, Defendant Mike Rose
re-alleges as if restated fully herein all allegations in the Complaint for Declaratory Judgment,
Writ of Mandamus, and Motion for Injunctive Relief attached to the Motion to Intervene by
Mike Rose filed with the Court on or about July 13, 2012, and attached hereto as Exhibit A

WHEREFORE, having fully answered Defendant Mike Rose, prays for this Court to
enter its Order declaring

- 1 That candidate Sean Bennett was not and is not a qualified candidate to be the
Republican Party candidate for Senate District 38 in the 2012 General Election,
- 2 That Mike Rose is the qualified candidate for the November 12, 2012 General
Election for Senate District 38,
- 3 That candidate Sean Bennett was correctly found by Dorchester Republican Party
Chair Carroll Duncan to be ineligible for the November 6, 2012 General Election
Primary,
- 4 That the South Carolina Republican Party must certify to the South Carolina State
Election Commission that Mike Rose is the lawfully nominated Republican
candidate for District 38 of the South Carolina Senate,
- 5 Award this Defendant his costs and his attorneys' fees in accordance with Rule 65
(1)(2) of the South Carolina Rules of Civil Procedure, and
- 6 Such other and further relief as this Honorable Court deems just and proper

[Signature Page to Follow]

Respectfully submitted,

COLLINS & LACY, P C

By



JOEL W. COLLINS, JR.

LOGAN M. WELLS

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Columbia, South Carolina 29211

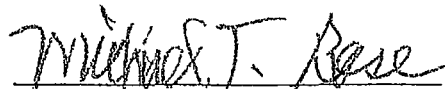
(803) 256-2660

(803) 771-4484 (f)

ATTORNEYS FOR DEFENDANT

MIKE ROSE

By



MICHAEL T. ROSE

Pro se

Columbia, South Carolina
August 3, 2012

EXHIBIT A

EXHIBIT COPY

2012 AUG -3 PM 3 26

U. J. Graham
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA

COUNTY OF DOCHESTER

Dorchester County Democratic Party,

Plaintiff,

vs

Dorchester County Republican Party
(Carroll Duncan, as Chairman), South
Carolina Republican Party (Matt Mooie as
Executive Director & Chad Connolly as
Chairman), Dorchester County Board of
Elections (Joshua Dickard as Executive
Director), South Carolina State Election
Commission (Marc Andino, as Executive
Director & Chris Whitmire as Director of
Public Information and Training),

Defendants

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

CIVIL ACTION NUMBER 2012 CP-18-1632

MICHAEL T ROSE'S MOTION TO
INTERVENE AS A PLAINTIFF

Carroll Duncan
CLERK OF COURT
DOCHESTER COUNTY

CERTIFIED CCP
2012 JUL 13 PM 12 08

YOU WILL PLEASE TAKE NOTICE THAT Michael T Rose, acting pro se and by and through his undersigned counsel, moves for leave to intervene as a plaintiff in the above-captioned action, pursuant to Rule 24(a)(2), or in the alternative Rule 24(b)(2), of the South Carolina Rules of Civil Procedure, and to file the attached complaint, writ of mandamus, and motion for injunctive relief. This motion is based on the following grounds:

1 Michael T Rose has an interest in the subject of this transaction, which is not adequately represented by Plaintiff Dorchester Democratic Party.

2 Plaintiff in this case brought the action to seek enforcement of S.C. Code § 8-13-1356 in accordance with Anderson v. South Carolina Election Commission, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012), and Florence County Democratic Party v. Florence County Republican Party, Op. No. 27128 (S.C. Sup. Ct. filed June 5, 2012) (Pl. Compl. ¶ 15). The

gravamen of Plaintiff's Complaint is that the non-incumbent Dorchester County Republican Candidates (1) did not comply with the provisions under § 8-13-1356, (2) were unlawfully certified by the DCRP, SCRCP, DEC, and SEC for the primary nomination, (3) were held ineligible to appear on a ballot by the Supreme Court, (4) were to be removed from the certified list subsequently submitted by the SCRCP to the SEC, (5) but remained on the Dorchester County ballot for the June 12, 2012 Primary Election, and (6) must not be certified as candidates for the general election and must be removed from the ballot (Id. at ¶ 16)

3 Michael T Rose was an incumbent candidate on the Dorchester County ballot for the June 12, 2012 Republican Primary Election. Michael T Rose complied with § 8-13-1356 and was lawfully included on the aforementioned ballot. Michael T Rose's opponent in the election did not comply with § 8-13-1356 and was not lawfully on the ballot. See (Ex. A, Pleading)

4 Accordingly, Michael T Rose claims an interest relating to the transaction that is the subject of this action.

5 Michael T Rose is so situated that the disposition of this action may as a practical matter impair or impede his ability to protect his interest relating to the transaction that is the subject of this action.

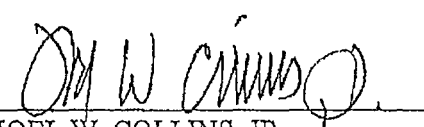
6 This motion is timely as it was filed only two weeks after the initial Complaint, and the litigation has not progressed to an advanced stage.

7 The original parties to this litigation would suffer no prejudice from the granting of the intervention. Moreover, Michael T Rose's intervention in the instant action would serve the purposes of judicial economy as it would avoid subsequent related litigation because the present case is ongoing and the Court has already expended resources in the handling of this matter.

Based on the foregoing reasons, Michael T Rose respectfully requests this Court grant his motion to intervene as a plaintiff in the above-captioned case

Respectfully submitted,

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for MICHAEL T ROSE
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ATTORNEYS FOR MICHAEL T ROSE

Columbia, South Carolina
July 12, 2012

STATE OF SOUTH CAROLINA

COUNTY OF DOCHESTER

Dorchester County Democratic Party, and
Michael T Rose,

Plaintiffs,

vs

Dorchester County Republican Party
(Carioll Duncan, as Chairman), South
Carolina Republican Party (Matt Mooie as
Executive Director & Chad Connolly as
Chairman), Dorchester County Board of
Elections (Joshua Dickaid as Executive
Director), South Carolina State Election
Commission (Marci Andino, as Executive
Director & Chris Whitmire as Director of
Public Information and Training),

Defendants

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

CIVIL ACTION NUMBER 2012-CP-18-1632

PLAINTIFF MICHAEL T ROSE'S
COMPLAINT FOR DECLARATORY
JUDGMENT, WRIT OF MANDAMUS,
AND MOTION FOR INJUNCTIVE
RELIEF

CERTIFIED COPY
2012 JUL 13 PM 12 08
CLERK OF COURT
DOCH-ESTER COUNTY

TO THE DEFENDANTS ABOVE-NAMED

COMES NOW Plaintiff Michael T Rose (hereinafter "Plaintiff"), acting pro se and by and through his undersigned counsel, seeking a Declaratory Judgment under Rule 57 and Injunctive Relief under Rule 65 of the South Carolina Rules of Civil Procedure in connection with a dispute as to whether the Defendants must comply with the South Carolina Supreme Court's Order in Anderson v South Carolina Election Commission, 397 S C 551, 725 S E 2d 704 (2012) (interpreting S C Code Ann § 8-13 1356 and holding that given its plain language, § 8-13 1356 should be applied as written)

STATEMENT OF THE CASE

1 Plaintiff does not come before this Court requesting elucidation or clarification of Anderson v South Carolina Election Commission, 397 S C 551, 725 S E 2d 704 (2012). The Defendants' violation of the laws of this State and their disregard of the South Carolina Supreme Court's Order in Anderson, with regard to the rights of Plaintiff and his own corresponding obligations, make it necessary to seek relief from this Court to avoid additional damage, wasted resources, and deceit and fraud upon the electoral process. Time is of the essence. The Court should not permit an ineligible candidate to be certified for the general election. The Court should take action to prevent fraudulent ballots from being printed. Plaintiff submits that all the non-incumbent Dorchester County Republican candidacies are *void ab initio* inasmuch as the non-incumbent Dorchester County Republican candidates were never eligible candidates for the November 6, 2012 General Election. All non-incumbent Dorchester County Republican candidates must be removed from the ballot in order for the election process to proceed in a lawful manner.

SUPPORT FOR THE GRANT OF INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND WRIT OF MANDAMUS

Plaintiff respectfully submits the following:

2 Plaintiff, Michael T. Rose, is a citizen and resident of Dorchester County, South Carolina. Plaintiff was an incumbent candidate on the Dorchester County ballot for the June 12, 2012 Republican Primary Election. Michael T. Rose complied with § 8-13-1356 and was lawfully included on the aforementioned ballot.

3 The Dorchester County Democratic Party ("DCDP") is a county committee of the South Carolina Democratic Party, certified by the South Carolina Election Commission and the Dorchester County Board of Elections and Voter Registration to nominate candidates for offices

to be voted on in a general or special election and to nominate candidates of that party on a regular basis by party primary Richard Hayes is the Chairman of DCDP

4 South Carolina State Election Commission ("SCSEC") is a commission organized under the laws of South Carolina with a primary mission to ensure every eligible citizen has the opportunity to register to vote, to participate in fair and impartial elections, and to have the assurance that his or her vote will count. The Director of the SSEC is Mary Andino. Chris Whitmire is the Director of Public Information and Training for the SSEC.

5 South Carolina Republican Party ("SCR") is a political party certified by the SCSEC and operating subject to S.C. Code Ann. § 7-9-10, et seq. The Chairman of the South Carolina Republican Party is Chad Connelly. Matt Moore is the Executive Director of the South Carolina Republican Party.

6 Dorchester County Republican Party ("DCRP") is a county committee of the South Carolina Republican Party, certified by the SCSEC and the Dorchester County Board of Elections and Voter Registration to nominate candidates for offices to be voted on in a general or special election and to nominate candidates of that party on a regular basis by party primary. Carroll Duncan is the Chairman of the DCRP.

7 Dorchester County Voter Registration and Election Commission ("DEC"), a seven member board appointed by the Governor, has been codified by the South Carolina Legislature¹ as a government entity which conducts elections and registers electors in Dorchester County. Joshua Dickard is the Director of the DEC.

8 This action is brought pursuant to the South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10 to -140, for the declaration of rights, status, and other legal relations.

¹ S.C. Code Ann. § 7-27-295

9 Incorporated in this action is a Petition for a Writ of Mandamus² to compel officers charged with ministerial duties, which have refused to perform those duties, to immediately comply with the laws of South Carolina and carry out their respective duties

10 Plaintiff seeks a permanent injunction pursuant to Rule 65, SCRPC, and respectfully requests this Court exempt him from submitting a security as contemplated by Rule 65(c), SCRPC

11 A real and substantial controversy exists in this matter, and there is a definite assertion of legal rights and a positive legal duty with respect thereto

12 Plaintiff has a substantial interest in the subject matter of this complaint and will be directly affected by the non-enforcement of the statute and Order³ questioned. That is, Plaintiff is an individual whose civil and political rights are directly affected by the Order⁴ and statutes at issue here

13 A Declaratory Judgment by this Court would terminate the uncertainty and controversy as complained of below

14 A Writ of Mandamus is needed to command those Defendants with ministerial duties, to perform those duties of which Plaintiff (Petitioner) has a specific right therein, and for which Plaintiff (Petitioner) has no other legal remedy

15 If injunctive relief is granted against any or all of Defendants, Plaintiff believes he is entitled to an award of attorney's fees for the costs associated with this action, as this Court

² Writ of Mandamus is a form of relief Plum Creek Dev. Co. v. City of Conway 334 S.C. 30, 512 S.E.2d 106 (1999)

³ Anderson v. South Carolina Election Commission 397 S.C. 551, 725 S.E.2d 704 (2012)

⁴ Id.

deems appropriate, based on Defendants' violation of the Order of the South Carolina Supreme Court.⁵

16 In consideration of the above, this Court has proper jurisdiction over this matter and venue is proper.

FACTS AND ALLEGATIONS

17 Plaintiff has brought this action to seek enforcement of South Carolina law, S C Code Ann § 8-13-1356, and recent South Carolina Supreme Court decisions. The South Carolina Supreme Court held in Anderson v. South Carolina Election Commission, 397 S C 551, 725 S E 2d 704 (2012), that S C Code Ann § 8-13-1356 requires non-exempt candidates to file a paper copy State of Economic Interest ("SEI") at the same time and with the same official with whom the individuals filed a Statement of Intention of Candidacy ("SIC") as the only method by which a non-exempt individual can comply with § 8-13-1356. The South Carolina Supreme Court held in Florence County Democratic Party v. Florence County Republican Party, Op No 27128 (S C June 5, 2012), that candidates who had filed an SIC with the political party did not constitute "public officials" who were exempt from filing a paper copy SEI at the same time and with the same official with whom the individuals filed an SIC unless the candidate already held the office and had an SEI on file with the appropriate supervisory office. See S C Code Ann § 8-13-1356(A). The remedy is removal of the ineligible candidate from the ballot.

18 The gravamen of the request for Injunctive Relief, Declaratory Judgment, and Mandamus is that the non-incumbent Dorchester County Republican Candidates (1) did not comply with the provisions under S C Code Ann § 8-13-1356, (2) were unlawfully certified by the DCRP, SCRCP, DEC, and SFC for the primary nomination, (3) were held ineligible to appear on a ballot by the South Carolina Supreme Court, (4) were to be removed from the certified list

⁵ Id.

subsequently submitted by the SCRP to the SEC, (5) but remained on the Dorchester County ballot for the June 12, 2012 Primary Election, and (6) must not be certified as candidates for the general election and must be removed from the ballot. Plaintiff's position is supported by the facts and law stated below.

19 Under S.C. Code Ann. § 8-13-1356(B), non-exempt individuals must file an SEI at the same time and with the same official with whom the individual files an SIC.

20 Under S.C. Code Ann. § 8-13-1356(E), an officer authorized to receive declarations of candidacy and petitions for nominations may not accept an SIC unless it is accompanied by an SEI.

21 It has been widely reported by sources within the Dorchester County Republican Party that none of the non-incumbent candidates provided their SEIs at the same time as they provided their SICs, all failing to comply with §§ 8-13-1356(B) and (E).

22 The DCRP instructed those filing for office to provide a receipt of electronic filing rather than a paper copy SEI, and the non-incumbent candidates and an officer of the DCRP followed those instructions. In some cases, an officer of the DCRP printed a copy of the SEI of non-incumbent candidates after those non-incumbents had filed their SICs instead of those non-incumbent candidates submitting a paper copy of their SEIs to the officer at the same time the non-incumbent candidates filed their SICs.

23 On May 2, 2012, the South Carolina Supreme Court issued a Declaratory Judgment that any individual who did not comply with the plain language of the requirements set forth under §§ 8-13-1356(B) and (E) was "improperly placed on the party primary ballots and must be removed" and directed the "appropriate official of the political parties to file with the

State Election Commission by noon on May 4, 2012, a list of only those non-exempt candidates who simultaneously filed an SEI and an SIC as required by § 8-13-1356(B) ”

24 On May 4, 2012, per the Supreme Court’s Order, the SCRP submitted to the SCSEC and DCEC a list of individuals who were qualified to be certified by the SCRP

25 In spite of the Supreme Court’s Order, Defendants did unlawfully certify the candidacies of all the Republican non-incumbent candidates for the June 12, 2012 Republican Primary election

26 All of the non-incumbent Republic candidates in Dorchester County are unlawful and ineligible for the General Election

27 Section 8-13-1356(E) further provides that “[i]f the candidate’s name inadvertently appears on the ballot, the officer authorized to receive declarations of candidacy or petitions for nomination must not certify the candidate subsequent to the election ”

28 Non incumbent Dorchester County Republicans must not be certified for the General Election ballot

29 Defendants’ actions are in direct conflict with the South Carolina Supreme Court’s decision in Anderson and are in absolute violation of the main premise on which the conflict stemmed

30 Defendants were aware of the significant election issues before the South Carolina Supreme Court and further understood, and yet, willfully disregarded the clear language of the statute and the South Carolina Supreme Court’s Order in Anderson

31 South Carolina Code Ann § 7-11-10 provides “Nominations for candidates for offices to be voted on in a general or special election may be by political party primary, by political party conventions or by petition, *provided*, no person who was defeated as a candidate

for nomination to an office in a party primary or party convention shall have his name placed on the ballot for the ensuing general or special election, except that this proviso shall not prevent a defeated candidate from later becoming his party's nominee for that office in that election if the candidate first selected as the party's nominee dies, resigns, is disqualified, or otherwise ceases to become the party's nominee for such office before the election is held "

32 Plaintiff, an incumbent Dorchester County Republican Primary candidate, who complied with § 8-13 1356, should therefore have his name placed on the ballot for the ensuing general election

WHEREFORE, Plaintiff prays, in the interest of Justice that a Writ of Mandamus be issued against those several Defendants who have failed to carry out their duties under South Carolina law and pursuant to the South Carolina Supreme Court's Order in Anderson. Regardless of where the blame lays, the Plaintiff comes before this Court praying for declaratory and injunctive relief to enforce the South Carolina Supreme Court's clear command under Anderson. Plaintiff specifically requests that this Court order the SCSEC and all other Defendants to

- (1) Comply with the holdings in Anderson v South Carolina Election Commission, 397 S C 551, 725 S E 2d 704 (2012), and Florence County Democratic Party v Florence County Republican Party, Op No 27128 (S C June 5, 2012),
- (2) Not certify the names of all non incumbent Dorchester County Republicans to the General Election,⁶
- (3) Grant a Writ of Mandamus requiring all Defendants tasked with the necessary ministerial duties to comply with the terms of the declaratory judgment and injunctive relief,

⁶ Anderson is clear – the names must be removed

- (4) Comply with S C Code Ann § 7-11-10, and place Plaintiff's name on the ballot as the Republican candidate for the ensuing general election,
- (5) Award court costs and attorney's fees to Plaintiff pursuant to Rule 65, SCRCF, and
- (6) Due to the egregious nature of Defendants' actions, if this Court so finds contempt or other such conduct deserving sanctions, to grant whatever relief the Court deems appropriate and as may be requested by Plaintiff

Respectfully submitted,

By


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ATTORNEYS FOR MICHAEL T ROSE

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PRO SE

Columbia, South Carolina
July 12, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

IN THE FIRST JUDICIAL CIRCUIT

DORCHESTER COUNTY DEMOCRATIC)
PARTY,)

Civil Action No 2012-CP 18-1632

Plaintiff,)

vs)

DORCHESTER COUNTY REPUBLICAN)
PARTY (*Carroll Duncan as Chairman*),)
COLLETON COUNTY REPUBLICAN)
PARTY, BERKELEY COUNTY)
REPUBLICAN PARTY, CHARLESTON)
COUNTY REPUBLICAN PARTY, SOUTH)
CAROLINA REPUBLICAN PARTY (*Matt)
Moore as Executive Director & Chad)
Connolly, as Chairman*) DORCHESTER)
COUNTY ELECTION COMMISSION)
(*Joshua Dickard as Executive Director*),)
COLLETON COUNTY ELECTION)
COMMISSION, BERKELEY COUNTY)
ELECTION COMMISSION,)
CHARLESTON COUNTY ELECTION)
COMMISSION, SOUTH CAROLINA)
STATE ELECTION COMMISSION (*Marc)
Andino as Executive Director & Chris)
Whitmire as Director of Public Information)
and Training*), SEAN BENNETT, MIKE)
ROSE, TONY PISCATELLA,)

Defendants)

**MEMORANDUM IN OPPOSITION TO
DEFENDANT ROSE'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Defendant Sean Bennett respectfully submits this Memorandum in Opposition to Defendant Rose's Motion for Partial Summary Judgment. In this Motion, Rose argues summary judgment should be granted based on his allegation that the Statement of Economic Interests (SEI) Bennett filed is from 2010, not 2011. This motion should be denied for two reasons. First, the declaratory action that is currently pending before this Court seeks a determination of whether Bennett simultaneously filed a hard copy of his SEI with his SIC. The Complaint does not allege Bennett's SEI was otherwise defective, and Rose did not file a cross-claim in his July

27, 2012 Answer. Second, as reflected in the attached affidavit from Bennett, the allegation that his SEI did not include his economic interests from 2011 is patently untrue. (See Affidavit of Bennett in Response to Rose Motion for Partial Summary Judgment (attached as Exhibit A))

APPLICABLE LAW

Rule 56(b) of the South Carolina Rules of Civil Procedure permits a defendant to file a motion for summary judgment as to any “claim, counterclaim, or cross-claim asserted or declaratory judgment sought.” Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRPC.

ARGUMENTS

I Pleadings Fail to Allege Claim upon which Rose Seeks Summary Judgment

Rose seeks summary judgment on an issue which has never been alleged against Bennett and to which he has never had an opportunity to answer. As Rule 56(b), SCRPC, makes clear, such a motion is inappropriate because it does not relate to the issue asserted against Bennett in the declaratory judgment action filed against him.

Rose argues that no genuine issue of material fact exists with regard to whether the SEI Bennett filed was outdated. This argument is disingenuous. Up until now, Bennett has indeed not addressed in either his affidavits or Answer whether the SEI he filed contained information from 2010 or 2011. The reason that issue has not been addressed is that it has never been raised against Bennett by virtue of a claim or cross-claim. A party who raises an issue for the first time in a motion for summary judgment will be able to argue, almost without exception, that a dearth of facts to the contrary have been asserted by the opposing party. It is for that reason our Rules of Civil Procedure limit motions for summary judgment to any “claim, counterclaim, or cross-

claim asserted or declaratory judgment sought” See Rule 56(b), SCRCP It is also for that reason this Court should deny summary judgment

II Issues of Material Fact Exist

Even if this Court were to entertain Rose’s motion for summary judgment despite the fact that it raises an issue never before alleged against Bennett, the motion should be denied based on Bennett’s attached affidavit In it, Bennett explains that his SEI reports his economic interests from 2011, as required Because he entered his information from 2011, as he was supposed to do, he labeled his report 2011, though according to the instructions, it should have been labeled 2012 This error is not fatal to the filing

Section 8-13-1120 of the South Carolina Code governs the content of SEIs This section lists the information that must be submitted in a candidate’s SEI, and nowhere in the list of necessary items does it mention the proper labeling of the form While the State Ethics Commission may have provided instructions on how to date the form, an incorrect date that is accompanied by current and accurate economic information, would not violate any of the provisions of § 8-13-1120

Moreover, even if Bennett’s SEI did have an error in the economic information that he provided, which it did not, the remedy Rose seeks – Bennett’s disqualification from the November ballot – is contrary to the clear provisions of Chapter 13 of Title 8 of the South Carolina Code Pursuant to Chapter 13, it is not the circuit court, but the Senate Ethics Committee that has the authority to determine whether an error in the SEI of a candidate for the Senate constitutes an “inadvertent and unintentional” error, not subject to a penalty, or whether the error was committed in an effort to violate a requirement of Chapter 13 of Title 8 See 8-13-1170(A) Accordingly, Rose’s argument that Bennett should be disqualified simply because he

labeled his current and accurate SEI with the year "2011" instead of "2012" has no merit and is simply his latest attempt to retain his Senate seat on a technicality, not a democratic vote

Respectfully submitted,



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-and-

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**ATTORNEYS FOR SEAN MICHAEL
BENNETT**

August 3, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DORCHESTER) IN THE FIRST JUDICIAL CIRCUIT

DORCHESTER COUNTY) Civil Action No 2012 CP-18 1632
DEMOCRATIC PARTY,)

Plaintiff,)

vs)

AFFIDAVIT OF SEAN BENNETT

IN RESPONSE TO DEFENDANT

MIKE ROSE'S MOTION FOR
PARTIAL SUMMARY JUDGMENT

DORCHESTER COUNTY REPUBLICAN)
PARTY (*Carroll Duncan, as Chairman*),)
COLLETON COUNTY REPUBLICAN)
PARTY, BERKELEY COUNTY REPUBLICAN)

PARTY, CHARLESTON COUNTY REPUBLICAN)

PARTY, SOUTH CAROLINA REPUBLICAN)

PARTY (*Matt Moore as Executive Director*)

& *Chad Connolly, as Chairman*), DORCHESTER)

COUNTY ELECTION COMMISSION (*Joshua*)

Dickard as Executive Director), BERKELEY)

COUNTY ELECTION COMMISSION,)

CHARLESTON COUNTY ELECTION)

COMMISSION, SOUTH CAROLINA STATE)

ELECTION COMMISSION (*Marc Andino, as*)

Executive Director & Chris Whitmire as Director)

of Public Information and Training),)

SEAN BENNETT MIKE ROSE, TONY)

PISCATELLA)

Defendants)

PERSONALLY APPEARED BEFORE ME, SEAN MICHAEL BENNETT, who after
being duly sworn deposes and says as follows

1 I am the Senator Elect for Senate District 38 and am offering this Affidavit in
response to Defendant Rose's assertion that I filed a Statement of Economic
Interest Form in 2010

2 Attached to this Affidavit is an exact copy of the Statement of Economic
Interest Form that I completed on March 19 2012 and downloaded at 2 07
p m I completed this form and downloaded it on March 19 as my
appointment with the Dorchester County Republican Party to file as a
candidate for Senate District 38 was set for March 20, 2012 at 11 30 a m

3 I have read the Affidavit of the purported forensic expert hired by Defendant
Rose to insinuate that I did not download this document on March 19 2012 I

can only say that he is dead wrong and March 19, 2012 is when I executed the Statement of Economic Interest

My purpose for executing a Statement of Economic Interest on March 19, 2012 was to file as a candidate for the Senate 38 primary election to be held on June 12, 2012. At no time prior to March 19, 2012 have I ever run for public office or held public office. At no time prior to March 19, 2012 have I ever had a reason to file a Statement of Economic Interest.

- 5 Mr. Rose, as he has done often in this matter, has made a baseless accusation that I have filed a Statement of Economic Interest for the calendar year of 2010. It makes no sense for me to do that, as I held no office and was not a candidate in 2011 that would have required the filing of this document. Further, the deadline for filing a 2010 report was April 15, 2011.
- 6 If I should have entered 2012 for the year immediately below my name, my response is that this was clearly a scrivener's error. The economic information I entered on the form was from 2011 *not* 2010, the information I entered was accurate and current.
- 7 The filing deadline for 2012 report was on April 15, 2012. By filing on March 20, 2012 I was clearly making a current report of my 2011 Statement of Economic Interest.
- 8 Again, I reiterate to this Honorable Court, that the Statement of Economic Interest I filed electronically and the hard copy that I filed simultaneously with my Statement of Intention of Candidacy was a current report of my Statement of Economic Interest for the calendar year 2011. I would respectfully ask the Court to deny Defendant Rose's Motion.

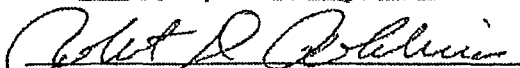
FURTHER AFFIANT SAYETH NOT!

By


SEAN MICHAEL BENNETT

SWORN TO AND SUBSCRIBED BEFORE ME

this 3 day of August, 2012


Notary Public State of South Carolina

My Commission Expires

6-12-18

SC GOV - SC State Ethics Commission Public Disclosure and Accountability Reporting

Electronic Filing

Statement of Economic Interests Review

Filing Report Review

Name Sean Bennett
Year 2011
Filing Type Original

Demographic Information

Name	Address	Phone	County
Sean Bennett	1422 Peninsula Pointe Summerville, SC 29485	843 442 3009	Dorchester

Positions

Position/Title	Entity	Type	Term of Office	Date Filed
Senator	Senate	Candidate	1/2013 1/2017	3/2012

Income and Benefits

*** No Income and Benefits Reported ***

Family Income and Benefits

*** No Family Income and Benefits Reported ***

Regulated Business Associations

*** No Regulated Business Associations Reported ***

Real or Personal Property Interests

*** No Property Interest Entries Reported ***

Real or Personal Property Interests II

*** No Sold, Leased, or Rented Property Interests Reported ***

Business Interests

Name of Business	Relationship
Asset Integration Consultants Inc	Owner

Creditors

*** No Creditors Reported ***

Lobbyist/Lobbyist's Principal

*** No Lobbyist/Lobbyist's Principal Entries Reported ***

Government Contracts

*** No Government Contracts Reported ***

Gifts

*** No Gifts Reported ***

Travel Reimbursement

*** No Travel Reimbursements Reported ***

General Assembly

*** No General Assembly Entries Reported ***

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STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER

DORCHESTER COUNTY DEMOCRATIC
PARTY,

Plaintiff,

vs

DORCHESTER COUNTY REPUBLICAN
PARTY (*Carroll Duncan, as Chairman*),
COLLETON COUNTY REPUBLICAN
PARTY, BERKELEY COUNTY
REPUBLICAN PARTY, CHARLESTON
COUNTY REPUBLICAN PARTY, SOUTH
CAROLINA REPUBLICAN PARTY (*Matt
Moore as Executive Director & Chad
Connolly, as Chairman*), DORCHESTER
COUNTY ELECTION COMMISSION
(*Joshua Dickard as Executive Director*)
COLLETON COUNTY ELECTION
COMMISSION, BERKELEY COUNTY
ELECTION COMMISSION,
CHARLESTON COUNTY ELECTION
COMMISSION, SOUTH CAROLINA
STATE ELECTION COMMISSION (*Marc
Andino, as Executive Director & Chris
Whitmire as Director of Public Information
and Training*), SEAN BENNETT, MIKE
ROSE, TONY PISCATELLA,

Defendants

IN THE COURT OF COMMON PLEAS

IN THE FIRST JUDICIAL CIRCUIT

Civil Action No 2012 CP 18-1632

**MEMORANDUM IN OPPOSITION TO
DEFENDANT ROSE'S MOTION FOR
SANCTIONS AGAINST BENNETT**

Defendant Sean Bennett respectfully submits this Memorandum in Opposition to Defendant Rose's Motion for Sanctions for Spoliation of Evidence against Defendants Sean Bennett and Tony Piscatella. This motion is completely baseless and reflects a pattern of mean-spirited and frivolous accusations Rose has lodged against Bennett ever since Rose lost his Senate seat. The motion should be dismissed, and Bennett should be reimbursed for the attorneys' fees he incurred defending it.

FACTUAL BACKGROUND RELATIVE TO ROSE'S MOTION

The factual background underlying this motion boils down to a swearing contest between three witnesses with firsthand knowledge unequivocally testifying under the penalty of perjury that Bennett filed his SEI at the same time he filed his SIC versus other witnesses who lack firsthand knowledge but nevertheless feel compelled to testify under the penalty of perjury why they doubt that the simultaneous filing occurred. Without belaboring the factual history, which has been outlined in several previous motions, the pertinent facts are these:

- Bennett, Piscatella, and Woods have submitted affidavits about the documents Bennett filed with Piscatella on March 20, 2012. All three, who are the only three with firsthand knowledge, state that Bennett filed a paper copy of his SEI along with his SIC.
- After Bennett filed, Piscatella was directed to check the candidates' filings again on at least two other occasions to ensure they complied with the Supreme Court's opinions in *Anderson v. South Carolina State Election Commission*, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012) (rehearing denied by way of clarification on May 3, 2012) and *Florence County Democratic Party v. Florence County Republican Party*, Op. No. 27128 (S.C. Sup. Ct. filed June 5, 2012) (rehearing denied on June 6, 2012). He re-verified each time that Bennett had a paper copy of his SEI in the file.
- The day after the voters elected Bennett over the incumbent Rose, Rose received a phone call suggesting Bennett's file might be missing a paper copy of his SEI.
- Carroll Duncan, the chairperson of the Dorchester County Republican Party, contacted Piscatella after the election and directed him to check Bennett's file again to make sure it had an SEI.
- Piscatella discovered Bennett's SEI – which he remembered receiving on the day of filing, verifying its existence after the *Anderson* opinion, and re-verifying its existence after the *Florence County* decision – was now missing.
- This missing SEI is NOT the spoliation of evidence at issue in Rose's motion.
- Upon realizing Bennett's SEI was missing, Piscatella downloaded a copy of it from the State Ethics Commission website and made a notation that he had done so on the document itself.
- Piscatella retained an attorney, who advised Piscatella to preserve the documents to ensure no other tampering occurred.

Piscatella's attorney contacted Bennett and asked Bennett to provide him with a copy of the materials Bennett had received back after he had filed with Piscatella. Bennett copied his file and sent it as requested, which included his previously filed SEI.

Based on the above facts, Rose has filed this motion for sanctions against Bennett and Piscatella, arguing they "altered the contents of Mr. Bennett's official DCRP file despite having knowledge that the material was relevant to and subject of a potential claim at the time of this alteration." This argument is manifestly without merit.

APPLICABLE LAW

Citing to several South Carolina cases, Rose states the law of spoliation as follows: "the unexplained and deliberate spoliation of relevant, documentary, or other evidence, or the mutilation or alteration of such evidence, gives rise to an inference that the matter destroyed, mutilated, or altered is unfavorable to the spoliator." See Rose's Motion for Sanctions at 1, citing to *Wisconsin Motor Corp. v. Green*, 224 S.C. 460, 79 S.E.2d 718 (1954), *Pringle v. SLR, Inc. of Summerton*, 382 S.C. 397, 675 S.E.2d 783 (Ct. App. 2009), *Gathers v. S.C. Elec. & Gas Co.*, 311 S.C. 81, 427 S.E.2d 687 (Ct. App. 1993). None of these cases, however, define spoliation to include an "alteration" of a document.

In *Wisconsin Motor Corp.*, our Supreme Court held that nonpayment could be inferred where a bookkeeper who claimed to have paid for goods could not produce records to show his payment. In *Pringle*, the Court of Appeals declined to enforce a negative inference regarding the alleged spoliation of evidence, but noted that the Supreme Court had approved the following jury charge with regard to such an inference: "when evidence is lost or destroyed by a party an inference may be drawn by the jury that the evidence which was lost or destroyed by that party would have been adverse to that party." *Id.* at 405, 675 S.E.2d at 787. Likewise, in *Gathers*, the Court of Appeals re-iterated the exact same instruction.

In addition to South Carolina law, Rose also cites to *Corpus Juris Secundum* to support his assertion that altered evidence gives rise to a negative inference. The CJS indeed indicates that a handful of states will allow a fact-finder to determine whether the alteration of evidence rises to the level of spoliation. But even in those cases, the inference is not absolute. As the 9th Circuit Court of Appeals explained, “the [negative] inference [for tampering with evidence] may be overcome by evidence in the record giving a satisfactory explanation, even when there is actual tampering.” *Wong v Swier*, 267 F.2d 749, 759 (9th Cir. 1959).

Regardless of whether the law of spoliation of evidence in South Carolina encompasses “alteration” of evidence, a proposition for which Rose was unable to cite any South Carolina authority, Bennett did not participate in any spoliation, and this motion should be denied.

ARGUMENTS

As outlined in Bennett’s attached affidavit, no evidence was lost, destroyed, mutilated, or even altered. While Bennett admits to sending Piscatella his file, his doing so in no way compromised the evidence. Piscatella and Bennett both acknowledge that the copies were sent, so this is not a situation where documents have mysteriously shown up and the parties cannot determine what’s what. The very fact that Piscatella made a notation on the SEI he printed out on June 13th and the fact that he has explained why he did so, shows that every effort is being made to be upfront and honest about the situation. To the extent Bennett’s sending of his file raises suspicions, his explanation for why he sent it indicates a pure motive with no intent to tamper with the evidence. Accordingly, Rose’s motion for sanctions should be dismissed, and this Court should consider awarding attorney’s fees to stymie frivolous motions such as this one from overwhelming opposing parties and this Court.

Respectfully submitted,



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***ATTORNEYS FOR SEAN MICHAEL
BENNETT***

August 3, 2012

- Carroll Duncan, Tony Piscatella, or any other member of the 'filing review team' inform me that there was a problem with my paperwork
- 4 After the Anderson decision, Chairwoman Duncan sent an e-mail to all of the candidates, which I received, assuring us that the Dorchester County Republican Party had no problems. In that e-mail she states that we had "multiple sets of eyes reviewing these files and everything appeared to be in order" (A copy of the Duncan e-mail is attached hereto)
- 5 On May 3, 2012 Chairwoman Duncan sent an e-mail to the South Carolina Republican Party stating that every candidate had been certified, except for John Mondo (A copy of the Duncan e-mail is attached hereto)
- 6 After the Florence County decision, Chairwoman Duncan initiated a second review of the candidate files. This time she informed Dorchester County Election Commission Executive Director Joshua Dickard that all candidate files had hard copies of the SEI filed simultaneously with the SIC and Duncan and Piscatella's decision "stands as is" (A copy of Duncan's e-mail to Josh Dickard is attached hereto)
- 7 The primary election for South Carolina Senate Seat 38 was held on June 12, 2012. I soundly defeated Senator Mike Rose by a margin of 60.09%-39.91%. I was declared the winner of the primary and the election was certified by the Dorchester County Election Commission. At no time did any citizen, any party, or Senator Mike Rose protest this election.
- 8 For reasons still unknown to me, Chairwoman Duncan apparently called Tony Piscatella at some point on the day after the election, and asked him to check the files again. I do not know why she would ask him to do this and she has had several opportunities to explain why she felt the need to have the files checked after the election, but has failed and refused to answer that question.
- 9 It is my understanding that Mr. Piscatella went to the Dorchester County Republican Party Headquarters to examine the files which were in a filing cabinet that was not locked. It is further my understanding that multiple people had access to the key code of the front door of the Dorchester County Republican Party Headquarters.
- 10 When Tony Piscatella checked the files, every candidate's files were intact but mine. Two documents were missing from my file, my Statement of

Economic Interest and my Campaign Disclosure Report There is no doubt in my mind that those documents were filed on March 20, 2012 The only spoliation that has occurred in this case happened between June 7, 2012 and June 13, 2012 when someone went into the headquarters of the Dorchester County Republican Party and removed these documents from my file

- 11 I began hearing rumors that there were problems at the headquarters and I asked Ms Woods to give me an Affidavit as to her involvement with the filing process I was also informed that Carroll Duncan and Tony Piscatella were going to secure the files and not let anyone have access to them on instruction of the South Carolina Republican Party
- 12 At the same time, Richard Hayes of the South Carolina Democratic Party, was in the news daily, demanding to see the files and threatening a lawsuit Mr Piscatella retained Attorney Chris Murphy to represent him with respect to the issue involving the missing SEI and Campaign Disclosure Reports
- 13 I am informed and believe that Mr Piscatella downloaded a copy of my SEI from the State Ethics Commission website on June 13, 2012 so that he could show what had been in the file He noted the date that he downloaded the file on the copy, 06-13-2012 He did this at a time when I had no knowledge that my SEI was missing I had nothing to do with him downloading that document, yet Defendant Rose wants to label these documents as "Bennett 1" and "Bennett 2" Nothing could be further from the truth
- 14 I was contacted by Attorney Murphy and asked to provide a copy of what I had filed with Mr Piscatella on March 20, 2012 I provided Mr Murphy with a copy of my folder It included the exact Statement of Economic Interest Form that was filed on March 20 2012 The Candidate Pledge was not included but it was filed on March 20, 2012, and was forwarded by Carroll Duncan to the State Republican Party They have it on file as evidenced by the e-mail from Executive Director Matt Moore dated August 1, 2012 (e-mail of Matt Moore and a copy of candidate pledge on file with state Republican Party attached hereto)
- 15 There was no comingling of documents between me and Mr Piscatella I simply provided Attorney Murphy a copy of my file so that he could document what I had done

- 16 Mr Rose's assertions that Mr Piscatella, Mr Murphy, and myself participated in an unexplained and deliberate spoliation of relevant, documentary evidence is libelous The facts are these I filed a proper Statement of Economic Interest on March 20, 2012, some third party stole that Statement of Economic Interest between June 7, 2012 and June 13, 2012, and I provided counsel for Mr Piscatella with a copy of what I filed
- 17 I respectfully ask the Court to deny Defendant Rose's Motion and award attorneys' fees for having to defend it

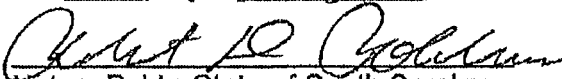
FURTHER AFFIANT SAYETH NOT

By


SEAN MICHAEL BENNETT

SWORN TO AND SUBSCRIBED BEFORE ME

this 3 day of August, 2012



Notary Public State of South Carolina

My Commission Expires 6-12-18

Robby Robbins

Subject

FW SCGOP Issues Statement on Candidate Certification

CERTIFIED COPY
2012 JUL 30 PM 4:27
Charles J. Williams
CLERK OF COURT
DORCHESTER COUNTY

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

From **Carroll Duncan** <carrollduncan@gmail.com>

Date Fri, May 4, 2012 at 3 28 PM

Subject Fwd SCGOP Issues Statement on Candidate Certification

To Carroll Duncan <Carrollduncan@gmail.com>

Cc Tony Piscatella <tpiscatella@gmail.com>, Tim Huber <TRH61054@aol.com>, Janette Chipas <jkcchipas@sc.rr.com>, Barbara Mojonmier <mojonmier@earthlink.net>, Ann Shields <anshields@sc.rr.com>, Mikki Hunter <mikki25@sc.rr.com>

Dear Candidates,

Unbelievable, hectic, stressful is all I can say to describe this week. Provided below in the communique from SCGOP is the official list turned into the State Election Commission today of candidates who are certified. I chose to provide you the entire statewide list to peruse so you will see what's happened county by county.

Tony Piscatella drove me to the Swamp this morning so that I could hand deliver before noon to Joshua Dickard, Ex Director of Elections and Voter Registration, a certification letter with an attached list of all candidates who filed in Dorchester County who are to appear on the ballot. I am sorry to say Mr. John J. Mondo, Sr. could not be certified. Additionally, John Steinberger, who filed in Charleston County, was removed from Senate 41 race.

For your information, we were in great shape once the Supreme Court made their decision, especially for all the challengers and "newbies" because our team (listed above) spent weeks meticulously checking and rechecking what was required of us and we went the extra mile asking for the SEI information, not just the confirmation #.

Our home team go-to guy, Tony, was the master at taking over under the circumstances; you will recall I was unable to get up to the office with no elevator, he insisted that the extra step was taken. On the last day of filing, we had multiple sets of eyes going over all the required info being sent to the State GOP and kept the SEI copies at the office.

As you all may already know, there were two major developments today:

1) Columbia Attorney Todd Kincannon filed a lawsuit in Federal Court this morning asking for an emergency hearing (probably not the legal term, so forgive me) on behalf of the candidates across the state who were taken off the ballot and

2) Senator Larry Martin, Chairman of the Senate Judiciary Committee, called an emergency meeting of said committee Tuesday, May 8, 10:00 am for the purpose of introducing and passing legislation to give those candidates who filed in a timely manner, but got kicked off the ballot for technicalities, time to submit proper documentation to the Parties and have them placed back on the ballot.

ROA 772

Will update you as we receive information and thank each of you for your patience as we have diligently taken received information and applied the ruling passed by the Supreme Court, with many checks and balances. The SCGOP rechecked all of the information the county parties sent to them yesterday. Our goal as a Party is treat all GOP candidates fairly and equally.
Sincerely,

Carroll

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

From **Matt Moore** <matt@scgop.com>
Date Fri, May 4, 2012 at 12:55 PM
Subject SCGOP Issues Statement on Candidate Certification
To Matt Moore <matt@scgop.com>

FOR IMMEDIATE RELEASE

South Carolina Republican Party
Contact: Matt Moore, Executive Director
[803-988-8440](tel:803-988-8440)

SCGOP Issues Statement on Candidate Certification

Columbia, SC - The South Carolina Republican Party today issued a statement following the S.C. Supreme Court's Noon, May 4 filing deadline.

"On behalf of all South Carolina Republicans, I am sad about this week's candidate filing rulings, but am committed to following the S.C. Supreme Court's instructions. Our party has meticulously analyzed the filing submissions in compliance with the standards set forth by the Court.

We respect the Court's decision and in compliance with the Court's order, we have submitted our list to the Election Commission. We are looking forward to moving ahead and anticipate animated and spirited primary contests on June 12th."

Link to filings

<https://docs.google.com/spreadsheets/cc?key=0AtgtKoNHR5uNdEtoeGRSVUVIUnIybzNCOHk4dkVHSEE>

###

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

From **Carroll Duncan** <carrollsduncan@gmail.com>

Date Thu, May 3, 2012 at 3 02 PM

Subject Candidates- Dorchester County Official Notice

To Matt MooreR <matt@scgop.com>

Cc Carroll Duncan <Carrollsduncan@gmail.com>, Tony Piscatella <tpiscatella@gmail.com>

Dear Matt,

Unfortunately, Mr John J Mondo, Sr , candidate for H 102, does **not** meet the criteria spelled out in the May 2, 2012 SC Supreme Court ruling He did not turn in a copy of the SEI with his Statement of Intention of Candidacy nor had he filed by March 30 with the Ethics Commission He did file as soon as he was notified of the deficiency by the EC on April 23

I look forward to hearing from you all about the latest appeal Mr Mondo indicated to Tony that he may run as a conservative Independent in the General Election in November

Carroll

Carroll S Duncan, Chairman
Dorchester County Republican Party
Summerville, SC

CERTIFIED COPY
2012 JUL 30 PM 4:57
Theresa Williams
CLERK OF COURT
DORCHESTER COUNTY

Reception

From Carroll Duncan [carrollduncan@gmail.com]
Sent Thursday, June 07, 2012 2:06 PM
To Joshua Dickard
Cc Tony Piscatella; Carroll Duncan
Subject Re: Supreme Court Ruling UPDATE

Josh,

After examining all candidate's files at the Dorchester County GOP office with all hard copies of the SEI being provided at the same time the Candidate Declaration form was submitted, to the best of my knowledge, at this time, no changes are required on the GOP Primary ballot. The certified candidates' list presented to you on May 4, 2012 before 12 noon by Tony Piscatella and me stands as is.

If you need further information, please don't hesitate to call me.

We certainly appreciate everything you, your staff and the Election Commissioners are doing to protect the integrity of the election process on June 12.

Best,

Carroll

Carroll S. Duncan, Chairman
Dorchester County GOP
843.873.1654

CERTIFIED COPY
2012 JUL 30 PM 4:37
CLERK OF COURT
DORCHESTER COUNTY
Keith Williams

On Thu, Jun 7, 2012 at 10:47 AM, Joshua Dickard <JDickard@dorchestercounty.net> wrote:

I just received an update from the State Election Commission regarding any decertification's you may have. Please submit any decertified names to my office by 4:00 p.m. today, June 7, 2012. Thank you again for your help.

Joshua A. Dickard
Executive Director
Dorchester County Elections & Voter Registration

2120 East Main Street, Dorchester, SC 29437
[843.832.0071](tel:843.832.0071) (office) | [843.832.0281](tel:843.832.0281) (fax)
<http://www.dorchestervotes.org>



Please consider the environment before printing this e-mail

Robby Robbins

From Matt Moore [matt@scgop.com]
Sent Wednesday, August 01, 2012 4:31 PM
To Butch Bowers, Robby Robbins
Subject Documents from Sean Bennett
Attachments seanbennettsic.pdf, ATT00834.htm, sharon@scgop.com_20120801_162413.pdf, ATT00837.htm

The State Party is in possession of two documents from Sean Bennett: his SEI and candidate pledge (attached).
The Dorchester County Party forwarded no SEIs.
Sincerely,

Matt Moore
Executive Director
South Carolina Republican Party
email matt@scgop.com
twitter @MattMooreSC
phone 803 988

NOTICE OF CANDIDACY AND PLEDGE

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

I hereby file my notice as a candidate for the nomination as Senator in the primary election to be held on June 12, 2012. I affiliate with the Republican Party, and I hereby pledge myself to abide by the results of said primary and I authorize the issuance of an injunction upon ex parte application by the party chairman, as provided by law, should I violate this pledge of offering or campaigning in the ensuing general election for election to this office or any other office for which a nominee has been elected in said primary election, unless the nominee for any such office has become deceased or otherwise disqualified for election in said ensuing general election.

Sean M. Bennett

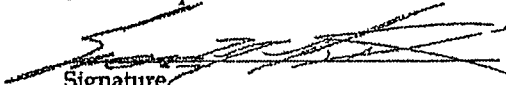
Print Name

843-821-3009

Office Telephone

1422 Peninsula Pointe

Address


Signature

Summerville

29485

City

Zip

3/20/12
Date

843 821-3352

Home Telephone

The notice of candidacy required by this section to be filed by a candidate in a primary must be signed personally by the candidate, and such signature of the candidate must be signed in the presence of the county chairman or such other officer as may be named by the county committee with whom such candidate is filing, or a candidate must have his signature on the notice of the candidacy of any candidate signed by an agent on behalf of a candidate shall not be valid.

NOTE The county chairman shall retain the original, a copy shall be given to the candidate and a copy shall be mailed to State Republican Party Headquarters.

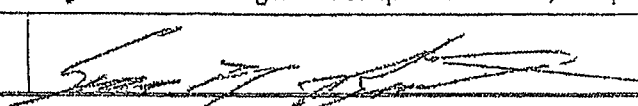
South Carolina Republican Party
1913 Marion Street
Columbia, SC 29201
Phone (803) 988-8440

Current as of February 17, 2012

Statement of Intention of Candidacy - Partisan

- This form must be completed by a candidate seeking partisan office
 - A Statement of Intention of Candidacy must be filed with each party the candidate wishes to be the nominee
- The S.C. Constitution prohibits a person who has been convicted of a felony from filing for public office for 15 years after the completion of the sentence, including probation and parole time, unless previously pardoned

Name		<i>Sean Bennett</i>		Party	<i>Republican</i>	
Office		<i>Senator</i>		District	<i>38</i>	
Primary or Convention		<i>Primary</i>		Election Date		<i>6/12/12</i>
Address		<i>1422 Peninsula Park</i>	City	<i>Summerville</i>	Zip	<i>29485</i>
Email Address		<i>sbennett@scsenators.org</i>				
Telephone	Cell	<i>8442-3009</i>	Home	<i>821-3352</i>	Work	<i>821-3009</i>
Voter Registration Number		<i>5207270</i>				
Guidelines for a Candidate's Name to appear on the ballot A given name or a derivative may be used ▪ The name will not contain quotations, parentheses, or other distinguishing marks ▪ Nicknames are allowed if they are used in good faith for honest purposes and do not ▪ Imply professional or social status ▪ Include an office or military rank ▪ Exceed 15 letters						
Name as you wish it to appear on ballot (please print)		<i>Sean Bennett</i>				
Audio Ballot – Phonetically spell your name, if necessary		Example Jackson Gervais jur-VAY		<i>Shen BEN-et</i>		

Candidate's Oath	
I affirm that I meet, or will meet by the time of the general or special election, the qualifications for this office	
Candidate's Signature	

Completed by County Party			
Date Received	<i>3/20/12</i>	Time Received	<i>11:43</i>
Received By	<i>Tony Prochitt</i>		
County Political Party	<i>Roanoke County</i>		

Completed by State Party			
Date Received	<i>APR 02 2012</i>	Time Received	<i>3:00</i>
Received By	<i>ATG</i>		
State Political Party	SCGOP		

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
IN THE FIRST JUDICIAL CIRCUIT

DORCHESTER COUNTY DEMOCRATIC
PARTY,

Civil Action No 2012 CP 18-1632

Plaintiff,

VS

DCRP (*Carroll Duncan, as Chairman*),
COLLETON COUNTY REPUBLICAN
PARTY, BERKELEY COUNTY
REPUBLICAN PARTY, CHARLESTON
COUNTY REPUBLICAN PARTY, SOUTH
CAROLINA REPUBLICAN PARTY (*Matt
Moore as Executive Director & Chad
Connolly, as Chairman*) DORCHESTER
COUNTY ELECTION COMMISSION
(*Joshua Dickard as Executive Director*),
COLLETON COUNTY ELECTION
COMMISSION, BERKELEY COUNTY
ELECTION COMMISSION,
CHARLESTON COUNTY ELECTION
COMMISSION, SOUTH CAROLINA
STATE ELECTION COMMISSION (*Marc
Andino, as Executive Director & Chris
Whitmire as Director of Public Information
and Training*), SEAN BENNETT, MIKE
ROSE, TONY PISCATFLLA, EDWARD B
CARTER,

Defendants

**MOTION OF DEFENDANT SOUTH
CAROLINA STATE ELECTION
COMMISSION (*Marc Andino, as Executive
Director & Chris Whitmire as Director of Public
Information and Training*) TO LIFT
AUTOMATIC STAY**

Pursuant to Rule 241(d)(1), SCACR,¹ Defendant South Carolina State Election Commission (Marc Andino as Executive Director and Chris Whitmire as Director of Public Information and Training) (collectively, SEC) respectfully moves this Court for an Order lifting the automatic stay imposed by Rule 241(a), SCACR, because the statutory deadlines regarding the November 6, 2012 General Election are imminent and any delay in meeting those deadlines

¹ "Except where extraordinary circumstances make it impracticable, an application for an order lifting the automatic stay or for supersedeas must first be made to the lower court or administrative tribunal which entered the order or decision on appeal." Rule 241(d)(1), SCACR

would have significant negative consequences for the candidates, voters, and public officials of this State

FACTUAL BACKGROUND

This matter involves the allegations by Plaintiff Dorchester County Democratic Party and Appellant/Defendant Mike Rose that non-incumbent Republican candidate Sean Bennett, the winner of the Republican Party Primary Election for Senate District 38, did not meet the eligibility requirements to be on the Republican Primary Election ballot because he did not file his statements of economic interest (SEI) and statements of intention of candidacy (SIC) at the same time and with the same official as required by S C Code Ann § 8-13-1356 and Anderson v S C Election Comm'n, 397 S C 551, 725 S E 2d 704 (2012) (petition for rehearing by way of clarification denied) and Mr Bennett was erroneously certified to the SEC to appear on the Republican Primary Election ballot in disregard of the statute and opinion. A trial on the merits was held on August 6, 2012, and on August 9, 2012, this Court issued an Order finding Mr Bennett had complied with S C Code Ann § 8-13-1356 and Anderson v S C Election Comm'n, 397 S C 551, 725 S E 2d 704 (2012) (petition for rehearing by way of clarification denied), and therefore was eligible to be and was properly on the June 12, 2012 Primary Election ballot and is eligible for certification to the General Election ballot.

DISCUSSION

Section 7-13-350 of the South Carolina Code (Supp. 2011) requires that before noon on August 15, 2012, the state political parties must certify to the SEC its candidates for the South Carolina House of Representatives, State Senate, congressional, and solicitor offices for the November 6, 2012 General Election, and the county political parties must certify the nomination candidates for county wide and less than county wide offices that are up for election in the

General Election See Affidavit of Marc Andino, filed July 12, 2012 in Dorchester County in Dorchester County Democratic Party v Dorchester County Republican Party et al, Civil Action No 2012 CP-18-1632 (Andino Affidavit) After August 15, 2012, the SEC will be preparing ballot data sets (definitions) and ballot forms and will need the entire time before the General Election to accomplish that task See Andino Affidavit, ¶¶ 7 & 8

Pursuant to Section 7-15-406 of the South Carolina Code (Supp 2011), absentee ballots must be sent to all UOCAVA qualified electors at least forty-five (45) days prior to the November 6, 2012 General Election Therefore, the UOCAVA ballots have to be sent out not later than September 22, 2012 The UOCAVA absentee ballots include the offices for all federal, state, and county wide or less than county wide offices that are up for election in the General Election See S C Code Ann § 7-15 460 (Supp 2011)²

Because of the tight time constraints imposed by state and federal law on the election process, any stay preventing the political parties from certifying candidates to the SEC or preventing the SEC from moving forward with preparations for the November 6, 2012 General Election would have significant negative consequences for the candidates, voters, and public officials of this State A delay in ballot preparations could result in a delay of the mailing of absentee ballots to UOCAVA voters and a delay of the November 6, 2012 General Election If the SEC is unable to meet its statutory deadlines for mailing absentee ballots and holding the General Election, the State could face a lawsuit under Section 5 of the Voting Rights Act

Further, Appellant/Defendant Mike Rose does not have a likelihood of success on the merits The evidence adduced at trial showed, as this Court found, Defendant Sean Bennett had filed a paper copy of his SLI at the same time and with the same official as his SIC

² This section was precleared by the United States Department of Justice on August 22, 2011

CONCLUSION

It is essential to ensure the affected political parties and election commissions are able to fulfill their duties regarding preparations for the General Election, including the timely mailing of absentee ballots. The SEC respectfully requests this Court lift the automatic stay imposed by Rule 241(a), SCACR.

Respectfully submitted,

M. Elizabeth Crum, S.C. Bar No. 1486
lcrum@mcnair.net
Amber B. Martella, S.C. Bar No. 78706
amartella@mcnair.net
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

By 

Attorneys for Defendant South Carolina
State Election Commission (Marcu Andino,
as Executive Director & Chris Whitmire as
Director of Public Information and
Training)

August 10, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

DORCHESTER COUNTY DEMOCRATIC
PARTY,

Civil Action No 2012 CP 18 1632

Plaintiff,

v

DORCHESTER COUNTY REPUBLICAN
PARTY (*Carroll Duncan, as Chairman*),
SOUTH CAROLINA REPUBLICAN PARTY
(*Matt Moore as Executive Director & Chad
Connolly, as Chairman*), DORCHESTER
COUNTY BOARD OF ELECTIONS (*Joshua
Dickard as Executive Director*), SOUTH
CAROLINA STATE ELECTION
COMMISSION (*Marcu Andino, as Executive
Director & Chris Whitmire as Director of
Public Information and Training*),

Defendants

AFFIDAVIT OF

MARCI B. ANDINO

CERTIFIED COPY
2012 JUL 12 AM 9:50
Clayton B. Anderson
CLERK OF COURT
DORCHESTER COUNTY

Personally appeared before me, Marcu Andino, who, first being duly sworn, deposes and says that

1 She is the duly appointed Executive Director of the South Carolina State Election Commission (SEC) and is a resident of Richland County, South Carolina

2 Pursuant to S C Code Ann § 7-3-20(C)(12) (Supp 2011), as Executive Director, she serves as the State's chief election official responsible for implementing and enforcing South Carolina's responsibilities under the Uniform and Overseas Citizens Absentee Voting Act (UOCAVA), as set forth in the United States Code, Title 42, Section 1973ff, et seq

3 Pursuant to S C Code Ann § 7-15-406 (Supp 2011), absentee ballots must be sent to all UOCAVA qualified electors at least forty-five (45) days prior to the General Election. The

UOCAVA absentee ballots include the offices for all federal offices, State and county offices that are up for election in the General Election. See S.C. Code Ann. § 7-15-460 (Supp. 2011).¹

4 The General Election will be held November 6, 2012. Therefore, the UOCAVA ballots have to be sent out not later than September 27, 2012.

5 Before noon on August 15, 2012, the political parties' State Executive Committees are required to certify their respective candidates for the South Carolina House of Representatives, State Senate, congressional and solicitor offices to the SEC.

6 Before noon on August 15, 2012, the political parties' County Executive Committees are required to certify the nomination candidates for county wide and less than county wide offices that are up for election in the General Election to their respective County Election Commissions.

7 Based upon the candidate certifications by the respective State political party executive committees, the SEC will immediately begin preparing election definitions and ballot forms for the respective County Election Commissions to use for the General Election. The SEC is responsible for reviewing and approving the election definitions and ballot forms developed by the respective County Election Commissions.

8 In order for the SEC and for the respective County Election Commissions to have sufficient time to prepare the election definitions and ballot forms to meet the UOCAVA requirements and prepare and open the absentee precincts, the SEC and County Election Commissions must begin preparation on August 16, 2012.

9 Further Affiant says that not

[signature on next page]

¹ This section was precleared by the United States Department of Justice on August 22, 2011.

Cham Andino

Marci B Andino

Sworn to and subscribed before me

this 11th day of July, 2012

Samuel A Reynolds (L.S.)

Notary Public for the State of South Carolina

My Commission expires 10-4-2020

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Howard P. King, Circuit Court Judge

Case No. 2012-CP-18 1632

Dorchester County Democratic Party and Richard
Hayes,

Plaintiff,

v

Dorchester County Republican Party (Carroll Duncan, as Chairman),
Colleton County Republican Party, Berkeley County Republican Party,
Charleston County Republican Party, South Carolina Republican Party
(Matt Moore as Executive Director & Chad Connolly as Chairman),
Dorchester County Election Commission (Joshua Dickard as Executive Director),
Colleton County Election Commission, Berkeley County Election Commission,
Charleston County Election Commission, South Carolina
State Election Commission (Marc Andino, as Executive Director
& Chris Whitmire as Director of Public Information and Training),
Sean Bennett, Mike Rose, and Tony Piscatella,

Defendants,

of whom Mike Rose is the

Appellant

NOTICE OF APPEAL

Pursuant to Rule 203(d)(1)(A)(iv), SCACR, and S.C. Code Ann. § 14-8-200(b), Mike Rose appeals the attached order of the Circuit Court dated and filed with the Clerk of Court for Dorchester County on August 9, 2012. This Order declares Sean Bennett has met the requirements of S.C. Code Ann. § 8-13-1356 and the case law interpreting that statute. Counsel for Mike Rose received written notice of the entry of this order on August 9, 2012.

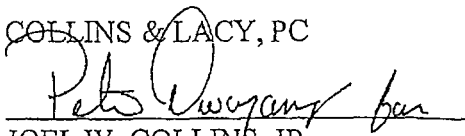
RECEIVED

AUG 10 2012

S.C. Supreme Court

Appellant Rose also refers the Court to his Motion for Expedited Appeal, filed contemporaneously with this Notice of Appeal

Respectfully submitted,

By 
COLLINS & LACY, PC
JOEL W. COLLINS, JR.
jcollins@collinsandlacy.com
AMY L. NEUSCHAFER
aneuschafer@collinsandlacy.com
LOGAN M. WELLS
lwells@collinsandlacy.com
Collins & Lacy, P.C.
1330 Lady Street, Sixth Floor (29201)
Post Office Box 12487
Columbia, South Carolina 29211
(803) 256-2660
(803) 771-4484 (f)
ATTORNEYS FOR MICHAEL T. ROSE

MICHAEL T. ROSE
409 Central Avenue
Summerville, South Carolina 29483
(843) 871-1821
mrose5@sc.ri.com

PRO SE

NOTICE OF APPEAL

Columbia, South Carolina
August 10, 2012

Other Counsel of Record

Christopher J. Murphy, Esquire
Murphy Law Firm, L.L.C.
136 West Richardson Avenue
Summerville, SC 29483

Counsel for Tony Piscatella

J. Todd Kincannon, Esquire
The Kincannon Firm
PO Box 7901
Columbia, SC 29202
*Counsel for Dorchester County
Republican Party and Carroll Duncan*

Robert D Robbins, Esquire
Robert D Robbins, Attorney at Law
110 N Main Street
Summerville, SC 29483

Counsel for Sean Bennett

Mary Elizabeth Cium, Esquire
Amber B Martella, Esquire
Ariail Kuk, Esquire
McNair Law Firm, PA
PO Box 11390
Columbia, SC 29211

*Counsel for South Carolina Election
Commission, Marci Andino & Chris
Whitmore*

Karl S Bowers, Jr, Esquire
M Todd Carroll, Esquire
Womble Carlyle Sandridge & Rice, PLLC
1727 Hampton Street
Columbia, SC 29201

*Counsel for Colleton County Republican
Party, Charleston County Republican
Party, Berkeley County Republican Party,
South Carolina Republican Party, Matt
Moore and Chad Connolly*

Tanya Gee, Esquire
Nexsen Pruet
P O Box 2426
Columbia, SC 29202

Attorney for Sean Bennett

James E Smith, Jr, Esquire
Dylan W Goff, Esquire
James E Smith, Jr, P A
1422 Laurel Street
Columbia, SC 29201

*Counsel for Dorchester County
Democratic Party*

Samuel W Howell, IV, Esquire
Alan B Linkous, Esquire
Howell Linkous & Nettles, LLC
PO Box 1768
Charleston, SC 29402

*Counsel for Charleston County Election
Commission, Berkeley County Election
Commission, and Colleton County
Election Commission*

Andrew T Shepherd, Esquire
Chellis & Frampton, P A
112 West Fourth Street North
P O Box 430
Summerville, SC 29483

*Counsel for Dorchester County Election
Commission*

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER) IN THE COURT OF COMMON PLEAS
)
) IN THE FIRST JUDICIAL CIRCUIT

DORCHESTER COUNTY)
 DEMOCRATIC PARTY, and) Civil Action No 2012 CP 18 1632
 RICHARD HAYES)
)

Plaintiffs)

vs)

ORDER

DCRP (*Carroll Duncan, as Chairman*),)
 COLLETON COUNTY REPUBLICAN)
 PARTY, BERKELEY COUNTY)
 REPUBLICAN PARTY,)
 CHARLESTON COUNTY)
 REPUBLICAN PARTY, SOUTH)
 CAROLINA REPUBLICAN PARTY)
 (*Matt Moore as Executive Director &*)
 (*Chad Connolly, as Chairman*),)
 DORCHESTER COUNTY ELECTION)
 COMMISSION (*Joshua Dickard as*)
 (*Executive Director*), COLLETON)
 COUNTY ELECTION COMMISSION,)
 BERKELEY COUNTY ELECTION)
 COMMISSION, CHARLESTON)
 COUNTY ELECTION COMMISSION,)
 SOUTH CAROLINA STATE)
 ELECTION COMMISSION (*Marcu*)
 (*Andino, as Executive Director & Chris*)
 (*Whitmire as Director of Public*)
 (*Information and Training*), SEAN)
 BENNETT, MIKE ROSE, TONY)
 PISCATELLA, EDWARD B CARTER,)

Defendants

This matter came before the Court on August 6, 2012, with regard to the Dorchester County Democratic Party's (Plaintiff or DCDP) First Amended Summons and First Amended Verified Complaint for Declaratory Judgment, Writ of Mandamus, and Injunctive Relief. Present at the hearing were Dylan Goff, Esquire, Attorney for Plaintiff, Butch Bowers, Esquire,

2012 AUG -9 AM 10 46
 DORCHESTER COUNTY

1 #12 HAK

Attorney for Defendants DCRP (DCRP), Colleton County Republican Party (Colleton CRP), Berkeley County Republican Party (BCRP), Charleston County Republican Party (Charleston CRP), and South Carolina Republican Party (Matt Moore as Executive Director and Chad Connolly, as Chairman) (collectively, SCRP), Todd Kincannon, Esquire, Attorney for Defendant Carroll Duncan as Chairman of the DCRP (Duncan), Andrew T. Sheppard, Esquire, Attorney for Defendants Dorchester County Election Commission (Joshua Dickard as Executive Director) (collectively, DCEC), Samuel W. Howell Esquire, Attorney for Defendant Colleton County Election Commission (Colleton CEC) and Defendant Berkeley County Election Commission (BCEC) and Charleston County Election Commission (Charleston CEC) M. Elizabeth Crum, Esquire, Attorney for Defendants South Carolina State Election Commission (Marc Andino as Executive Director and Chris Whitmire as Director of Public Information and Training) (collectively, SEC) Robert D. Robbins Esquire, and Tanya Gee, Esquire, Attorneys for Defendant Sean Bennett (Bennett), Michael Rose, Esquire, and Joel Collins Jr., Esquire, Attorneys for Defendant Michael Rose (Rose) Chris Murphy, Esquire, Attorney for Defendant Tony Piscatella (Piscatella), and Lionel Lofton, Esquire and William H. Waring, III, Esquire, Attorney for Defendant Edward B. Carter (Carter)

FACTUAL BACKGROUND

This matter involves the allegations by Plaintiff that all non incumbent Republican candidates—Sean Bennett, Ed Carter, Roger Goodman, John Hull, Michael Turner, Carol Duncan and Jordan Bryngelson—did not meet the eligibility requirements to be on the Republican Primary Election ballot because they did not file their respective statements of economic interest (SEI) and statements of intention of candidacy (SIC) at the same time and with the same official as required by S.C. Code Ann. § 8-13-1356 and Anderson v. S.C. Election

Comm'n 397 S C 551, 725 S E 2d 704 (2012) (petition for rehearing by way of clarification denied) and the candidates were erroneously certified to the SEC to appear on the Republican Primary Election ballot in disregard of the statute and opinion. Plaintiff also alleges that Tony Piscatella wrongfully concealed the DCRP's candidate filing records, which are alleged to be evidence in this case.

This matter was filed with the Clerk of Court of Dorchester County on June 29, 2012. On July 9, 2012, Bennett filed a Motion to Intervene as a defendant in this case and on July 12, 2012, Rose filed a Motion to Intervene as a plaintiff in this case. On July 12, 2012, the SEC filed its Motion to Expedite and Affidavit of Marci Andino to the Clerk of Court of Dorchester County (Clerk).

This matter was before the Hon. Dianne S. Goodstein, Chief Judge First Judicial Circuit. On July 19, 2012, Judge Goodstein recused herself and on July 20, 2012, the Supreme Court appointed me as the Circuit Judge to hear this matter. On July 20, 2012, Plaintiff filed its first Amended Summons and First Amended Verified Complaint for Declaratory Judgment, Writ of Mandamus and Injunctive Relief. The First Amended Summons and Verified Complaint, *inter alia*, added several defendants, namely the Colleton CRP, BCRP, Charleston CRP, Colleton CEC, BCEC, Charleston CEC, Bennett, Rose, and Piscatella.

On July 23, 2012, I held a conference call to determine the status of the case, the parties, and to resolve the Motion to Expedite. Given the impending S.C. Code Ann. § 7-13-350 deadline of noon August 15, 2012, for the political party defendants to certify, as appropriate, the candidates for inclusion on the general election ballot and the September 22, 2012 deadline for sending out absentee ballots¹ for the November 6, 2012 General Election, I granted the Motion to

¹ The Uniform and Overseas Citizens Absentee Voting Act (UOCAVA) as set forth in the United States Code Title 42 Section 1973ff *et seq.* and S.C. Code Ann. § 7-15-460 (Supp. 2011) require that absentee ballots to all

Expedite and issued an Order on July 23 2012, granting the Motion to Expedite, adding the Colleton CRP, BCRP, Charleston CRP, Colleton CEC, BCEC, Charleston CEC, Bennett Rose, and Piscatella as parties Defendant, and setting a scheduling order. Additionally all parties agreed that the relief sought was a declaratory judgment and that the request for injunction and mandamus should be withdrawn.

On July 27 2012 the following parties filed an Answer to the First Amended Verified Complaint: the SEC, Bennett Carroll S. Duncan as Chairman of the DCRP, Rose, Joshua Dickard as Executive Director of the DCEC, the Charleston CEC, the BCEC, the SCRCP and the DCRP. On July 30, Edward B. Carter was added as a party Defendant and filed his answer.

The Defendant Bennett filed a Motion to Dismiss for Lack of Standing. At the hearing, the Plaintiff, Dorchester County Democratic Party, move to add Richard Hayes, a Dorchester County resident and a resident of Senate District 38, as a party plaintiff. This motion was granted and the lack of standing issue became moot and the motion was denied.

On August 2, 2012 the Defendant Rose filed a motion ~~for leave to~~ Cross Claim. This motion is denied on three grounds: (1) it was not timely filed in accordance with the expedited scheduling order to which Rose participated and did not object, (2) Rose, as a candidate, was required by law (S.C. Code Section 7-17 560) to exhaust administrative remedies before filing a lawsuit challenging the validity of an election, (3) Rose is not prejudiced by the denial of the motion. He previously filed and was granted the right to intervene as a party defendant and his position is before the Court by his timely filed answer raising the issues asserted in his cross complaint.

UOCAVA qualified electors be transmitted by September 22, 2012 (at least forty five (45) days prior to the November 6 2012 General Election). The UOCAVA absentee ballots must include the offices for all federal offices State and county wide or less than county wide offices that are up for election in General Election.

All other motions filed in this matter, including the motions for summary judgment, to dismiss under the doctrine of laches, to dismiss for failure to state a cause of action, and for directed verdict, are denied

Testimony was presented by way of affidavits and all defendants were given the opportunity to cross examine the affiant

Having observed the witnesses, reviewed the evidence and considered the arguments of the parties, the Court makes the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1 This Court has jurisdiction over the parties to this case and the subject matter of this case

2 Mike Rose is a resident of Dorchester County, is the current Senator for District 38, and is seeking re-election to that office

3 Sean Bennett is a resident of Dorchester County and is seeking election to the Senate District 38 seat

4 Ed Carter is a resident of Dorchester County and is seeking election to the House District 97 seat

5 Roger Goodman is a resident of Dorchester County and is seeking election to the Dorchester County Council District 6 seat

6 John Hull is a resident of Dorchester County and is seeking election to the Dorchester County Council District 4 seat

7 Michael Turner is a resident of Dorchester County and is seeking election to the Dorchester County Sheriff office

8 Jordan Bryngelson is a resident of Dorchester County and is seeking election to the House District 97 seat

9 Carroll Duncan (Duncan) is a resident of Dorchester County, the Chairman of the DCRP and is a candidate for the Dorchester County Council District 5 seat

10 Tony Piscatella is a Dorchester County resident, was at all relevant times the DCRP treasurer, and the person designated by the Chairman of the DCRP to receive candidate filings during the 2012 primary election

11 On July 7, 2012, Duncan sent a letter to Marci Andino (Andino) and Joshua Dickard (Dickard) purporting to decertify all non-incumbent Republican candidates for districts and offices within Dorchester County, including statewide and countywide or less than countywide offices, stating that the decertification was made in an effort at compliance with the June 29, 2012 Order in Dorchester County Democratic Party v. Dorchester County Republican Party, et al., 2012 CP 18-1632 granting a temporary restraining order. The TRO expired

12 On July 18, 2012, Duncan sent another letter to Andino and Dickard, again purporting to decertify all non-incumbent Republican candidates, asserting that as the Chairman for the DCRP it is her responsibility to certify and decertify all candidates

13 Andino responded on July 18, 2012, informing Duncan that, although the candidates for statewide offices file with their county party the state party is given the authority and responsibility to certify and decertify under S.C. Code Ann. §7-15 11(2). The DCRP does not have the authority to decertify candidates for the South Carolina House of Representatives (House) or the Senate and only has the authority to certify and decertify candidates for countywide and less than countywide offices. The SCRP has the authority to certify and decertify for statewide offices

14 On May 2, 2012 the South Carolina Supreme Court ordered "the appropriate official of the political parties to file with the State Election Commission or the appropriate county election commission, by noon on May 4th, 2012, a list of only those non exempt candidates who simultaneously filed an SEI and an SIC as required by § 8 13-1356(B)" Anderson v. South Carolina Election Commission, 397 S C 551, 725 S E 2d 704 (2012)

15 In Florence County Democratic Party v. Florence County Republican Party, 727 S E 2d 418, 420 (S C 2012), the South Carolina Supreme Court reaffirmed that a candidate must file an SEI and an SIC at the same time and with the same official to be eligible to be certified as the political party's candidate in the general election

16 In Anderson and Florence County Democratic Party the Supreme Court held that the South Carolina election statutory scheme requires the political parties certified by the SEC, which parties nominate candidates by party primary, to certify that the candidates complied with the requirements of S C Code Ann § 7 11-15 (Supp 2012) and § 8 13 1356 (Supp 2011)

17 S C Code Ann 7 11-15(2) that requires the state party executive committee to certify House and Senate and does not authorize a county party executive committee to certify. The party executive committee responsible for certifying a candidate for nomination is the party responsible for decertifying the candidate

18 Section 7-11 15 of the South Carolina Code, states in pertinent part

(2) Candidates seeking nomination for the State Senate or House of Representatives must file their statements of intention of candidacy with the county executive committee of their respective party in the county of their residence. The county committees must, within five days of the receipt of the statements, transmit the statements along with the applicable filing fees to the respective state executive committees. However, the county committees must report all filings to the state committees no later than five p.m. on March thirtieth. The state executive committees must certify candidates pursuant to Section 7 13-40

No candidate's name may appear on a primary election ballot, convention slate of candidates, general election ballot, or special election ballot, except as otherwise provided by law, if (1) the candidate's statement of intention of candidacy has not been filed with the County Election Commission or State Election Commission, as the case may be, by the deadline and (2) the candidate has not been certified by the appropriate political party as required by Sections 7 13-40 and 7 13-350, as applicable

19 S C Code Sections 8 13-1356 (B) and (E) and 7 11-15 are mandatory and govern in this matter

20 Section 8 13-1356 states, in pertinent part

(B) A candidate must file a statement of economic interests for the preceding calendar year at the same time and with the same official with whom the candidate files a declaration of candidacy or petition for nomination

(E) An officer authorized to receive declarations of candidacy and petitions for nominations under the provisions of Chapter 11 of Title 7 may not accept a declaration of candidacy or petition for nomination unless the declaration or petition is accompanied by a statement of economic interests. If the candidate's name inadvertently appears on the ballot, the officer authorized to receive declarations of candidacy or petitions for nomination must not certify the candidate subsequent to the election

21 S C Code Ann § 7 13-350 requires the state and county political parties respectively to certify to the SEC and the county election commissions the names of the candidates for the November 6, 2012 general election on or before noon on August 15, 2012, and states, in pertinent part

Except as otherwise provided in this section, the nominees in a party primary or party convention held under the provisions of this title by any political party certified by the commission for one or more of the offices national, state, circuit, multi-county district, countywide, less than countywide, or municipal to be voted on in the general election, held on the first Tuesday following the first Monday in November must be placed upon the appropriate ballot for the election as candidates nominated by the party by the authority charged by law with preparing the ballot if the names of the nominees are certified, in writing, by the political party chairman, vice chairman, or secretary to the authority, for general elections held under Section 7 13 10, not later than twelve o'clock noon on August fifteenth or, if August fifteenth falls on Saturday or Sunday, not later than twelve o'clock noon on the following Monday and for a special or municipal general election by

at least twelve o'clock noon on the sixtieth day prior to the date of holding the election, or if the sixtieth day falls on Sunday, by twelve o'clock noon on the following Monday. Political parties nominating candidates by primary or convention must verify the qualifications of those candidates prior to certification to the authority charged by law with preparing the ballot. The written certification required by this section must contain a statement that each candidate certified meets or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office for which he has filed. Any candidate who does not, or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office for which he has filed shall not be nominated and certified, and such candidate's name shall not be placed on a general, special, or municipal election ballot.

22 Mike Rose and Sean Bennett were the only two candidates on the June 12, 2012 Republican Primary Election ballot seeking the Republican nomination for the Senate District 38 seat. The SCRCP certified both Mr. Rose and Mr. Bennett as Republican candidates for Senate District 38. Sean Bennett won the primary election by a percentage of 60.09% to 39.91%.

23 Ed Carter and Jordan Bryngelson were the only two candidates on the June 12, 2012 Republican Primary Election ballot seeking the Republican nomination for the House District 97 seat. The SCRCP certified both Mr. Carter and Mr. Bryngelson as Republican candidates for this seat.

24 While Mr. Roger Goodman and Mr. John Hull were each certified by the DCRP as candidates for county council, each filed affidavits with this Court averring that neither filed a paper copy of his SEI at the same time and with the person as he filed his SIC.

25 The parties agreed and stipulated at the hearing that the issues involving the certifying of candidates Carter, Bryngelson, Goodman, Hull, Turner and Duncan had been resolved and that findings of fact and conclusions regarding these candidates was unnecessary.

26 The Court finds that Bennett did file his Statement of Economic Interest (SEI) at the time of filing his Statement of Intended Candidacy (SIC). This Court is a strong believer in the democratic process and that members of the General Assembly (Senate and House of

Representatives) are representatives of the people who elected them. The Court declines to disenfranchise the voters of Dorchester County and invalidate the results of the Republican Primary on the basis of confusing and unconvincing testimony and evidence that Bennett did not file his SEI in accordance with Code Section 8-13-1356. Anderson, supra and Florence County, supra, require only that proof of filing a paper copy is necessary. There is evidence in the record that Bennett filed a paper copy of his SEI by the affidavit of Bennett himself and two others, and none of this testimony was challenged by any of the defendants even though each was given an opportunity to do so by cross examination. Additionally, the DCRP officer in charge of filing, the Defendant Piscatella, also testified that a paper copy was filed. The paper copy cannot be located, but the fact that this copy is lost is not fatal to Bennett's claim of filing. The Court therefor finds, even though there is conflicting testimony in the record, that Bennett filed his copy of his SEI at the time he filed his SIC.

The Court is also unconvinced that the filing of the SEI with the DCRP did not meet the requirements of the statute that the filing be for the preceding year. The evidence is less than clear with regard to the period covered by Bennett's SEI filing, and the regulations of the State Ethics Commission (SEC) regarding filing requirements and time are murky and unclear. After weighing the evidence I find that the filing complies with S.C. Code Section 8-13-1356 (B). The voters of Dorchester County have spoken, and it is appropriate that their voices be heard if it can be done within the law. The Court finds that Bennett has complied with both the statutory and case law.

26. The Court disapproves of the removal of the relevant records by Piscatella from the office of the DCRP. Even understanding the concerns of Piscatella to potential tampering of the records in view of potential access by twelve to thirty persons, there were ways of securing the

records other than removal. Nonetheless this removal in no way affects the validity or admissibility of the records and no convincing attack has been made on their authenticity.

NOW THEREFORE IT IS ORDERED THAT

The correctness or incorrectness of the filing of the non-incumbent candidates except Sean Bennett was concluded at the hearing on August 6, 2012 with the agreement of all the parties and that consent and order on the record is the Order of the Court with regard to those candidates.

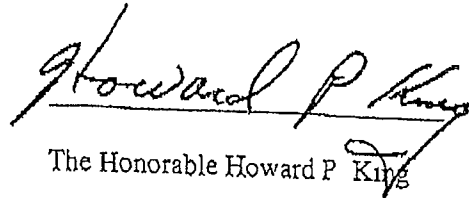
AND IT IS FURTHER ORDERED THAT

The complaint of the plaintiff, Dorchester County Democratic Party that Shawn Bennett be decertified as the Republican candidate for Senate Seat 38 is denied and that by way of declaratory relief as agreed by the parties, the Court does hereby declare that Sean Bennett has met the requirements of S.C. Code section 8-13-1356 and the case law interpreting that statute. The letter of July 18, 2012 of Ms. Duncan purporting to decertify him is of no force and effect as it exceeded the statutory authority of the DCRP. Bennett is eligible to be and was properly on the Republican Party Primary ballot and is eligible for certification on the general election ballot.

AND IT IS FURTHER ORDERED THAT

No sanctions are imposed and each party shall bear their own costs and attorney's fees.

AND IT IS SO ORDERED!


The Honorable Howard P. King

Presiding Judge

Sumter, South Carolina

August 9, 2012

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF DORCHESTER 2012-CP-18-01632

DORCHESTER COUNTY	)	
DEMOCRATIC PARTY,	)	
	)	
Plaintiff,	)	TRANSCRIPT OF RECORD
	)	
-vs-	)	August 6, 2012
	)	
DORCHESTER COUNTY	)	St George, South Carolina
REPUBLICAN PARTY, et al ,	)	
	)	
Defendant	)	

B E F O R E

The Honorable Howard King, Judge

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Lionel Lofton, Esq
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M Elizabeth Crum, Esq
Amber Martella, Esq

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Circuit Court Reporter

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1 (August 6, 2012)

2 THE COURT All right Good morning,
3 everyone, and good morning to all counsel and spectators
4 as well as the parties to this action Before we get
5 started, I just want to make a few introductory remarks

6 First, I know this is an important matter to
7 all the parties concerned, and we're going to address all
8 of the issues involved thoroughly and expeditiously
9 I'll give everyone an opportunity to get your positions
10 on the record, but I don't envision a lot of live
11 testimony That is the reason that I requested in
12 requiring affidavits for direct testimony, but I'm going
13 to treat that, of course, as direct testimony which would
14 require that the witness be here and subject to
15 cross-examination and cross-examined by any party that
16 wishes to

17 So if you do have a witness's testimony that
18 you want to present, do it in the form of introducing the
19 affidavit with any attachments that should be
20 authenticated in the affidavit, but unless there's good
21 reason for deviating from the requirement of affidavits
22 rather than live testimony, I probably will not do so

23 But I do want to ask everyone to be brief and
24 succinct I, of course, am going to require courtesy and
25 civility I think this is a matter we can move along

1 expeditiously, and I don't think it's complicated from a
2 legal issue standpoint but more from a fact standpoint

3 Now, having said that, I want to -- and let
4 me see where I put it We'll get appearances on the
5 record, and let's start first with the plaintiff, the
6 Dorchester County Democratic party

7 MR GOFF Good morning, Your Honor Dylan
8 Goff for James Smith

9 THE COURT And then we'll go from there --
10 let's go to the Dorchester County Republican party, and
11 then we'll go through the rest of the parties On behalf
12 of the Dorchester Republican party?

13 MR BOWERS My name is Butch Bowers, and I'm
14 here with my co-counsel, Robert Bolchoz, and we're here
15 on behalf of the Dorchester County Republican party and
16 the South Carolina Republican party

17 THE COURT All right, sir

18 MR KINCANNON Your Honor, Todd Kincannon,
19 on behalf of Carroll Duncan who is chairman of the
20 Dorchester County Republican party

21 THE COURT Mr Bennett -- Mr Bennett and
22 Mr Robbins

23 MR ROBBINS Yes, sir Robert Robbins and
24 Tanya Dee on behalf of Sean Bennett

25 THE COURT Okay

1 MR HOWELL Your Honor, Sam Howell I'm
2 here on behalf of the Berkeley County Board of Elections
3 and the Charleston County Board of Elections

4 THE COURT All right Thank you, Mr
5 Howell

6 MR HILAND I'm here for Andrew Shepherd for
7 the Dorchester County election commission

8 MS CRUM Yes, sir Liz Crum here on behalf
9 of the South Carolina election commission, and I have
10 Ms Amber Martella with me

11 THE COURT All right And, Mr Bowers,
12 you're here on behalf of the Berkeley County Republican
13 party as well?

14 MR BOWERS Yes, Your Honor Mr Bolchoz
15 and I are here on behalf of all the Republican party
16 entities that are parties in this matter

17 THE COURT Mr Lofton and Mr Waring?

18 MR LOFTON Yes, Your Honor?

19 MR WARING Yes

20 THE COURT You're here on behalf of Mr Ed
21 Carter?

22 MR LOFTON Yes, sir

23 MR WARING Yes, Sir

24 THE COURT Anybody here on behalf of
25 Colleton County election commission?

1 Mr Collins?

2 MR COLLINS Good morning, Your Honor

3 THE COURT Good morning, Mr Collins

4 MR COLLINS I represent, and Mr Mike Rose
5 also represents himself pro se

6 THE COURT Okay

7 MR MURPHY Chris Murphy representing the
8 defendant, Tony Piscatella

9 THE COURT All right Are there any other
10 parties here or anybody on behalf of any other parties
11 for this action that have an interest in it? Yes, sir?

12 MR DI SABATO Your Honor, Dennis Di Sabato
13 I'm appearing pro se I filed an amicus brief with the
14 Court on Friday

15

16 MR BENDER Good morning, Your Honor I'm
17 Jay Bender I'm here on behalf of reporter Lindsay
18 Street, who has been subpoenaed, and I filed a motion to
19 quash that subpoena

20 THE COURT All right, Mr Bender Thank
21 you, sir

22 All right That is probably the one thing
23 that we can go ahead and dispose of You don't have any
24 interest in the litigation, is that right, Mr Bender?
25 Your interest is in representing the reporter who has

1 been subpoenaed, is that correct?

2 MR BENDER Other than the spectacle, that
3 is right

4 THE COURT I understand that Let's go
5 ahead and dispose of that motion Come on up, Mr
6 Bender I have the motion, a copy of which was filed
7 with the Court this morning, and apparently it is
8 addressed to a subpoena issued by --

9 MR MURPHY It was issued by me on behalf of
10 Mr Piscatella

11 THE COURT All right Yes, sir?

12 MR BENDER May it please the Court, Your
13 Honor There was a subpoena filed on behalf of Lindsay
14 Street for an online publication known as Patch South
15 Carolina has had, since 1993, reporter shield law It is
16 codified as section 19-11-100, but significantly, act
17 number 138 of the 1993 acts in joint resolutions contains
18 a finding by the General Assembly that provides a context
19 for the motion to quash

20 The General Assembly finds it is vital in a
21 democratic society that the public have an unrestricted
22 flow of information on matters of concern to the public
23 and that the threat of compelled testimony or production
24 of information documents or items obtained or prepared in
25 gathering or disseminating news to the public interferes

1 with the free flow of information

2 The information that Lindsay Street would
3 have relative to this litigation comes entirely from her
4 activities gathering and disseminating news, so there is
5 nothing independent of her role as a reporter that would
6 provide testimony in this litigation, and for that
7 reason, we believe that the burden shifts to the party
8 that has issued the subpoena to establish the factors in
9 the statute that the information sought is material and
10 relevant to the controversy, cannot be reasonably
11 obtained by alternative means, and is necessary to the
12 proper preparation or presentation of the case

13 I don't believe any of those factors can be
14 established, but it is up to the party that has issued
15 the subpoena to come forward with clear and convincing
16 evidence as required by the statute to demonstrate those
17 factors

18 THE COURT Okay Mr Murphy?

19 MR MURPHY Thank you, Your Honor Your
20 Honor, I am in the process of filing Mr Piscatella's
21 affidavit I have a certified copy because I would just
22 like to draw your attention to the relevance of
23 Mrs Street's testimony, which is on June -- on or about
24 June 14, June 15, she viewed documents, filing documents,
25 of Mr Ed Carter, one of the defendants She verified

1 that Mr Carter's filing documents appeared to be in
2 order and that everything was there, including the SEI
3 Subsequent to that, she e-mailed to my client and to
4 Carroll Duncan an e-mail which is attached, and that's
5 what you're looking at, Your Honor, that's Exhibit P to
6 Mr Piscatella's trial affidavit, an e-mail verifying
7 that she did view Mr Carter's filing documents and that
8 they appear to be in order and complete

9 I believe, Your Honor, that it is -- that she
10 is relevant She is a fact witness I subpoenaed her
11 In the event that anyone, during the cross-examination of
12 Mr Piscatella, in his affidavit, Your Honor, has
13 verified the e-mail and it came to him, but if anybody
14 questions the veracity of the e-mail or the authenticity
15 of that e-mail, I then, out of an abundance of caution,
16 subpoenaed Mrs Lindsay Street in case it comes up during
17 cross-examination

18 If everyone will consent that the e-mail that
19 is attached -- and I apologize, we're in the process of
20 filing the trial affidavit -- is authentic, and that it
21 did come from Lindsay Street to Mr Piscatella, I would
22 see no reason for Mrs Street to be still under subpoena

23 THE COURT All right Let me ask Mr Bender
24 this Mr Bender, by this e-mail from Lindsay Street to
25 Carroll Duncan, it appears that she has, in effect, made

1 herself a witness by sending this e-mail

2 MR BENDER What she was doing with that
3 e-mail was attempting to communicate with persons who had
4 control of the file, appropriate wording to describe what
5 had been seen, and that is not an e-mail designed to
6 state facts for litigation, the e-mail was designed to
7 get language correct for publication, and the statute
8 itself points out that publication is not a waiver of the
9 privilege

10 I think that it's clear that if there was a
11 viewing of material that had been filed in support of the
12 candidacy, by anyone, other than Ms Street, those are
13 the persons who should be called upon first to confirm
14 what they had seen A reporter is not the witness of
15 first resort, a reporter is the witness of last resort,
16 and clearly those materials in the file were available
17 for others to inspect, and it's up to the party seeking
18 to compel the testimony from the reporter to show that
19 they have exhausted those alternative means to compel
20 testimony

21 THE COURT But then when she communicated
22 with the chairman of the Republican party, didn't she
23 waive any privileges that she had at that point?

24 MR BENDER No She was engaged in
25 gathering news and trying to get the information correct

1 for publication She's asking someone with whom she's
2 communicating to review the language to see if that is
3 right

4 THE COURT And send a copy to one of the
5 defendants in this case?

6 MR BENDER Well, that defendant happened to
7 be in the control of the information that was part of the
8 news story

9 MR MURPHY And he was the party, Your
10 Honor, Mr Piscatella, that actually allowed her to view
11 the documents

12 THE COURT I know that Thank you

13 MR KINCANNON Todd Kincannon on behalf of
14 Carroll Duncan

15 Carroll was the other recipient of that
16 e-mail We would be happy to stipulate to what
17 Mr Murphy said, that the e-mail was sent by Ms Street
18 and it says what it says I think that might resolve it

19 THE COURT Mr Robbins, I think I know what
20 your position is You would be willing to stipulate as
21 well, is that right?

22 MR ROBBINS I would want to point out a
23 couple things to you The contents of this e-mail was
24 never reported It was not news It was not something
25 she was gathering for a story It was an internal

1 conversation between her and Mr Piscatella and
2 Ms Duncan, so contrary to what Mr Bender says --

3 THE COURT But from your standpoint, as far
4 as moving this on, you don't care about the content --
5 the e-mail you're willing to stipulate to?

6 MR ROBBINS I am, Your Honor, and I would
7 also say to you for purposes of this case, for the
8 relevance of this case, it is the position of the Rose
9 camp and the Duncan camp that she did not know what
10 Mr Piscatella was doing at this point and had no idea
11 what was in the file, and this e-mail clearly establishes
12 that she was having communication with both
13 Mr Piscatella and Ms Street and she knew Ed Carter's
14 file was intact

15 THE COURT I understand that, and I
16 understand your position is that you don't -- it supports
17 your position

18 Mr Collins, I would assume, since it doesn't
19 support your position, that you would object to the
20 e-mail?

21 MR COLLINS Judge, we have not seen that
22 e-mail, and I haven't really had a chance to sort it out
23 in my mind and confer with my client, but it seems to me,
24 Judge, that the candidate file speaks for itself The
25 best evidence of what is in his file is the documentation

1 in his file, and her affidavit neither adds nor subtracts
2 from that, and the regularity of the keeping of the file
3 is certainly an issue in this case

4 THE COURT All right

5 MR COLLINS Also, Your Honor, it remains to
6 be seen whether Mrs Street is thoroughly knowledgeable
7 about everything that is supposed to be in a candidate's
8 file

9 THE COURT The only thing he's going to
10 testify to is what's in that e-mail

11 MR COLLINS I understand, but to the extent
12 the e-mail says the file was proper, it presumes that she
13 knows every single solitary requirement

14 THE COURT What the e-mail says is, Patch
15 editor Lindsay Street verified it appears both the SEI
16 and SIC were filed at the same time, March 16, at party
17 headquarters on Trolley Road even though the SEI was
18 filed on line and printed March 13th

19 If I let him testify at all, that's what he
20 is going to be testifying to, what was in the e-mail, if
21 I let him testify at all

22 MR WARING For obvious reasons, Mr Carter
23 would stipulate to the contents of that e-mail

24 THE COURT Mr Murphy?

25 MR MURPHY I'll let Mr Collins take a look

1 at this

2 THE COURT All right I'm going to think
3 about it a little bit before I make a ruling on it

4 MR BENDER I would add I do concur with
5 Mr Collins assessment that the evidence of the file is
6 the determination

7 THE COURT Right Okay Now, counsel,
8 let's address the various complaints and
9 cross-complaints, including the most recent, apparently,
10 cross-complaint on behalf of Mr Rose, and it appears to
11 me that this was filed, basically, as a response to the
12 motion for summary judgment to prevent summary judgment
13 from being issued

14 I'll tell you right now, I'm not going to
15 issue summary judgment Summary judgment is normally
16 designed to shorten a case and to make a ruling based
17 upon the facts that are already in the record, and I
18 think that all of the issues are before the Court with
19 the parties's alignment, the way they're aligned now,
20 that's the way the Dorchester County Democratic party and
21 all -- everybody else being defendants, and I'm not going
22 to issue summary judgment I don't think anything is
23 gained by that

24 We're here We've here to get the matters on
25 the record We're here to get the matters of the facts

1 out and make a determination based on the facts, so I
2 don't think the cross-complaint is really necessary I
3 think that the issues are before the Court and I'm
4 prepared to go forward, and to the extent any motions for
5 summary judgment have been filed in this matter, they are
6 overruled

7 MR COLLINS Judge, thank you We simply
8 noted that in the summary judgment motion that was filed,
9 the lead position was that the Dorchester County
10 Democratic party lacked standing and in an effort to be
11 sure that there was somebody coming forward with their
12 positions that challenged --

13 THE COURT I think Mr Robbins has filed --
14 one of his positions is that they lack standing, is that
15 right, Mr Robbins?

16 MR ROBBINS Yes, sir

17 THE COURT And I'll hear from you on that,
18 but, again, my position is that they may technically lack
19 standing I don't know whether they did or didn't, but
20 with the cross-complaints and the other complaints in
21 this matter that the issues are really before the Court
22 and there is really no issue before this Court on a
23 technical basis as to whether or not this matter ought to
24 go forward, but I'll be glad to hear from you if you
25 think otherwise

1 MR COLLINS Do I understand correctly that
2 Senator Rose's cross-complaint for the purposes of this
3 hearing will be considered going forward, that he is
4 allowed to be a cross-claiming defendant?

5 THE COURT Let me hear from Mr Robbins

6 MR ROBBINS Your Honor, do you want me to
7 address the cross-claim first?

8 THE COURT I want to hear the -- my position
9 is what difference does it make if the issue is before
10 the Court and who's cross-claiming against who? We all
11 know that the issue here in this case is whether or not
12 the candidates in the Republican primary properly filed
13 their SEIs at the time prior to the primary, and how we
14 get there and how we decide that issue, it doesn't really
15 matter We're tilting at windmills if we do anything
16 else, but I'll be glad to hear from you

17 MR ROBBINS Thank you, Your Honor If it
18 pleases the Court, the issue in this case is a very
19 limited issue It is compliance with the Anderson
20 holding, and that is what Mr Smith pled on behalf of the
21 plaintiffs in the first pleadings It's what he pled in
22 the second pleadings It is what Mr Collins has pled on
23 behalf of Mr Rose in his pleadings, in his prayer, and
24 that holding, in that case, said you have to file an
25 SEI with the SIC simultaneously with the filing official

1 Nothing more, nothing less That's all Anderson dealt
2 with, and if that's all we're dealing with in this case,
3 we're fine, but Mr Rose is wanting now to interject
4 because he is concerned about the plaintiffs not having
5 standing He's wanting to interject his cross-claim, and
6 he's wanting to interject other portions of 1356 that
7 were not in that original decision

8 And, Your Honor, the --

9 THE COURT We're not putting any new issues
10 in the case, I'll tell you that right now, Mr Collins
11 The issue in this case and the pleadings that are before
12 me, and I'm not going to allow any cross-complaints to
13 put any new issues in the case, I'm not going to grant
14 the motion for summary judgment -- I mean, the motion to
15 dismiss the lack of standing to Mr Robbins, the issue in
16 this case is and the issue we're going to decide here
17 today, the issue is did the candidates properly file SEIs
18 prior to the primary in accordance with the Anderson
19 decision and the Florence County decision?

20 And how we got there and where we go from
21 here, all of the technicalities of it, to quote one of my
22 favorite jurists, and many of you know him, a very wise
23 judge by the name of Judge Alex Sanders who once said in
24 a decision and was reprimanded by the chief justice that
25 what doesn't make any difference doesn't matter, and

1 that's exactly what the situation is here Whatever
2 doesn't make any difference doesn't matter, and what
3 doesn't make any difference here is all of the pleadings
4 and all of the various jockeying for position

5 The issue before the Court is did the
6 candidates properly file their SEIs with the proper
7 official that would qualify them to be on the ballot? If
8 they did, then the certification would stand, or -- well,
9 I'm not sure whether the certification would stand They
10 should be certified If they didn't, then they shouldn't
11 be certified I don't see that there are any other
12 issues

13 Mr Robbins, I'll hear from you

14 MR ROBBINS Your Honor -- and I agree with
15 everything you just said, but the key issue within what
16 you just said is it had to be a hard copy, downloaded and
17 presented at the same time That was what was before the
18 Supreme Court in Anderson, that alone, nothing else Did
19 they have a hard copy that they downloaded and presented?
20 Because a lot of people apparently just did the online
21 filing, and that was it That was all that was addressed
22 in Anderson

23 And what they're trying to interject now is
24 other portions of the statute deals with dates and things
25 that were sent to Columbia and all other extraneous

1 matters that were not dealt with in Anderson, and those
2 matters were not pled by the plaintiff They were not
3 pled by Mr Rose in his original complaint, and he is
4 well beyond the deadline for amending any pleadings in
5 this case, and we just object to any amendments that
6 would allow them to raise any of these issues

7 That's the reason Mr Di Sabato -- I don't
8 know how to pronounce his last name -- that's why he is
9 here today, to raise these issues about 2010, 2011, and,
10 Judge, that was not before the Court in Anderson, and
11 that's my point and why we are objecting to them amending
12 the pleadings

13 We have a limited issue, as you said, that
14 needs to be addressed, and as long as we're going to
15 stick with did Ed Carter hand a paper copy to Tony
16 Piscatella and did Sean Bennett hand a paper copy to Tony
17 Piscatella, we're good to go, but if not, I would like to
18 be heard on the procedural history of this case because
19 he is not properly before this Court on a cross-claim in
20 terms of the procedure that took place

21 THE COURT All right Mr Collins, are the
22 new issues being offered by virtue of this cross-claim
23 that is really outside of my scheduling order?

24 MR COLLINS Well, Your Honor, we don't
25 think so, but we have framed an issue that goes beyond

1 the point of whether the SEI is filed simultaneously with
2 the statement of the detention of candidacy, and that is
3 the requirement of 1356(b), that the statement of
4 economic interest be for the preceding calendar year

5 Mr Bennett's SEI is not for the preceding
6 calendar year, 2011 It is for the year before that,
7 2010, and we believe clearly the very careful and narrow
8 interpretation of this statute that we've seen the
9 Supreme Court emphasize twice clearly allows this Court,
10 requires this Court, to address this requirement as well,
11 and if you say that this matter is not before you, then
12 what that means is that Senator Rose needs to hustle out
13 this afternoon and file a new lawsuit challenging the
14 candidacy of his opponent, Mr Bennett, on the grounds
15 that they did not carefully, clearly comply with the
16 filing of a statement for economic interest for the
17 preceding year

18 And let me point out, Your Honor, he's the
19 only county in Dorchester County who got it wrong Every
20 other candidate's SEI relate to the preceding year of
21 2011

22 THE COURT Whoa, whoa, whoa Doesn't 813 --
23 1356 says -- 8-13-1356(b), a candidate must file a
24 statement of economic interest for the preceding year?
25 It's a question Did they comply with the statute?

1 MR COLLINS Yes, sir, and as long as we
2 understand it, that is before you, we have nothing else
3 to say

4 THE COURT Your position is you complied
5 with the statute, isn't it, Mr Robbins?

6 MR ROBBINS It is Your Honor

7 THE COURT All right That's it

8 MR ROBBINS But that particular issue was
9 not before the Court in Anderson, and that is what they
10 have pled That is what they have pled, and they're now
11 trying to interject additional information through this
12 cross-claim They also are trying to --

13 THE COURT Didn't they plead that they did
14 not comply with section 8-13-1356(b)? Isn't that what
15 y'all pled?

16 MR GOFF That's absolutely right It
17 sounds like you deny their motion for summary judgment,
18 so I really didn't want to, but I did want to stand up to
19 address what I think is a mischaracterization of our
20 pleadings, and that is it's not as narrow as Mr Robbins
21 makes it out to be

22 It is in compliance with Anderson, compliance
23 with 1356 The Court's ruling in Anderson is plain, and
24 I'm reading from Anderson too We direct the parties to
25 file with the state election commission or the

1 appropriate county election commission by noon on May 4,
2 2012 a list of candidates who complied with section
3 8-13-1356 as the statute is written and as has been
4 interpreted by Court, and that is Anderson too, Your
5 Honor

6 Your Honor, it's not a simple matter of did
7 he file any statement of economic interest He had to do
8 it directly as statute is written, and he requires it be
9 filed for the preceding year and for the office for which
10 you're running

11 THE COURT I hate to disagree with you I
12 don't think the insertion by putting into the
13 cross-complaint the preceding year that Mr Collins wants
14 to put in changes the issues that are before the Court
15 The question before the Court is, as I asked the
16 plaintiff's lawyers in this case, the whole thing is did
17 the parties comply with South Carolina code section
18 8-1-1356 as interpreted by Anderson?

19 That's as simple as I can say it I don't
20 know of any other way to do it, and 8-13-1356 says a
21 candidate must file a statement of economic interest for
22 the preceding calendar year at the same time and with the
23 same official with whom the candidate files a declaration
24 of candidacy or petition for nomination

25 And that looks like to me like the narrow

1 issue we got, and that Court's ruling and that's the way
2 we're going forward

3 MR ROBBINS Your Honor, are we still going
4 to be allowed to argue the standing issue?

5 THE COURT The standing issue of the
6 Democratic party to bring the suit?

7 MR ROBBINS Yes, sir

8 THE COURT Why is that necessary if we got
9 all the parties before the Court in the cross-complaints?

10 MR ROBBINS We don't have all the parties
11 If you will allow me to argue their failure to protect
12 their own position in this litigation, it is a big issue,
13 because if they don't have standing to bring the
14 complaint, then they are not able to bring these
15 cross-claims

16 And I can show you through the procedural
17 history of this case that defendant Rose does not protect
18 his position in this litigation If the Democrats don't
19 have standing to bring this litigation, they cannot
20 cross-claim

21 THE COURT I had two questions about -- I
22 got two questions about that raised with the motion, and
23 one of them was the standing thing, so let me hear from
24 you, Mr Robbins on the standing of the Democratic party

25 MR ROBBINS Your Honor, my client filed for

1 and won the Senate District 38-C on June 1, 2012 in a
2 Republican primary There was no Democratic primary
3 There is no Democrat on the ballot in November

4 They brought this suit on behalf of the
5 Dorchester County Democratic party, which has no issue
6 with Sean Bennett He is a Republican If they had
7 brought the suit against Ed Carter, I could understand
8 it Ed Carter is running against a Democrat They have
9 someone on the ballot in November, Your Honor, but they
10 brought the suit in the name of an entity that has no
11 interest in the Republican nomination for this seat that
12 is uncontested in November

13 The pleadings, Your Honor, were verified by
14 Richard Hayes, who is the Dorchester County Democratic
15 party chairman He is a resident of Senator-Elect
16 Bennett's district If he wanted to bring the suit
17 himself, he could have done it, and he chose not to do
18 it, Your Honor, and they have made a fatal decision to
19 bring this litigation in the name of an entity that has
20 no stake in the outcome, and they shouldn't be allowed to
21 do that

22 They had an ample opportunity for a citizen
23 who was a voter in the district, if they so chose Just
24 as in Anderson, these people in Anderson were residents
25 of Lexington County

1 THE COURT I understand all that, and I'm
2 going to ask Mr Goff about it in a minute, and it did
3 cause me some concern, but then when we get the
4 cross-complaints, doesn't that get the issue before Court
5 and take care of that problem?

6 MR ROBBINS It didn't, Your Honor, because
7 they did not properly file a cross-complaint They
8 initially --

9 THE COURT They, being who?

10 MR ROBBINS Rose

11 THE COURT Okay

12 MR ROBBINS The case was originally brought
13 on June 29th against the Dorchester County Republican
14 party, the Dorchester County election commission, the
15 state party, and the state election commission, only
16 those four defendants by the Democratic party They
17 didn't even name the individual candidates

18 They then got -- they got a TRO with no
19 evidence which decertified all the non-incumbent
20 candidates, which obviously applied to my compliant
21 Mr Kincannon entered into a consent order with his boss
22 to do that throughout the rest of the litigation That
23 forced us to intervene in this case to protect our
24 interest on July the 9th

25 When we moved to intervene on July 9, so did

1 Mr Collins on behalf of Mr Rose, and from that point
2 forward, we were trying to get Judge Goodstein to sign an
3 order Ms Crum prepared a motion to expedite which you
4 ultimately signed, but we never got in the case You got
5 appointed, I believe, on the 20th --

6 THE COURT 20th, right

7 MR ROBBINS And then on the 23rd, we had a
8 phone conference to deal with the issues in this case

9 Well, prior to the 23rd, Mr Smith amended
10 his pleadings, and when he amended his pleadings, he
11 named Mr Carter, he named Mr Bennett, he named
12 Mr Piscatella as defendants -- he didn't name
13 Mr Carter, he named Mr Bennett, Mr Piscatella, and
14 Mr Rose as defendants

15 THE COURT All right

16 MR ROBBINS On the 20th and he served
17 everybody with the pleadings So the motion for him to
18 intervene as a plaintiff was never granted, and the
19 lawyer for the Democrats puts him in as a defendant

20 We have the phone conference on the 23rd, and
21 you asked Mr Collins in the phone conference with all
22 these lawyers that are in this room, Do you have any
23 objection to being put in this case as a defendant?

24 No, sir, Your Honor He consented to it
25 Mr Rose was on the phone call too No objection

1 whatsoever Then you set deadlines for this case for
2 everybody to put in their pleadings, and they put in a
3 general answer with no cross-claim, and we relied on that
4 answer to prepare this defense to come up here today and
5 argue to you, and the reason that they want to put in a
6 cross-claim now is they're scared to death that you're
7 going to rule that there is no standing for these
8 Democrats to bring a suit against a Republican who is
9 uncontested, and if they get kicked out and they don't
10 have a cross-claim, they get kicked out too

11 Now, everybody else in this case complied
12 with your deadlines, Judge, and they did not They did
13 not file a cross-claim timely, and they should not be
14 allowed to do it today, Judge It is not proper, it's
15 not per the rules, it's not per your order, and it is
16 great prejudice for my client for that to be allowed at
17 this stage of the game

18 THE COURT Okay I got you, Mr Robbins

19 All right Mr Goff, tell me about what you
20 think, why the Democratic party has standing to bring
21 this suit

22 MR GOFF I think we heard more about why
23 Mr Collins and Mr Rose should be in this case

24 THE COURT I want to hear it from you I'm
25 interested in why you think the Democratic party has

1 standing to bring this suit

2 MR GOFF I think it's very simple I think
3 the orders in Anderson and Florence, which is the state
4 parties were both parties to, need to be enforced We
5 are simply seeking and -- and it's not about Mr Bennett
6 or Mr Carter, it's about the process It's about
7 enforcing an order to which the parties were --

8 THE COURT But still, you got to have some
9 reason, some understanding to bring this suit You
10 said -- from what you're saying, some citizen of
11 Greenville County could bring this suit against the
12 election here in Dorchester County

13 MR GOFF No, sir I don't think they
14 could I think that, first of all, we are seeking to
15 enforce an order to which both of the parties here were
16 involved in, but, more importantly, the Court --

17 THE COURT Why do you want to enforce it?
18 You got no dog in this fight

19 MR GOFF Well, I think we do, Your Honor
20 The Dorchester County Democratic party followed the
21 Court's order in Anderson They decertified candidates
22 They did the right thing, and they're simply asking of
23 this Court to order the Republicans to do what the
24 Supreme Court has already ordered them to do So we have
25 complied, Your Honor

1 THE COURT Obviously, the reason that you
2 want to do that is so when it's time for the election
3 comes up, everybody that is on the candidate to be
4 petition candidates and nobody will be voting straight
5 party ticket

6 MR GOFF We simply seek that they be
7 treated equally under the law and abide by the Court's
8 order as we have, but, Your Honor, our organization is a
9 legal entity It's made up of Title 7 of the South
10 Carolina code, and it's made up of registered voters in
11 this county

12 THE COURT Why didn't you have a registered
13 voter bring the suit? You got the chairman of your party
14 who lives in the district that you're challenging the
15 Republican election Why didn't he bring the suit?

16 MR GOFF Your Honor, I don't think we were
17 required to I think the parties have the standing to
18 enforce Court's order to which they were a party to,
19 particularly when they have, in effect --

20 THE COURT Let me ask you Let me take it
21 one step further If that is the case, why didn't you
22 bring suit before the primary?

23 MR GOFF Your Honor, I have no idea why my
24 partner didn't file the lawsuit before June 29th

25 THE COURT Wouldn't that have been the time

1 to challenge -- if your purpose is a nobler cause to make
2 everybody follow the law as the Democratic party claims
3 to have done, then shouldn't the Democratic party have
4 brought this suit prior to the primary, prior to the
5 election, prior to Mr Rose being -- I mean, Mr Bennett
6 being elected?

7 I mean, you know, I admire the Democratic
8 party's noble purpose of making everybody comply with the
9 law, but, you know, and you got to ask this question
10 here?

11 MR GOFF No, sir, I don't think we do I
12 think we would not have had notice We wouldn't have
13 knowledge notice that there was noncompliance prior to
14 the primary I think the affidavits that have already
15 been filed in this case establish how it was that
16 everybody came to learn that there was some problems with
17 the Republican filings, but, again, Your Honor, I go back
18 to it's a simple issue of we have complied with the
19 Court's order in Anderson, and we ought not to be
20 penalized because the Republicans chose not to

21 THE COURT How are you being penalized?
22 That's what I want to know

23 MR GOFF The Democrats decertified all
24 their candidates

25 THE COURT So?

1 MR GOFF Thereby not having candidates on
2 the ballots And, again, it's not about Mr Bennett's
3 race or Mr Carter's race It's about an entire slate of
4 candidates, just as it was in Anderson The Anderson
5 Court specifically talks about, this isn't about a single
6 candidate's race I'm going to read from Anderson We
7 are not confronted with the prospect of a single
8 candidate's name appearing on the ballot but with the
9 systemic failure of the political parties to follow the
10 law The effects of the political parties nor in the
11 statutory gatekeeping role is a prospect of inclusion of
12 many candidates on the ballot who do not comply with the
13 law

14 Your Honor, that's simply why we're here
15 today The Supreme Court has already spoken on this
16 issue, but the Republicans chose to ignore the Supreme
17 Court

18 MR KINCANNON Your Honor, if could I
19 briefly be heard on this, Todd Kincannon for Carroll
20 Duncan

21 There's a fundamental problem here if the
22 Court rules there's no standing for the Democrats, and I
23 wish no Democrat ever had standing to sue a Republican,
24 that would be great, but the problem is that the Florence
25 County opinion imposes -- from the Supreme Court imposes

1 a duty to continue to decertify candidates that are found
2 after the election not to have met the qualifications and
3 filed properly

4 The Florence County case says explicitly, it
5 even give a rule as to what to do if this comes after the
6 election, so the Florence County opinion -- and, by the
7 way, Anderson and Florence County are both orders
8 They're not simply opinions, but they're orders They
9 ordered the county parties of both political parties to
10 ensure that the filings are done directly, and that's a
11 duty that continues after the election

12 And, Judge, the problem here is that if this
13 issue as to the date and as Mr Bennett, all the
14 different issues before the Court that have been raised
15 in the pleadings relating to what Your Honor said, which
16 is did the parties comply with page 1313, if any of that
17 is not resolved in that action today, then it's still an
18 independent duty of party officials in the Republican
19 party to decide to certify or decertify, even after the
20 election based on Florence County

21 So I see a tremendous practical problem here,
22 Judge, which is if this Court doesn't decide this issue,
23 then it simply just falls back to the parties, the
24 Republican party entities, and there is a dispute,
25 although I don't think it makes much of a difference, but

1 if the Court doesn't decide the issue from Mr Bennett
2 today, then the Republican parties still have to, and if
3 they decide adverse to one party or another, then we're
4 just going to be back here again, and, so, judge, as a
5 purely practical matter, I would say that since Florence
6 County imposes its continuing duty on party officials to
7 ensure certifications are done properly, it makes all the
8 sense in the world for the Court to go ahead and hear it
9 because if not, then we still have this problem

10 It's not going away, and that's all I have
11 for my client, Your Honor Thank you

12 THE COURT All right Thank you

13 MR COLLINS Judge King, may I just clarify
14 something?

15 THE COURT Yes, Mr Collins

16 MR COLLINS First of all, we all have to
17 admit that we've been operating under breakneck speed
18 trying to put this all together and get it before you
19 We appreciate everyone's cooperation, and I'm not
20 accusing anybody of doing anything wrong, I'm just saying
21 we have had an enormous amount of work to do in a very
22 short period of time

23 I would point out, Your Honor, in the answer
24 we filed to the first amended verified complaint, that's
25 the complaint that was discussed during that conference

1 call, we alleged in the answer, quoting, Mike Rose would
2 show the statement of economic interest later claimed to
3 exist in candidate Bennett's file and to have been given
4 by Bennet to the Dorchester County Republican party was
5 an SEI for the year 2010, not for the year 2011

6 There is the issue framed

7 THE COURT Doesn't that get the issue before
8 the Court without your cross-complaint?

9 MR COLLINS That's exactly what my point
10 is, Your Honor It's before the Court It's before the
11 parties

12 THE COURT That doesn't have anything to do
13 with the standing issue, but that has to do with whether
14 your cross-complaint should be granted, and that puts
15 that issue before the Court because that brings the
16 statute into question, and the statute is, of course --
17 it's what the statute says It's for the preceding year

18 So I think the statute isn't in question
19 The only question I see what Mr Robbins is saying is
20 that the Democratic party does not have the right to
21 bring this action, and if they didn't have the right to
22 bring the action, then there is nothing before the Court
23 for adjudication

24 MR COLLINS That's right, Your Honor, and
25 then we can all go back home and immediately file another

1 lawsuit this afternoon It will be brought this time by
2 somebody that Mr Robbins can't possibly claim lacks
3 standing, and everything will be ramped up again for some
4 other judge, if not you, to have another emergency
5 hearing with this deadline looming ahead of us

6 So, Your Honor, I respectfully submit that
7 the issues are properly before the Court, and they are
8 ripe for adjudication today This is the best time and
9 place, and somebody needs to rule Regardless of who
10 wins, Your Honor, I'm going to predict there will be an
11 appeal from your ruling, and it will go to the South
12 Carolina Supreme Court, and they will apply their very,
13 very rigid test on the statutory construction of this
14 statute 1356

15 THE COURT All right Mr Robbins, let me
16 hear from you regarding the standing issue It seems to
17 me like the answer and everything puts the issue of the
18 interpretation of the statute before the Court, and what
19 filing has to be made, but is there anything you want to
20 say in response to Mr Goff's position on standing?

21 MR ROBBINS Yes, sir, I do, Your Honor
22 The Democrats decertified one candidate and the
23 Republicans decertified one candidate in Dorchester
24 County So I don't understand where he's trying to say
25 that there was any prejudice to their party, and that is

1 the basis for bringing this suit

2 They both decertified one candidate, but,
3 Judge, the Sloan case, I think, which is a seminal case
4 on standing, says to have standing a party must have a
5 personal stake in the subject matter of a lawsuit, and
6 the Democratic party does not

7 And I'm going to go back to the structure of
8 this case, Judge On July 9, Mr Collins informed Judge
9 Goodstein by e-mail he was going to move to intervene as
10 a plaintiff On July 20, for reasons unbeknownst to me,
11 Mr Smith, Mr Goff's boss, amended his pleadings and
12 named him as a defendant When that happened, I
13 certainly expected some issue from Mr Collins and/or
14 Mr Rose as to being a defendant in the case because,
15 quite frankly, Your Honor, they don't have any claim
16 against each other They don't have a claim against
17 Rose

18 Rose lost So why is he even in the case?
19 But they made him a defendant I don't know why they did
20 that, but they did, and he never, after they did that,
21 made any effort whatsoever to become a plaintiff again
22 And now what he's asking you to do this morning is let
23 him be a plaintiff again, and he's in this case and they
24 served him as a defendant, Judge, and he did not protect
25 his legal interests by filing a cross-claim

1 So if they are kicked out, so is he, and I
2 disagree with Mr Collins If he had his day in court
3 and he loses, he's done, and that's our position, Judge,
4 and I'll be glad to walk you through these times that all
5 those things happened, but he did not file a cross-claim

6 THE COURT It's on the record I understand
7 it, and with the time constraints -- and, of course, the
8 Court did, by that conference call, shorten all times
9 that had to be done, but I will note for my own thing, if
10 I recall and if I look back at it, that Mr Collins and
11 Mr Rose filed an answer after that and had an
12 opportunity to, at the same time, make the motion for
13 cross-complaint at that time, Mr Collins Why wait
14 until this morning?

15 MR COLLINS Your Honor, we didn't wait
16 until this morning We have a pleading that was filed
17 last week entitled amended answer of Mike Rose to the
18 first amended verified cross-complaint and cross-claim
19 against all of the defendants

20 In an abundance of caution --

21 THE COURT Why didn't you file it in the
22 original answer, my question is, I guess

23 MR COLLINS Judge, I would have to say I
24 just didn't think of it

25 THE COURT Pretty good reason Happened to

1 me too

2 MR COLLINS We were just reeling and doing
3 the best we could, and, frankly, I will admit it didn't
4 really focus in my mind until I saw the motion of Mr
5 Robbins for summary judgment alleging, as his first
6 ground, that the Dorchester Democratic party did not have
7 standing

8 That's when we focussed in our minds, and we
9 realized we needed to make our position abundantly clear,
10 and that's when we asked that our answer be denominated
11 as an answer and cross-claim, and then we thereafter
12 filed this pleading I have in my hand, which is clearly
13 identified as an answer and a cross-claim And it
14 contains the very same averments that were in that answer
15 that I read into the record a few minutes ago, namely
16 challenges to the SEI -- the simultaneous SEI filing
17 requirement and a challenge to the appropriateness of the
18 year of his SEI

19 THE COURT I understand, and that's in your
20 answer, but let me ask Mr Robbins this Mr Robbins,
21 when we started this little colloquy, I understand that
22 you felt like his cross-complaint introduced some new
23 issues into the case and that is that of the preceding
24 year It seems abundantly clear to me that his answer
25 puts -- whether the filing for the preceding year was in

1 issue, so that is not a new issue raised by the
2 cross-complaint What is the prejudice to your client to
3 allow the cross-complaint just to get the issues before
4 the Court today rather than me to throw it out on
5 standing if I did that and for them to file another
6 lawsuit tomorrow?

7 MR ROBBINS Your Honor, I don't know how
8 they could file another lawsuit They're in the case
9 now They had an opportunity to protect their position
10 in the case, and Mr Collins just admitted he just didn't
11 think about that legal defense

12 THE COURT But he's raised it as --

13 MR ROBBINS Excuse me Let me rephrase
14 that, Judge Not the legal defense, the legal
15 cross-claim I'm not talking about the 2010 issue He
16 didn't think about the fact that he needed the
17 cross-claim, and he did And they're in the case,
18 they've got a duty to protect their interest, and they
19 haven't done it

20 THE COURT Yeah, but, you know, we have a
21 real tight time frame on this I required answers and
22 motions and cross-complaints and everything, and within a
23 few days nobody -- I think all this has come about --
24 what's today, the 6th? In 13 days because on the 23rd is
25 when I had the conference, telephone conference, and here

1 we are -- of course, this occurred even before that, so
2 in a period of about ten days, we tried to get all the
3 pleading straight and get all the issues before the
4 Court, and I -- you know, it just seems to me like when
5 we started out with this whole matter this morning that I
6 said the issue before the Court was, and I still think
7 the issue is, whether or not the parties complied with
8 the code section by filing the SEI as required by the
9 code and interpreted by Anderson in Florence County,
10 because I really think the most important thing is the
11 compliance with the statute

12 I don't mind telling all counsel that I'm
13 always reluctant to disenfranchise the voters from their
14 determination of who they want the candidates to be, but
15 that's an issue that the Supreme Court has said has got
16 to be done strictly according to the statute, and I'm
17 going to keep the matter of standing under advisement
18 with the right to still consider that matter

19 I'm not going to dismiss it at this time, but
20 I'm going to keep it under advisement, but I'm going
21 forward with the matter on the merits here today

22 MR ROBBINS Thank you, Judge

23 MR GOFF The plaintiffs stand prepared to
24 amend their complaint and add Richard Hayes as a party
25 plaintiff

1 THE COURT Who is Richard Hayes?

2 MR GOFF He's the chairman of the
3 Dorchester County Democratic party, if it saves you some
4 work, Your Honor

5 THE COURT As I say, I'm not going to rule
6 on the matter I'm not going to rule on the motion to
7 add Mr Hayes I'm not going to -- I'll keep it under
8 advisement I'm not going to exclude that That is an
9 issue for my ultimate determination, but I am going to go
10 forward with the determination of the interpretation --
11 the factual issue as to whether or not compliance was
12 done and whether it was done in accordance with the
13 statute

14 MR KINCANNON Your Honor, on behalf of
15 Carroll Duncan, if I may make one brief comment strictly
16 for the record preservation The case of Getsy versus
17 Bagwell, a South Carolina Supreme Court case, it was
18 actually an appeal from me an election commission
19 chairman long years ago, and in that case I believe the
20 Supreme Court made clear that pleading technicalities in
21 an election case, and it was a protest, but pleading
22 technicalities are just not that important in these kind
23 of cases, and, again, our interest is in getting this
24 decided before this Court I just want to put that on
25 the record, Your Honor

1 THE COURT I think that's what I've been
2 saying for last hour Okay Mr Goff, plaintiff's case

3 MR GOFF Thank you, Your Honor

4 May it please the Court The Dorchester
5 County Democratic party brought this matter simply
6 seeking equity and equal protection under the law We as
7 well as all the party defendants in this matter are
8 subject to Anderson, subject to Florence Hundreds of
9 candidates across state have been removed from ballot for
10 failure to file, and it's fundamental unfairness to not
11 require the statement here in Dorchester County

12 The Supreme Court has made it absolutely
13 clear It's a very simple command It says, To stay on
14 a ballot, the candidate must follow to the letter
15 813-1356 It doesn't mean almost follow, it doesn't mean
16 kind of follow it

17 Court said today it's a harsh result, and I
18 think there's nobody here in this country that takes very
19 lightly the issue of going behind an election with the
20 Courts

21 Your Honor, quite frankly, I was in
22 Afghanistan for the first election and it's embarrassing
23 to me to see what is happening in this state We messed
24 it up worse than they did, but it doesn't change the fact
25 that the Supreme Court has spoken, and they've spoken

1 very, very clearly on this issue, Your Honor, and that is
2 if you didn't comply to the letter with 1356, your
3 candidacy is void from the beginning

4 You could go all the way back -- you never
5 were a candidate, and that's what we got to decide here
6 today Your Honor, to accept the defendant's position on
7 this, you simply had to believe that one county official
8 ignored --

9 THE COURT Don't we have to get some proof
10 first? Right now I don't have anything in the record but
11 the affidavits What do you wish to present on behalf of
12 the plaintiff as proof of your position that they haven't
13 complied?

14 MR GOFF Your Honor, I would present the
15 affidavits of Carroll Duncan, Jordan Bryngelson, and
16 Michael Turner

17 I see Ms Duncan is here I see
18 Mr Bryngelson, and I see Mr Turner Yes, Your Honor,
19 they're all here

20 THE COURT All right So they're all
21 subject to cross-examination?

22 MR ROBBINS Your Honor, might I ask which
23 Duncan affidavit he's referring to?

24 THE COURT Is there more than one?

25 MR KINCANNON Your Honor, there are two

1 Duncan affidavits, and the third is simply verification
2 of some exhibits sitting here in front of me The two
3 Duncan affidavits, the first one just relates to what
4 happened briefly, and then the second one explains her
5 position as chairman of the Dorchester County Republican
6 party

7 And, as I said, the third one is just a
8 verification of exhibits pursuant to the Court's order,
9 procedural order

10 THE COURT All right Which are you
11 presenting, Mr Goff?

12 MR GOFF All three, Your Honor

13 THE COURT Okay Three Duncan affidavits

14 MR GOFF Your Honor, as far as I know,
15 Mr Turner and Mr Bryngelson only have one each

16 THE COURT It would make it a whole lot
17 easier for me if everybody would just hand up a copy of
18 the affidavits rather than me search for them, and now
19 they're in the record

20 MR MURPHY Do you want all those?

21 MR COLLINS I'm providing Mr Kincannon
22 with the latest evidence of his client, Mrs Duncan, and
23 I must say that this is the copy I brought Court There
24 is some highlighted things in it that I did for my
25 purposes, but since he can't readily put his hands on his

1 copy, I'm giving him mine

2 THE COURT That's no problem

3 MR KINCANNON Judge, I'll tell you what
4 If we can hand this up to you right now, I have the
5 original sitting in this pile of paper

6 THE COURT We'll substitute it in just a
7 minute Just hand up -- this is -- all right The
8 plaintiff's tender of proof has been on behalf of Mr
9 Goff, the other plaintiff, the Dorchester County
10 Democratic party, the affidavit of Michael Turner, the
11 affidavit of Jordan Bryngelson, and the three affidavits
12 of Ms Duncan

13 All right Now, that being the case, is
14 that -- does the Democratic party as plaintiff in this
15 case rely on that proof, and is that all the proof you're
16 relying on, Mr Goff?

17 MR GOFF We do, Your Honor

18 THE COURT All right Is there a desire on
19 the part of the defendant to cross-examine the defendant,
20 or affiant Jordan Bryngelson, Mr Robbins?

21 MR ROBBINS Yes, sir, Your Honor, very
22 briefly

23 THE COURT All right How about Mr Turner?

24 MR ROBBINS Again, very briefly, Your
25 Honor

1 THE COURT And how about Ms Duncan?

2 MR ROBBINS That one is going to take a
3 while, Judge

4 THE COURT It ain't going to take long, all
5 right? All right That's why I wanted to find out All
6 right Let's call -- I call on Mr Turner to come
7 forward, please, Michael Turner

8 All right Mr Robbins, you may proceed

9 MICHAEL TURNER,

10 having been first duly sworn,
11 was examined and testified as follows

12 EXAMINATION

13 BY MR ROBBINS

14 Q Good morning, Mr Turner How are you?

15 A Not too bad

16 Q You were incumbent candidate for sheriff in this
17 year's primary, is that correct?

18 A That's correct

19 Q And from reviewing your affidavit, you believe you
20 filed for that office on March 28th?

21 A Correct

22 Q And pretty early in the morning, shortly after
23 9 00?

24 A That's correct

25 Q You would have filed with Tony Piscatella, seated

1 over here at this table?

2 A Yes, sir

3 Q Have you seen your affidavit recently?

4 A I have a copy of it with me

5 Q You got it up there right now?

6 A Yes, sir

7 Q Would you just grab it for me real quick

8 A It's in front of me

9 Q Okay You stated in that affidavit that you
10 brought a hard copy of your statement of economic
11 interest form to the Republican party offices that
12 morning, is that correct?

13 A That is correct

14 Q And you did not rely on any instructions that you
15 would receive from the state party, the local party, or
16 anywhere else You made your own conscious decision to
17 bring a hard copy of that SEI?

18 A That is correct

19 Q Okay And then when you got there, you insisted
20 on that hard copy being placed in your file and being
21 made a part of campaign candidate file?

22 A That is correct

23 Q And I believe in your affidavit you said you had a
24 bad experience traveling one time with electronic
25 confirmations?

1 A On more than one occasion

2 Q On more than one occasion, so you weren't
3 comfortable relying on that electronic confirmation in
4 your case, and you wanted that hard copy presented?

5 A Correct

6 Q And that hard copy was received by Mr Piscatella
7 and remained in your file after you left, correct?

8 A I presume so He took it

9 Q He took it? Okay He received it It was there
10 when you left

11 A Correct

12 Q In your mind -- well, not in your mind When you
13 sat at the desk and filed for the office of sheriff, you
14 simultaneously handed him a statement of economic
15 interest and a statement of intention of candidacy and he
16 accepted it?

17 A Correct

18 MR ROBBINS Thank you, sir

19 THE COURT All right Mr Collins,
20 unless -- Mr Robbins I understood what you were doing,
21 but let's don't repeat what's already in the affidavit,
22 and that is pretty much what that was, but go ahead

23 MR COLLINS What I was going to do was
24 emphasize points in his affidavit

25 THE COURT No, sir I don't want any

1 emphasis in any of them If there's any
2 cross-examination points you want to make to refute
3 what's in the affidavit, that's fine Anybody else? Any
4 other parties wish to cross-examination Mr Turner? All
5 right Thank you, Mr Turner You may step down

6 Mr -- I'm not sure I'm pronouncing his name
7 right, Bryngelson?

8 JORDAN BRYNGELSON,
9 having been first duly sworn,
10 was examined and testified as follows

11 EXAMINATION

12 THE COURT All right Mr Robbins?

13 BY MR ROBBINS

14 Q May it please the Court, Judge, and I'll try to be
15 very brief

16 Mr Bryngelson, you were a non-incumbent candidate
17 for the house, correct?

18 A Yes

19 Q And you were defeated by Mr Carter?

20 A Correct

21 Q And you have been very active in the local
22 government?

23 A Yes

24 Q The Dorchester County Republican party?

25 A Yes

1 Q What is your most recent position with the party?

2 A Most recently, I was state executive committeeman

3 Q You would have been privy to all of the
4 instructions and to all the documents that needed to be
5 filed to become a candidate for house seat 97, is that
6 correct?

7 A Up until the start of the filing period I
8 resigned because of the conflict of interest

9 Q And on March 28, you went in to file?

10 A Correct

11 Q And you presented a hard copy of the statement of
12 economic interest to Mr Piscatella?

13 A Yes, sir

14 Q And he received it?

15 A Yes, sir

16 MR ROBBINS Thank you

17 THE COURT Anything, Mr Collins?

18 EXAMINATION

19 BY MR COLLINS

20 Q Mr Bryngelson, did anyone associated with the
21 Dorchester County Republican party admit to you the
22 paperwork was not handled properly on the candidates?

23 A I never heard anything like that directly from
24 anyone

25 Q Well, did you hear it indirectly?

1 A Well, there is a lot of rumors running around
2 town

3 MR ROBBINS I'm going to object to any kind
4 of testimony about rumors

5 THE COURT I'm not interested in rumors
6 BY MR COLLINS

7 Q Did Mr Piscatella ever admit to you he mishandled
8 the paperwork?

9 A No, sir

10 THE COURT All right Excuse me
11 BY MR COLLINS

12 Q Do you have any reason to believe, other than
13 what's in your affidavit, that the statements of economic
14 interest were not handled properly?

15 A I really just know about mine I didn't do the
16 filing process

17 THE COURT All right Anyone else?
18 Mr Lofton? All right Thank you, sir You may step
19 down

20 All right, Ms Duncan All right Mr
21 Robbins?

22 MR ROBBINS I'm going to allow Mr Murphy
23 to go first this time

24 THE COURT Yes, sir

25 MR MURPHY Thank you, Your Honor

1 And, Judge, just so everybody is clear, since there is
2 two affidavits, when I'm referencing the first affidavit
3 that was --

4 THE COURT That's the 24 page affidavit?

5 MR. MURPHY No, sir, that's the second
6 affidavit I'm referencing -- for my purposes and to try
7 to keep the record clear, I'm going to state that
8 affidavit one is the affidavit that she's presented on
9 July 18, 2012

10 THE COURT Okay

11 MR. MURPHY And then affidavit two is a long
12 affidavit I do not have a signed or notarized copy, but
13 the date of that one is August 2nd of 2012, not 2002,
14 Your Honor

15 THE COURT All right, August 2 And that's
16 the 24 page affidavit, and that will be affidavit two
17 All right? Very good

18 CARROLL DUNCAN,
19 having been first duly sworn,
20 was examined and testified as follows

21 EXAMINATION

22 BY MR. MURPHY

23 Q Ms. Duncan, when you're referencing your first
24 affidavit, the one that's dated August -- or July 18th,
25 do you have a copy of that with you?

1 A No

2 Q Would you like a copy? Could I get a copy for
3 her? I want to hand you up your affidavit that has been
4 admitted into evidence That's your first affidavit, Ms
5 Duncan Is that your signature that appears on the back?

6 A Yes

7 Q And -- Your Honor, has she been sworn? And you
8 understand your testimony today is under oath

9 A I certainly do

10 THE COURT All right The testimony is in
11 the affidavit It's cross-examination I'm not going to
12 have her testify as to what is in the affidavit

13 BY MR MURPHY

14 Q Ms Duncan, you described your involvement as very
15 limited in the filing process, is that correct?

16 A That's correct

17 Q Were you not the candidate that certified all of
18 the candidate filings?

19 A Was I the candidate who --

20 Q Were you the chairwoman of the Republican party
21 who certified all of the filings?

22 A I am

23 Q Did you verify -- did you view the filings that
24 were filed, the candidate files?

25 A Do you mean did I actually examine each one of

1 them and read what they said?

2 Q Yes, ma'am

3 A No, I did not

4 Q You did not On March 30th of 2012, you have
5 testified very limited What was your involvement with
6 the candidate files? Did you attend or did you appear at
7 Dorchester County Republican party headquarters?

8 A Yes

9 Q And what was that purpose?

10 A As the chairperson, I was up there to make sure
11 that all of the materials that needed to go to the state
12 'party, the election commissions, that they got in their
13 envelopes and were sent

14 Q So you did not verify or view -- it's your
15 testimony you did not view the documents

16 A Since I was not the person who took those
17 documents and actually, you know, was the filing officer,
18 I was not the filing officer, no, sir, I did not

19 Q Who all was there?

20 A Gosh, let's see My son was there because he had
21 to pick me up I was still in a wheelchair
22 Mr Piscatella was there

23 Q Ann Shields?

24 A I don't remember

25 Q Barbara Mojonnier?

1 A Barbara was there

2 Q Janette Chipas?

3 A Janette was there

4 Q Let me show you what was an exhibit to
5 Mr Piscatella's affidavit and ask if you can recognize
6 that What?

7 A Do you mean recognize it? It's my signature and
8 it's a checklist

9 Q And what does it say? How is that titled?

10 A Checklist

11 Q Candidate checklist?

12 A Checklist

13 Q Is that a checklist of various documents that were
14 filed for candidates in Dorchester County?

15 A It's actually a complete checklist from the South
16 Carolina Republican party about everything that we had to
17 send to them

18 Q And did you complete that checklist?

19 A Did I put those checks there? Yes

20 Q All right And you certified to the Republican
21 party that all your candidates with that document
22 properly filed?

23 A Yes, I did

24 Q All right But it's your testimony that your
25 involvement was very limited In fact, you were an

1 integral part of the filing process because you had to
2 sign off on the filing documents, correct?

3 A I wouldn't describe it as integral, but I had to
4 sign off on the checklist

5 Q Now, if you could, draw down your attention to the
6 bottom of the second page of your affidavit Paragraph
7 nine, you testify that filing was so far uneventful, yet
8 you do not describe -- you would agree with me, anything
9 that transpired on March 30th in the Republican party
10 headquarters

11 A No I'm sorry What now?

12 Q You skipped over what happened on March 30th You
13 didn't talk about anything in your affidavit about March
14 30th or your involvement at the party headquarters that
15 day, is that correct?

16 A That's what it says, yes

17 Q All right Because your involvement was very
18 limited, correct?

19 A Correct

20 Q All right Now, do you recall sending an e-mail
21 on May 4th, 2012 to all the candidates?

22 A I don't know what date it was, but I certainly
23 sent an e-mail to all the candidates That was after the
24 first

25 Q After the Anderson decision?

1 A Yes, yes

2 Q And did you not in that e-mail tell everybody
3 that, quote, you had multiple sets of eyes view the
4 documents?

5 A Yes

6 Q And we did it right

7 A Yes

8 Q And kept copies of the SEIs at the office

9 A Yes

10 Q So you send an e-mail out that the SEIs were at
11 the office and that you had multiple sets of eyes and
12 that we did it correctly, correct?

13 A When I said multiple sets of eyes, I was referring
14 to making sure all the correct information got into the
15 correct envelopes to send to the South Carolina
16 Republican party

17 Q Yet you certified and you sent out a checklist --

18 A That's not in question I did that

19 Q Okay Let me show you what is Exhibit N on
20 Mr Piscatella's affidavit and ask you if you can
21 recognize -- let me back up

22 Did you view -- here we go Do you recall sending
23 an e-mail to Matt Moore with the Republican party?

24 A I sent a gazillion to him Which one?

25 Q Do you recognize that e-mail? Can you confirm

1 that is an e-mail from you?

2 A Yes, that's an e-mail from me to Matt Moore, yes

3 Q And in that e-mail you also certified that all the
4 documents, that only one candidate in Dorchester County
5 did not meet the qualifications

6 A Yes

7 Q All right And then you recertified, or e-mailed
8 again to Matt Moore, or to Joshua Dickard, and Joshua is,
9 for the Court's education, the elections director of the
10 elections commission in Dorchester County

11 A Uh-huh, yes

12 Q So on June 7th, you recertified that all of the
13 candidates were properly qualified?

14 A Was that -- that was after the Florence -- is that
15 where we did it?

16 Q Yes

17 A Yes

18 Q Okay Now, yet you testify in your affidavit that
19 you started to hear motions that candidate -- that Sean
20 Bennett's filings were missing, correct?

21 A Tell me where that is on this affidavit, exactly

22 Q Page 15

23 A I only have six pages

24 Q I'm sorry Paragraph 15

25 A After the election, that's when I heard -- yes

1 Q All right Tony Piscatella had told you on June
2 13 that Mr Bennett's paperwork was missing, correct?

3 A I believe that was the date, but yes, he told me

4 Q And you immediately reported that to party
5 officials, correct?

6 A I did

7 Q And party officials told y'all, for lack of a
8 better term, to basically lock it down, the files,
9 correct?

10 A No We needed to find out what was going on We
11 were absolutely clueless as to why that paper wasn't
12 there, so we needed to have some type of investigations,
13 and I needed to talk to party official We just really
14 kind of didn't know what to do, but lock it down I
15 don't know what you mean by that, really

16 Q You suggested to Tony Piscatella that he lock the
17 documents down if he established a privileged
18 relationship with an attorney and not to allow anybody to
19 view any of the documents, correct?

20 A That was during the period that we were trying to
21 figure out what was going on, yes

22 Q So is your testimony as far as the documents being
23 not accessible to the public or to anybody else but you,
24 you suggested to my client that he lock it down, for lack
25 of a better term?

1 A Please explain to me what you mean by lock it
2 down

3 Q Don't allow anybody to look at the documents

4 A Okay At that point in time --

5 Q Is that correct?

6 A That is correct

7 Q Thank you

8 A At that point in time

9 Q It's your testimony in your affidavit that Sean
10 Bennett did not properly file his SEI at the time he was
11 certified, correct, or at the time he filed for office?

12 A No -- are you still on this one affidavit?

13 Q Yes I'll tell you when I switch to your second
14 affidavit

15 A Thanks so much Will you tell me now what number
16 you're talking about

17 Q It's your position, because you decertified Mr
18 Bennett, that Mr Bennett did not file an SEI at the time
19 that you filed his candidate paperwork?

20 A My position was that I could not see the
21 documents I didn't know what was in the document

22 Q But you viewed the documents on March 30th?

23 A Oh, no, I did not, sir I did not read any SEI

24 Q So that checklist that you provided to the
25 Republican party on March 30th and dated March 30th and I

1 believe the time is 12 56, 12 57, is false?

2 A No

3 Q You state in there that you viewed the documents,
4 Ms Duncan?

5 A Sir, if you mean by this checklist, that I looked
6 through every single paper, I did not

7 Q So you didn't do your job properly? Whose job is
8 it -- whose job was it to certify the candidate?

9 A It was the filing officials's job --

10 THE COURT Wait a minute Let her answer
11 the question, counsel

12 THE WITNESS It was the filing official's
13 job to take all of the paperwork, make sure that it was
14 correct, and I took his word because he was a trusted
15 person And that's why I filled out this checklist, as
16 we went through, as I said, what went into the envelopes
17 to go to state

18 The SEIs didn't go to state

19 BY MR MURPHY

20 Q But you viewed the SEIs?

21 A No, I did not

22 Q But you said you did in that e-mail, Ms Duncan

23 THE COURT Point made, Mr Murphy Move on
24 No jury

25 BY MR MURPHY

1 Q Now, you filed on March 28th, correct?

2 A Yes

3 Q Who took your filing paperwork on March 28?

4 A Mr Piscatella

5 Q Didn't Mr Piscatella -- because you testified in
6 your affidavit that your involvement was very limited --
7 on March 28th, which was the same day that Mike Turner
8 filed, correct?

9 A I don't really know I don't remember, let me put
10 it that way

11 Q But on March 28th, what did Tony Piscatella do for
12 you, regarding a statement of economic interest?

13 A We went on the web site, the state ethics
14 commission web site, and we viewed my SEI, went over --
15 not word by word, but question by question, made sure it
16 was correct, and then we printed it, twice

17 Q Twice Because, one, on March 28th,
18 Mr Piscatella put your paper copy of an SEI in your file
19 for you, as a candidate?

20 A Yes

21 Q All right So he filed everything properly for
22 you --

23 A He did

24 Q But not for Mr Bennett?

25 A I don't know I didn't know

1 Q You decertified Mr Bennett?

2 A I had no choice I was Court ordered to do so,
3 and I could not have the papers in front of me to verify
4 that it was there, not there, or whatever because
5 Mr Piscatella was counseled by you not to give me the
6 paper

7 Q But wait a minute You suggested he come see me

8 A Actually, I don't remember who suggested it

9 Q Well, I mean, look at that e-mail, this e-mail
10 right here that says confidential?

11 A It's real confidential, isn't it?

12 Q Be careful what you e-mail Didn't you suggest to
13 Tony Piscatella that he come see me?

14 A I don't know if I actually suggested it --

15 Q Well, look at the --

16 THE COURT Let her answer the question

17 THE WITNESS Excuse me, Mr Murphy, but we
18 had a conversation, and we did need to seek an attorney's
19 advice on this, so whether he decided and told me or I
20 told him, I don't really know

21 BY MR MURPHY

22 Q Well, I mean, to refresh your memory, look at your
23 e-mail

24 A It doesn't suggest that I'm the one who told him
25 to go see you

1 Q It doesn't? The word suggested doesn't appear at
2 all?

3 A Suggested to Tony that he not give any information
4 for an affidavit unless he -- I suggested that he not
5 give any information for an affidavit

6 Q Until he could what?

7 A Until he could establish the privilege
8 relationship with attorney

9 Q And privileged relationships are established how?

10 A Well, I'm not an attorney --

11 THE COURT I'll take judicial notice I
12 know how privileged relationships are established
13 BY MR MURPHY

14 Q All right Now, on your second affidavit, which
15 for the record is unnumbered, how long did you spend
16 preparing that affidavit?

17 A You want to give me a copy of it?

18 Q It's your affidavit, but you can have a copy
19 Does somebody have a clean copy?

20 THE COURT She can use the one that was
21 handed up to me

22 MR MURPHY All right Thank you, Your
23 Honor

24 BY MR MURPHY

25 Q This 24 page affidavit -- let me ask you about --

1 you're under oath Do you swear and affirm everything
2 contained in that affidavit was your information?
3 Because that's your affidavit, correct?

4 A This is my affidavit, yes

5 Q So how long did you spend preparing that 24 page
6 affidavit?

7 A Are you actually asking me if I actually wrote
8 this?

9 Q You didn't write that?

10 A Sir, that's what attorneys are for I don't have
11 any idea how to write a court document

12 Q Wait a minute, wait a minute, wait a minute Hold
13 on, Your Honor -- so that document, you didn't prepare?

14 A Sir, I did not write this document, but I read it
15 and I agreed with it, and I say it is true

16 Q All right Well, explain to me -- what's the
17 Walsh decision? Explain to the Court the Walsh decision

18 A I'm not an attorney You know that

19 Q I understand that, Mrs Duncan, but you have given
20 an affidavit and sworn in this Court that that affidavit
21 is yours Explain to me the Walsh decision Don't look
22 at it You prepared that Explain to us the Walsh
23 decision

24 A I don't know the Walsh decision Like I said, I'm
25 not an attorney

1 Q Were you sworn in? Did you put your hand on a
2 Bible when you gave that affidavit?

3 A No

4 Q Explain to me --

5 MR KINCANNON I'd say for the record as far
6 as the affidavit goes, Ms Duncan verified to me what is
7 in it is accurate, and when we were scrambling for a copy
8 over here, she had it notarized and signed, and I think
9 Mr Murphy may have confused her now with this business
10 about swearing on a Bible

11 THE COURT I understand the affidavit
12 process You know, as I said, I'm one of 12 in this
13 matter, so I don't need it to be explained to me about
14 the process of getting an affidavit

15 MR KINCANNON All right Thank you
16 BY MR MURPHY

17 Q Explain to me about Narcisco Gonzalez You
18 thought that was relevant

19 A I will tell you that I'm not in the business of
20 writing affidavits or writing legal documents I don't
21 know how they're supposed to be written I depended on
22 my attorney

23 Q So your attorney filled out this affidavit?

24 A He didn't fill it out There is no filling out to
25 it, he wrote it with my consent, he wrote it with my

1 direction, what was the truth, and that's all I can tell
2 you about it I don't know all the legal stuff

3 Q But this is your affidavit, Ms Duncan

4 A Do you do this for other clients? Do you write
5 affidavits?

6 THE COURT All right Counsel, no back and
7 forth, and, as I told you, Mr Murphy, this is a limited
8 cross-examination to the document -- to the affidavit
9 itself and the contents of the affidavit, and I
10 understand the process of affidavits I understand how
11 information is given to me In my 30 years of practicing
12 law before I went on the bench I wrote many an affidavit
13 for a client and they read it and signed it and that is
14 the process it is done by, and we're just wasting time
15 BY MR MURPHY

16 Q So you would agree with me that that affidavit,
17 which is affidavit number two, contains information You
18 really don't know how it got in there?

19 A I know how it got in there

20 MR GOFF Objection, Your Honor I have to
21 object to that, Your Honor She signed the affidavit

22 THE COURT I'll let her answer the question
23 I don't think that's what she said, but let her answer
24 the question

25 BY MR MURPHY

1 Q There is information in that affidavit you had no
2 earthly idea was in there, correct?

3 A Before I signed it? No, I knew it was in there
4 I didn't sign it until I read everything

5 THE COURT The concern here is the facts
6 contained in the affidavit, so address the facts Let's
7 don't play games with what she knows about a certain
8 legal decision

9 MR MURPHY Thank you, Your Honor
10 BY MR MURPHY

11 Q After this lawsuit was filed on or about June
12 14th, you allowed -- you instructed my client to allow
13 Lindsay Street with the Patch, a news article, to view Ed
14 Carter's documents, correct?

15 A Yes

16 Q And she e-mailed you back and said she had viewed
17 and had confirmed that Ed Carter's documents appeared to
18 be in order?

19 A Yes

20 Q What conversations, if any, have you had with
21 Senator Rose regarding this lawsuit?

22 A I have had no conversations with Senator Rose
23 regarding this lawsuit, certainly not since the lawsuit
24 has been filed The last time I spoke to him was
25 sometime back in June

1 Q Did I have any -- to your knowledge, did your
2 attorney have conversations with Senator Rose regarding
3 the lawsuit and the hearing today?

4 A To my knowledge? Yes He also spoke with all the
5 other attorneys, tried to speak to you, spoke to Rob --
6 excuse me, Mr Robbins, so, yeah, he's spoken to all the
7 attorneys

8 MR MURPHY I would like the documents that
9 I introduced during cross-examination, while they are
10 part of Mr Piscatella's affidavit and as exhibits, out
11 of an abundance of caution, could I have these marked as
12 Court's exhibits?

13 THE COURT All right How many are there?
14 Let's get them straight on the record How many
15 different documents are there?

16 MR MURPHY There are five

17 THE COURT All right And what are they?

18 MR MURPHY Number one will be an e-mail
19 dated June 20th, 2012, from Carroll Duncan, and it has
20 the word confidential in bold type on top

21 THE COURT What's the date?

22 MR MURPHY June 30th

23 THE COURT All right Next?

24 MR MURPHY No 2 is the candidate
25 checklist, or a checklist dated 3/30/2012, which bears

1 her signature, and she testified she made those check
2 marks

3 THE COURT All right

4 MR MURPHY No 3 is an e-mail from Carroll
5 Duncan dated May 4th It starts out with the headline
6 dear candidates

7 THE COURT All right

8 MR MURPHY No 4 would be an e-mail from
9 Carroll Duncan dated June 7 to Joshua Dickard

10 THE COURT All right

11 MR MURPHY And No 5 is an e-mail dated May
12 3rd from Carroll Duncan to Matt Moore

13 THE COURT All right Why do you want to
14 make them Court's exhibits and later authenticate them?
15 Why don't you just go ahead and introduce them at this
16 time?

17 MR MURPHY I move to introduce those four
18 documents

19 THE COURT Any objection? All right Be
20 admitted as Defendant Piscatella Exhibit Nos 1, 2, 3, 4,
21 and 5 Let the court reporter mark them as such

22 (E-mails marked for identification and
23 admitted into evidence as Defendant's Exhibit Nos 1
24 through 5)

25 THE COURT Proceed

1 BY MR MURPHY

2 Q Ms Duncan, would it be fair to say that
3 candidates that filed in Dorchester County did not have
4 paper copies of their SEI with them?

5 A I wouldn't know that since I wasn't at the filing

6 Q Have you since learned that?

7 A I have since learned that some did and some
8 didn't

9 Q So it's your testimony that some candidates did
10 bring paper copies with them

11 A I have learned that some did, yes

12 Q And have you since learned that some candidates
13 actually had an SEI printed for them at the office while
14 they were there?

15 A With their permission -- I mean, I've learned some
16 of them were printed at the office, but I can't really
17 testify as to what went on at that office

18 Q But Mr Piscatella printed yours?

19 A Yes, he did I can only testify as to my
20 experience filing I know that firsthand

21 Q Mr Piscatella was instructed not allow anybody
22 to --

23 A That was during the time we were trying to figure
24 out what happened to the document, what was wrong with
25 the files, in a short period of time

1 Q But you will admit that he was instructed by the
2 state party to not allow anyone to have access to the
3 files, because he's the record custodian?

4 A At that time, at that time

5 Q Okay

6 MR MURPHY Your Honor, I'm going to sit
7 down right now, give somebody else an opportunity I
8 would like leave if I look through my stuff for an
9 opportunity

10 THE COURT All right Thank you, sir

11 Any questions from any of the other
12 defendants in this matter? Mr Robbins?

13 MR ROBBINS If it please the Court, Your
14 Honor

15 THE COURT Yes, sir

16 EXAMINATION

17 BY MR ROBBINS

18 Q Good morning, Ms Duncan

19 A Good morning, Mr Robbins

20 Q You've been a long time supporter of Mr Mike
21 Rose, have you not?

22 A Yes, I have, since his 2008 campaign

23 Q You have contributed financially to him?

24 A I have bought tickets to his fundraisers

25 Q That's contributing financially to his campaign,

1 is it not?

2 A Okay Yes

3 Q And you appeared in a campaign TV commercial for
4 Mr Rose, did you not?

5 A I did, four years ago

6 Q And that TV commercial was one during this 2012
7 campaign, was it not?

8 A Not the exact commercial, but yes, it was run

9 Q You were in the commercial and it ran during the
10 2012 campaign?

11 A That's correct

12 Q Now, you appointed Mr Piscatella to be the filing
13 official when you had your fall back in January, correct?

14 A That's correct

15 Q He had been serving as a treasurer for the
16 Dorchester County Republican party for how long?

17 A Gosh, probably three-and-a-half years

18 Q So he was the man that y'all entrusted with the
19 money at the Dorchester County Republican party?

20 A That's correct

21 Q And you made him in charge of the filing process?

22 A That's correct

23 Q Because you trusted him?

24 A That's correct

25 Q Now, he was also a very loyal backer of Mike Rose,

1 was he not?

2 A I believe he was

3 Q Now, in that March 4 e-mail that Mr Murphy just
4 talked about, excuse me, May 4 e-mail Mr Murphy talked
5 about, you were bragging on your review team, and that
6 review team consisted of a lady named Ann Shields She
7 also is a big supporter of Mike Rose, is she not?

8 A I believe so

9 Q You were bragging on a lady named Janette Chipas
10 She also is a big supporter of Mike Rose, is she not?

11 A I believe so

12 Q Barbara Mojonner, another Mike Rose supporter,
13 correct?

14 A I believe so

15 Q All of these folks were involved at various times
16 with the filing process, and all of you got together on
17 March 30 to review the documents that had been filed by
18 each and every candidate, correct?

19 A We all got together to put together the packages
20 that needed to go to the South Carolina Republican party

21 Q Y'all had a big table, I don't know how big it
22 was, but it was big enough that y'all could get around it
23 and put all the files out and go through all the
24 documents, and you were on one end and Tony Piscatella
25 was on the other end, correct?

1 A No I was on one end I was sitting to the side,
2 and I actually was just sitting there The ladies who
3 were there said, I have it I got control of it You
4 just sit there, so I watched the process

5 Q All right So you watched the process while these
6 ladies who were all with the exception probably of Mikki
7 Hunter, big Mike Rose supporters who are going through
8 the documents, analyzing the documents, and verifying
9 that the paperwork is correct?

10 A They weren't analyzing the documents, Mr Robbins
11 They were simply saying if they were there or not so that
12 they could go into a file to be sent to the S C GOP

13 Q Ms Duncan, your e-mail says they spent weeks
14 meticulously checking and rechecking what was required of
15 us

16 A Sir, that was before filing ever started We had
17 to --

18 Q Okay

19 A That was the planning session for the filing

20 Q So y'all just went through willy nilly and didn't
21 determine what was in them before you sent them to the
22 state party?

23 A I didn't say what?

24 Q What were you trying to say?

25 A I said that the documents that were required to be

1 sent to the South Carolina Republican party were there
2 We did not go through and verify what every person said

3 Q And the statements of economic interest were there
4 as well, and they were retained by you in the --

5 A They weren't retained by me

6 Q Let me finish my question They were retained by
7 the party and kept right there in a file on the table,
8 and that is the file that Mr Piscatella put in the
9 office, is it not?

10 A I guess so I really don't have a memory of where
11 those documents went, those SEIs

12 Q Well, you had to verify, after the Anderson
13 decision, that y'all had looked at the SEIs and they were
14 there?

15 A I had to verify --

16 Q Including yours?

17 A I had to verify -- filing official verified they
18 were there I did not see them

19 Q I didn't ask you if you saw them personally I
20 said the review team looked at them, and you had to
21 verify that y'all had the SEIs after the Anderson
22 decision, correct?

23 A No, that's not really correct We had to verify
24 there was -- not a confirmation, but we had to verify
25 there was proof of an SEI that was filed when the

1 candidate came in to file, and at the time of the filing,
2 it was actually all that was required was a confirmation
3 number from the South Carolina ethics commission

4 Q No, ma'am, after the Anderson decision

5 A I'm sorry You said after the Anderson decision?
6 Then that's when Mr Piscatella went up to the office and
7 told me, verified to me, that he did look at all those
8 documents

9 Q You truly didn't pay attention to what was being
10 done around that big table that day, did you?

11 A No, sir I tell you, I was in a lot of pain then
12 I was still in a wheelchair I couldn't walk, and I was
13 on prescription medication So I can't really remember
14 everything

15 Q But you, despite the contentions of your attorney
16 and the contentions of Mr Rose, that the instructions
17 clearly directed everybody to on line filing, you filed a
18 hard copy of your statement of economic interest, did you
19 not?

20 A I did

21 MR ROBBINS Your Honor, I don't know
22 whether that was part of --

23 THE COURT It was not one of the five
24 exhibits

25 MR ROBBINS I'll come back to that, Judge

1 THE COURT All right

2 BY MR ROBBINS

3 Q Well, regardless of what you saw or remember or
4 was able to accomplish on March the 30th, we had Janette
5 Chipas, Barbara Mojonner, Tony Piscatella, and Ann
6 Shields all looking at these files, supporters of Mike
7 Rose Now, if there was an SEI that was not in that
8 file, if a hard copy of Sean Bennett's SEI was not in
9 that file, don't you think one of those Mike Rose people
10 would have said something?

11 MR COLLINS Objection Speculation

12 THE COURT Wait a minute, wait a minute
13 What is your objection, Mr Collins?

14 MR COLLINS It calls for speculation

15 THE COURT I'll overrule it I'm dealing
16 with credibility here, and I'm overruling it I'm going
17 to allow her to answer the question

18 THE WITNESS Do you mind repeating it to me,
19 Mr Robbins?

20 BY MR ROBBINS

21 Q My question is very simple You had a handful of
22 Mike Rose's very dedicated supporters reviewing these
23 documents, and if Sean Bennett did not have a hard copy
24 of his statement of economic interest in that file on
25 March the 30th, don't you think one of those people,

1 knowing them as well as you knew them, would have said
2 something, Hey, Bennett didn't file, we can kick him out
3 right now?

4 THE COURT Keep it to the question No
5 jury, Mr Robbins I understand the question
6 BY MR ROBBINS

7 Q I'll calm down, Judge

8 A Thank you My answer is that a hard copy at that
9 time on March the 30th, we didn't know anything about
10 whether that was due or not It had to be -- not a
11 confirmation, but a -- well, a confirmation of whether
12 they filed an SEI, period We didn't know anything about
13 any hard copy being required at that time

14 Q All right And I appreciate you saying that So
15 you didn't know anything about it on March 30, but you
16 sure knew about it on May the 4th?

17 A Correct

18 Q Same question On May the 4th, why wouldn't
19 Barbara Mojonier, Ann Shields, and Tony Piscatella have
20 come forward and said, We got him There is no way to
21 run now because he didn't have an SEI in the file?

22 A Tony was the only person that reviewed the file on
23 that day He told me he went up to the office and that
24 everything was fine, he said, for Mr Mondo

25 Q Okay Well, maybe you have seen him in this case,

1 but I have not seen any affidavits from any of these
2 people that said that Tony Piscatella was the only one
3 that reviewed the files Any other affidavits I'm
4 missing?

5 A I'm not sure what your point is

6 Q My point is there is no testimony from anybody
7 else that says he's the only one that was around that
8 table looking at the files

9 A Oh, no, sir, not that I know of

10 Q And your e-mail clearly says that they were

11 A No, that was on March 30th that everybody was
12 sitting around reading

13 Q That's what I'm talking about

14 A Now I'm confused Are you asking me about May the
15 4th or March 30th?

16 Q I asked you about March 30, and you told me we
17 didn't have any knowledge that SEI was going to be an
18 issue on March 30, so I said how about May 4th?

19 A And that is after the Supreme Court, so yes, we
20 knew we needed hard copies

21 Q And none of these people have given -- and you
22 said in response to my question, Tony was the only one
23 who looked at them, and my question back to you was has
24 anybody, Chipas, Mojonner, Shields or -- well,
25 Piscatella has already given his affidavit Has

1 Mojonnier, Chipas, or Shields given an affidavit saying
2 they didn't look at the files, that Tony was the only one
3 looking at the files?

4 A Not to my knowledge

5 Q Thank you Now, you gave Mr Kincannon this
6 affidavit on July 18, and on page one, it says that I
7 provide this affidavit to give a factual accounting of
8 what I know regarding candidate filing

9 Well, that wasn't very much, was it?

10 A It's what I knew

11 Q I don't see -- can you point to me anything in
12 here where you talk about what happened between March 16
13 and March 30?

14 A Between -- no, sir

15 Q Look at pages one and two of your affidavit, and
16 tell me where you talk about anything that happened
17 between March 16 and March 20

18 A Well, if you say I didn't, I didn't I don't have
19 this memorized

20 Q Tell me on page two where you talk about what
21 happened on March 30th

22 A And that's the one that Mr Murphy read to me,
23 number five, filing ended on March 30th?

24 Q That's the only thing I see

25 A Okay

1 Q Now, the Democrats and Mr Rose and Mr Kincannon
2 have all been talking about online filing throughout this
3 whole litigation, and you said, when you found out that
4 we had hard copies of SEIs in the files, that you were
5 shocked and excited Why would you have been shocked and
6 excited when you filed a hard copy of an SEI?

7 A Because by that time we knew what the Supreme
8 Court had said, the only way a candidate could be on the
9 ballot, and I was very excited that what I thought Tony
10 had gone the extra mile

11 Q I guess I should rephrase that I could see why
12 you would be excited, but I don't know why you would be
13 shocked

14 A Because it wasn't part of the instructions

15 Q Let's talk about that Mr Murphy also handed
16 you -- I'm going to have to come back to that because I
17 don't want to waste the Court's time I'll come back to
18 that line of questioning in just a minute

19 Let me just ask it this way, and maybe I'll put my
20 hands on a document in a minute You sent an e-mail out
21 to the candidates in March which gave them a link to some
22 online instructions

23 A Yes

24 Q Or to some instructions, but in the body of that
25 e-mail, there was language that said they needed to bring

1 proof of completion of the SEI Do you remember that?

2 A I do

3 Q Okay Now, don't you agree with me that proof of
4 completion is a different set of terminology than proof
5 of online filing?

6 A What?

7 Q Do you agree with me that proof of completion
8 gives a different meaning to people than proof of online
9 filing?

10 A Not necessarily I do not agree with you

11 Q All right Let me just ask you if you can
12 identify this e-mail dated March 12 for me Take a
13 second and look at that

14 A Yes, sir

15 Q Is that it?

16 A Yes, sir

17 Q And on page two there, is that where the language
18 is that says proof of completion?

19 A Show me where --

20 Q See -- can you read what number two says? I'm
21 reading, Your Honor, from page two of the March 12
22 e-mail Can you read me what number two says there,
23 Ms Duncan?

24 A Yes There are two forms that must be completed
25 on line One, number one, parentheses, in which a

1 requirement to file, please complete before your
2 appointment and bring a proof of completion parentheses
3 SEI as required by the state ethics commission

4 Q Okay Thank you, ma'am

5 MR ROBBINS We would move this e-mail from
6 Ms Duncan into evidence at this time

7 THE COURT Any objection to any party?
8 Admitted as Defendants No 6

9 MR ROBBINS Thank you, Your Honor
10 (E-mail marked for identification and
11 admitted into evidence as Defendant's Exhibit No 6)

12 BY MR ROBBINS

13 Q All right So, after the Anderson decision came
14 out -- well, first off, after March 30, where did the
15 folder with all the candidates' packets go? What was
16 done with the folder?

17 A I believe it was left in the office

18 Q Okay You believe, but you're not sure?

19 A I'm not sure

20 Q Okay And what did you send to the state party on
21 behalf of the candidates?

22 A Checklist I would have to have that back I
23 can't remember exactly, but I think it was verification
24 of a newspaper ad that was run, in accordance with the
25 law

1 Q Right

2 A And that -- another, like, affidavit or something,
3 who the publisher was All of it had to do with the
4 advertisement, newspaper things that had to be done We
5 had to send in the statement of intention for candidacy

6 Q Yes, ma'am And a pledge?

7 A Yes, we did

8 Q That's what was sent to the state party by
9 Ms Mojonnier?

10 A Yes, sir

11 Q Okay So you kept the file What you didn't send
12 to the state party was retained in a file and was kept in
13 a filing cabinet there at the office?

14 A That's correct, yes

15 Q And how is the office itself -- not the filing
16 cabinet, how is the office itself secured?

17 A There is a lock to the main door to the office

18 Q A key lock or a push lock, push button lock? How
19 does it work?

20 A You have to have a key to get in Is that what
21 you're asking me?

22 Q Yes, ma'am?

23 A Yeah You have to have a key to get in

24 Q How many people have keys to the office or have
25 access to get into that office?

1 A Have access?

2 Q Uh-huh

3 A Oh, I would hate to say, but a lot

4 Q Okay All right So the files were in the office
5 from March 30 until May 4, and at that point, you asked
6 Mr Piscatella to go check again

7 A On May the 4th you said?

8 Q Yes, ma'am

9 A Yes

10 Q Pursuant to Anderson?

11 A Yes

12 Q And he did, he alone?

13 A As far as I know

14 Q And he verified to you that all hard copies of the
15 SEIs were in the file?

16 A Yes, he did

17 Q And based on that information, you reported to the
18 county election commission and to the state party that
19 everybody was good except for one candidate

20 A That's correct

21 Q And that would have been Mr John Mondo

22 A Yes

23 Q Okay So when the Florence County decision came
24 down in June, you had to go through that same procedure,
25 correct?

1 A Correct

2 Q And the files were still in the folder in the
3 filing cabinet in the office

4 A As far as I know

5 Q And you asked Mr Piscatella to go check them
6 again, right?

7 A Yes, I did

8 Q Okay And, again, you verified that all the SEIs
9 were in the files and certified Mr Bennett, right?

10 A Yes, I did, because Mr Piscatella told me that
11 they were all good

12 Q And that's what -- if you look at paragraph 14 of
13 your affidavit --

14 A Which one, sir?

15 Q The first one I'm not interested in that 24
16 page --

17 THE COURT She doesn't have that

18 BY MR ROBBINS

19 Q You don't have the first affidavit?

20 A Yes, sir, I do

21 THE COURT She's got the 24 page one I got
22 the other one here

23 THE WITNESS I have Mr Murphy's copy He
24 gave me a copy

25 THE COURT Okay

1 THE WITNESS Thank you

2 BY MR ROBBINS

3 Q On paragraph 14 at the bottom of page three, you
4 say there that Mr Piscatella represented to you that
5 that took place, correct?

6 A Yes

7 Q Then you sent an e-mail to Josh Dickard, who is
8 the election commission executive director here in
9 Dorchester County, correct?

10 A Are you talking out of Florence County?

11 Q Uh-huh

12 A Yes

13 Q And I'm going to hand you your e-mail to Josh
14 Dickard dated June 7

15 A Okay

16 Q That would have been the e-mail you sent him after
17 the Florence County decision, correct?

18 A Yes

19 Q Can you publish the content of that e-mail for me?

20 THE COURT Are you offering it?

21 MR ROBBINS Yes, sir, and, again, I
22 apologize, Judge I don't remember what Mr Murphy
23 entered, but I want to make sure that's in --

24 MR MURPHY That e-mail was previously
25 marked as one other defendant's exhibit

1 THE COURT All right I have them Let me
2 look and see it

3 MS CRUM Exhibit 4

4 THE COURT It's already in evidence as
5 Exhibit 4 Go ahead You can publish it

6 BY MR ROBBINS

7 Q Could you please read what that e-mail says

8 A Yes Well, it started out with Mr Dickard You
9 want me to read his e-mail to me?

10 Q I want you to read your e-mail to him I'm sorry,
11 yes, ma'am

12 A After examining all candidates filed at the
13 Dorchester County GOP office with all hard copies of SEIs
14 being provided at the same time the candidate declaration
15 was submitted, to the best of my knowledge at this time
16 no changes are required on the GOP primary ballot

17 The certified candidates list presented to you on
18 May the 4th, 2012 before 12 noon by Tony Piscatella and
19 me stands as is If you need further information, please
20 don't hesitate to call me We certainly appreciate
21 everything you do the staff and election commissioners
22 are doing to protect the integrity of the election
23 process on June 12th

24 Q So the previous certification stands as is, and as
25 of June 7, 2012, Sean Bennett was a certified candidate

1 for Senate seat 38 in Dorchester County, correct?

2 A That's correct

3 Q And then he went on to victory on June 12, didn't
4 he?

5 A Yes, he did

6 Q 60 plus percent to 39 some odd percent?

7 A Yes, sir

8 Q You made an appearance at his victory party that
9 night, didn't you?

10 A I did

11 Q And the very next day you told Mr Piscatella to
12 go check the files once again Why did you do that?

13 A I'm glad you asked me that I did that because
14 Mr Piscatella actually called me and said that there
15 was some question about -- I guess he had gotten a call
16 from Mr Rose and that there was some question about
17 whether Sean Bennett's filings were correct, so when
18 Mr Piscatella called me, I asked him to please go back
19 up there and verify it

20 Q Okay And what time was that phone call?

21 A I really don't know, Mr Robbins

22 Q So it's your testimony that Mr Piscatella called
23 you, and the reason he called you is he got a phone call
24 from Rose?

25 A Correct

1 Q So that's how all that originated?

2 A Yes

3 Q Okay On the morning after the election?

4 A I don't know if it was the morning, afternoon,
5 night, I don't know

6 Q But it was the day after the election

7 A Yes

8 Q And do you remember when Mr Piscatella got back
9 to you that day?

10 A I honestly don't remember if he got back to me
11 that day or what time that day or if it was the next day,
12 but he had told me the reason that Mike called him was
13 because somebody from Columbia had called him to say
14 that -- you know, to check the stuff, so I didn't see any
15 problem with him checking it

16 Q Okay

17 A But I don't know the time

18 Q Now, by this time, you were getting around fine
19 I wouldn't say getting around fine because you had a very
20 serious injury, but you were getting around and you were
21 attending meetings and you were functioning fine You
22 were clear headed at this point, were you not?

23 A I was

24 Q Okay So what did Mr Piscatella report back to
25 you when he went to the office to check the files?

1 A He told me that Mr Bennett's file -- I mean, his
2 SEI was missing

3 Q And that's the exact language he used, wasn't it,
4 it was missing?

5 A Exact language, I don't know, but that was
6 certainly the gist of it That's what was missing

7 Q That's what you just said, it was missing

8 A He said it's not there

9 Q The campaign disclosure form was also missing

10 A I don't know about that

11 Q Okay Now, Mr Piscatella downloaded a copy from
12 the state ethics web site and attached it to the file and
13 put a note on it, saying what he had done on June 13th,
14 did he not?

15 A I asked him to do that

16 Q You asked him to do that?

17 A I asked him to put a note on it He told me he
18 was going to download it, and I said that was fine, but I
19 said make sure you put a note on when you downloaded it
20 and why

21 Q And you approved of that procedure?

22 A Yeah

23 Q And that was an appropriate thing to do, don't you
24 think?

25 A Yes

1 Q And then did you call the state party at that
2 point?

3 A Yes

4 Q Now, on paragraph 17 of your affidavit, you say
5 you were shocked to hear Bennett's SEI was not in the
6 file after Piscatella had repeatedly represented to me
7 that it was in the file

8 A I sure was shocked

9 Q I don't see anything in your affidavit where you
10 went to any of these people that were on this review team
11 and asked them about it That doesn't appear on your
12 affidavit, does it?

13 A No Why would I go to them?

14 THE COURT Just answer the question Did
15 you go there or not?

16 THE WITNESS No, sir

17 BY MR ROBBINS

18 Q Then you come to the conclusion -- well, I'll get
19 to that in a second I'll withdraw that

20 Tony suggested various theories as to how the form
21 had gone missing What theories was he suggesting?

22 A Well, he suggested that someone had come into the
23 office and taken it

24 Q That would be a good guess

25 A He suggested that -- you know, he was telling me

1 that he had cleaned up the files because there were,
2 like, duplicates and triplicates of different things and
3 maybe he accidentally shredded it

4 Q He seriously said that to you?

5 A He seriously said that to me

6 Q Okay All right

7 A I believed him

8 Q And I don't see that in your affidavit

9 A Okay

10 Q If that was an actual quote from Mr Piscatella
11 and you're trying to give Judge King the truth in this
12 case and he said I might have accidentally shredded
13 somebody's SEI after Anderson and after Florence County,
14 you don't think that should go in an affidavit?

15 A I do, and it's in this 24 page one that you don't
16 care about

17 Q We'll get to that in a second So then you became
18 concerned that Tony had not been truthful with you
19 Why -- how did you come to that conclusion?

20 A There were people that had come forward --

21 Q No, no, no, no, no, no, no

22 THE COURT She can testify She can
23 identify people that came forward She can't testify as
24 to what they said

25 MR ROBBINS Let me rephrase the question

1 then, Your Honor, because I don't think she understands
2 what I'm asking her

3 BY MR ROBBINS

4 Q On June the 13th, when this affidavit is talking
5 about the present situation between you and
6 Mr Piscatella on the 13th, you were shocked to find out
7 it wasn't in there, and then you immediately leaped to
8 the conclusion that he's not being truthful

9 A Not on that same day

10 Q That's the way I read it

11 A That's not what it means

12 Q Okay All right Then we'll go on to something
13 else

14 MR COLLINS Your Honor, I respectfully
15 submit he opened door when he asked her why

16 THE COURT You'll have a chance,
17 Mr Collins

18 MR COLLINS Thank you

19 BY MR ROBBINS

20 Q So the guy that you had previously called a hero
21 you now were questioning his integrity

22 A Later on down the road, yeah

23 Q Later on down the road Okay Now, on June the
24 20th, you sent an e-mail to Matt Moore of the party
25 Well, let me back up before June 20

1 Y'all find out that the things missing on the
2 13th, and you get a phone call from Lindsay Street around
3 the 14th, correct?

4 A That sounds correct

5 Q And she wants to go see Mr Carter's file?

6 A Yes

7 Q Right?

8 A Uh-huh

9 Q And you let her

10 A I did

11 Q And she went and looked at it, and her report back
12 to you was, he's got a simultaneous SEI, SIC, correct?

13 A Correct

14 Q On the 15th of June

15 A Whenever she asked to subpoena him, that's when

16 Q Okay And on the 19th of June, at 3 19 in the
17 morning, you got an e-mail from Mr Rose

18 A I remember that well

19 Q Yeah Let me ask if you can identify this e-mail
20 from Mr Rose dated June 19th, ma'am

21 A Yes

22 Q You remember that e-mail well

23 A Oh, yes

24 MR ROBBINS We would move that one into
25 evidence, Your Honor

1 THE COURT All right Any objection from
2 any party?

3 MS CRUM Your Honor, I don't even know what
4 it says

5 THE COURT Show it to her, Mr Robbins

6 MR ROBBINS I would submit to her that this
7 is an exhibit that Mr Rose put into his packet That's
8 where I got it from

9 THE COURT It's an e-mail from Mr Rose
10 to --

11 MR ROBBINS Ms Duncan

12 THE COURT Yes, sir

13 THE WITNESS It was in

14 THE COURT Any objection? Admitted as
15 Defendant's No 7

16 (E-mail marked for identification and
17 admitted into evidence as Defendant's Exhibit No 7)
18 BY MR ROBBINS

19 Q You just told the Court it was in response to an
20 e-mail that you sent to him first, right?

21 A Correct

22 Q And as the party chairperson, you were concerned
23 post election with developing unity in the party,
24 correct?

25 A Correct

1 Q And you attempted, as you should have, to have a
2 cookout, I think you called it, a unity cookout for the
3 party, that Thursday

4 A Yes

5 Q Right?

6 A Yes

7 Q I guess it would have been the 21st

8 A Yes

9 Q And you invited Mr Rose to come to the unity
10 cookout?

11 A Yes, I did

12 Q And that's what you're referring to as the
13 invitation?

14 A Yes

15 Q And this is his response back to you?

16 A Yes

17 Q Among other things, right? And in this -- and,
18 Your Honor, I'm not going to take up all the Court's
19 time, but in this e-mail to you, he is telling you that
20 he's going to start investigating anything and everything
21 concerning Mr Bennett's paperwork, correct?

22 A Yes

23 Q It even cites the statute in here, and it sends
24 that to you at 3 19 in the morning?

25 A Yes

1 Q Okay Now, you took this e-mail and went and
2 visited Mr Bennett at his office, did you not?

3 A I went to visit Mr Bennett I'm not sure if I
4 took -- I don't remember taking the e-mail

5 Q All right Let me back up a second I'm getting
6 ahead of myself

7 You cut and pasted the long portion of
8 Defendant's exhibit 7, the Rose e-mail -- first you went
9 to Mr Bennett's office after you got this e-mail

10 A I'm not sure what day I went to his office, but I
11 obtained that cut and paste from Mr Murphy

12 Q You went to Mr Bennett to see him?

13 A Yes, I did

14 Q And you gave this to Mr Murphy?

15 A Yes

16 Q And this was statutory language Mr Rose had given
17 you?

18 A Yes

19 Q Okay And you asked Mr Bennett to look at his
20 file, the copy that he had, did you not?

21 A Yes, I did

22 Q And you saw in his copy file that he had an
23 SEI that was filed simultaneously with his SIC?

24 A I saw it in his file It was interesting He had
25 two affidavits, one of which he took to the office

1 Q That wasn't my question I asked you if he had an
2 SEI filed with an SIC?

3 MR KINCANNON Objection, Your Honor
4 That's outside her knowledge She testified she wasn't
5 there and so she couldn't possibly know that

6 THE COURT If you know Can you answer it?
7 If you know, if you don't know --

8 THE WITNESS I don't know

9 BY MR ROBBINS

10 Q Did you observe a statement of economic interest
11 form in his file copy?

12 A Actually, what I observed was his confirmation
13 number, and he had the file opened and just flipped
14 through several things

15 Q Okay So that's your testimony

16 A That's my testimony

17 Q Okay All right

18 A But what I was telling you about the affidavit is
19 that the affidavit said that it was taken to
20 Mr Piscatella, so I was pretty impressed that he had an
21 affidavit that said that

22 Q And so then after you left -- okay So on the
23 19th, you had the benefit of Lindsay Street's examination
24 of Mr Carter's file You had the benefit of viewing
25 Mr Bennett's file, and then you sent the e-mail to Matt

1 Moore on June 20, and you were seeking instruction on
2 whether to answer Mr Rose, were you not?

3 A That's what that says I don't, you know,
4 remember the e-mail

5 Q Let me hand you this June 20 e-mail and ask if you
6 can identify that That's from you to Matt Moore

7 A Sure Yes

8 Q And the question that you first pose to Mr Moore
9 was answer him or not?

10 A Correct

11 Q And what did you say next?

12 THE COURT Not into evidence yet, Mr
13 Robbins

14 MR ROBBINS I will move that into evidence,
15 Your Honor

16 THE COURT Okay Defendant's 8 will be what
17 now?

18 MR ROBBINS That will be an e-mail from
19 Carroll Duncan to Matt Moore dated June 20

20 THE COURT Any objection? Admitted as
21 Defendant's No 8

22 (E-mail marked for identification and
23 admitted into evidence as Defendant's Exhibit No 8)

24 THE WITNESS You want me to read it?

25 BY MR MURPHY

1 Q Yes, ma'am

2 A For you, Tony has not and will not alter any
3 records he's added a copy of the SEI to the file but
4 would note that it's a copy and note and what date he had
5 it and why

6 THE COURT While you're stopped, maybe it
7 would be a good time -- we've been here about
8 two-and-a-half hours Maybe we ought to take a
9 ten-minute break at this time

10 Ms Duncan, I will say you are still a
11 witness under oath, and it would be improper for you to
12 discuss this matter, including to your counsel during
13 this process, because you're still subject to
14 cross-examination, so please, do not discuss this with
15 anyone

16 The other thing I would like to get to is it
17 appears there has been some testimony regarding
18 Ms Street and what her report back or was at the SEC was
19 there My recollection is that what is the e-mail said
20 that y'all were trying to prove, so if that's the case,
21 then it seems like to me that it falls within the -- one
22 of the things is it cannot be obtained by alternative
23 means and it has been obtained by alternative means, and
24 that is the testimony of this witness, and Ms Street's
25 testimony would not be required, do you agree with that?

1 MR MURPHY Yes, sir

2 THE COURT You don't have any problem
3 quashing the subpoena of Lindsay Street?

4 MR MURPHY No, sir

5 THE COURT All right Subpoena is quashed
6 All right We'll take a ten-minute recess

7 (Recess taken)

8 THE COURT All right You may proceed with
9 your cross-examination, Mr Robbins

10 MR ROBBINS Thank you, Your Honor

11 BY MR ROBBINS

12 Q And, Ms Duncan, I'm going to go right back to the
13 e-mail I had you just look at that because I don't want
14 to confuse you on what we were looking at

15 You were examining your e-mail to Matt Moore, June
16 20, which has been marked and entered as Defendant's
17 Exhibit 8, and could you publish that for the Court,
18 please Read it for the Court

19 A Read just what I said?

20 Q Yes, ma'am

21 A For you, Tony has not and will not alter any
22 records He's added a copy of the SEI to the file but
23 with a note that it's a copy and what day he added and
24 why

25 Q And that is consistent with what you testified to

1 earlier, that you suggested that he put a notation on
2 what he downloaded to show what had been in the file,
3 correct?

4 A That's correct

5 THE COURT All right I don't have No 7
6 either I believe -- I think that's in your papers

7 MR ROBBINS I thought it was on the stack
8 that was on your desk, Judge

9 THE COURT No, I don't think so Let's see

10 MR ROBBINS I believe I put it in there
11 during the break

12 THE COURT Okay All right

13 BY MR ROBBINS

14 Q Now, I want to back up one second, Ms Duncan,
15 with respect to Mr Moore It was yours and
16 Mr Piscatella's decision together to keep those files
17 where nobody else could see them while you were
18 discussing this situation with Mr Moore, correct?

19 A Yes

20 Q And Mr Moore sent an e-mail to Mr Piscatella
21 telling him -- and copied Mr Rose on it, telling him
22 that it was the state party's policy to not allow anybody
23 to see these files because of what the Democrats are
24 doing all around the state

25 A I remember that, yes

1 Q And I asked you -- I don't know if you saw this
2 e-mail, but I got it marked as Defendant's Exhibit 9, if
3 you could just tell me whether you've ever seen that
4 e-mail

5 A I don't think so

6 MR ROBBINS Okay We'll mark it for
7 identification right now, Your Honor

8 THE COURT Okay So marked

9 THE WITNESS I received one similar, but I
10 don't remember seeing that one

11 (E-mail marked for identification as
12 Defendant's Exhibit No 9)

13 BY MR ROBBINS

14 Q But the bottom line is you and Mr Piscatella on
15 June 15 were adding at the direction of the state party
16 by not allowing anybody to see these files?

17 A At that time, yes

18 Q Okay Now, Mr Piscatella had previously offered
19 to give Mr Rose a copy of that, had he not?

20 A Yes

21 Q But he couldn't because of this policy?

22 A Yes

23 Q And then you presided over the monthly meeting of
24 the Dorchester County Republican party, I believe, on
25 June 28, is that correct?

1 A Yes, it is

2 Q And at that meeting, you announced to the party
3 that the threat of a Democrat lawsuit was imminent

4 A Yes I was told that by Mr Murphy when I went to
5 see him for advice

6 Q And that was pretty accurate because the next day
7 they filed a lawsuit, right?

8 A That's pretty accurate, yes, sir

9 Q And there was a request at that meeting to go to
10 the executive session to discuss the files?

11 A Yes

12 Q And you did not allow an executive session to
13 discuss those files, did you?

14 A That's correct, because Mr Murphy had told me
15 that that was upon his counsel, that he did not feel that
16 we should do that with this imminent lawsuit coming

17 Q Okay So you were getting counsel from Mr Murphy
18 on that issue?

19 A Yes

20 Q All right And then the lawsuit was filed on the
21 29th, and you retained Mr Kincannon?

22 A Yes

23 Q Did you hire him or did the party hire him?

24 A I did

25 Q Okay How were you referred to him?

1 A I've known Todd, or Mr Kincannon, for quite some
2 time and know of his expertise in election law

3 Q And after you retained Mr Kincannon, you issued a
4 press release on July 17, did you not?

5 A I'm not sure of the date, but yes, the press
6 release was issued

7 Q And as of July 17, despite the fact you went over
8 and looked at Mr Bennett's file, you were still taking
9 the position that you didn't know what had happened
10 during this election, and you were completely relying on
11 Tony Piscatella, correct?

12 A That's correct

13 Q And in this press release, you state that you
14 regret that you had to come to the decision to decertify
15 Mr Bennett

16 A That was after I was mandated by the Circuit Court
17 to do so, and, yes, I certainly regretted it

18 Q And at this point in time, Mr Piscatella had
19 possession of the file, did he not?

20 A Yes, sir

21 Q And you said in the press release that you will
22 make -- that the decertification decision was permanent
23 as to Sean Bennett, correct?

24 A Was that the 17 -- I'm confused There were two
25 times One was right after that lawsuit was filed that I

1 was mandated by the Circuit Court to decertify him, and
2 then there was -- and then there was another one after
3 all the investigation that I had to decertify, so --

4 MR ROBBINS I'm going to mark this press
5 release as an exhibit

6 BY MR ROBBINS

7 Q I'm going to hand you what's been marked as
8 Defendant's Exhibit 10 and ask you if that is a press
9 release that you sent out on July 17th regarding the
10 county elections

11 A Yes

12 Q Now, did you prepare that press release, or did
13 Mr Kincannon?

14 A I did with his assistance

15 Q You did with his assistance?

16 A As my attorney, yes

17 Q Who typed it?

18 A He did

19 Q Did you read it before it got sent out?

20 A I absolutely read everything before I send it out

21 Q Okay Now, this would be -- well, let me ask you
22 about the press release itself In the press release,
23 you attempt to decertify Sean Bennett permanently
24 That's what you say, right? I am permanently
25 decertifying Sean Bennett

1 A Where is that one?

2 Q You want me to show it to you?

3 A Yeah, please

4 Q It's the last paragraph on page one of the press
5 release that you read

6 A Yes

7 Q Given what I know, can you read that sentence?

8 THE COURT Not in evidence yet, is it? Did
9 you offer it?

10 MR ROBBINS I would move it into evidence

11 THE COURT Any objection? Press release
12 admitted into evidence without objection as Exhibit 10

13 MR ROBBINS Thank you, Judge

14 (Press release marked for identification and
15 admitted into evidence as Defendant's Exhibit No 10)

16 THE WITNESS Given what I now know, I have
17 no choice whatsoever but to permanently decertify Sean
18 Bennett, Roger Goodman, and John Hull as candidates In
19 the cases of Goodman and Hull, no election results are
20 expected, but Sean Bennett's situation is obviously far
21 more regrettable

22 With regard to the remaining non-incumbent
23 candidates, all are decertified until I gain access to
24 the Dorchester County Republican Party file documents
25 At that point in time I will reconsider my decision based

1 upon the documents in the file, though I have grave
2 concerns about whether the documents have remained
3 properly secured since Mr Piscatella took them
4 apparently to his house, and in the case of my county
5 council candidacy, I will make no recertification
6 decision whatsoever and will delegate that to the
7 vice-chairman of the Dorchester County Republican party

8 THE COURT We don't need to read the whole
9 thing I think he was asking you about a specific part
10 It's in evidence I can read it

11 BY MR ROBBINS

12 Q You attempted to permanently decertify Sean
13 Bennett, but in the case of the other candidates, were
14 you going to wait until you had a chance to review the
15 file, so my question to you is, why would you not wait to
16 review the file to make a decision on Mr Bennett?

17 A Because it had already been established that his
18 SEI wasn't in the file

19 Q It had not been established that he didn't file
20 it

21 A No, but it wasn't in the file I could only go on
22 what the information I had in front of me

23 Q And this was prepared by Mr Kincannon, correct?

24 A Yes

25 Q Would that be the same Mr Kincannon who attempted

1 to enter into a consent order with the Democrats to
2 permanently enjoin all the non-incumbent Republicans
3 during the pendency of this litigation?

4 THE COURT That is part of the legal -- that
5 doesn't matter Move on

6 MR ROBBINS I think that's all I have for
7 now, Your Honor Thank you

8 THE COURT All right Anyone else?
9 Mr Murphy, anything further?

10 MR MURPHY Yes, sir, I do

11 THE COURT Ms Crum, you got anything?

12 MS CRUM I just got a couple things, Your
13 Honor

14 THE COURT Yes, ma'am

15 EXAMINATION

16 BY MS CRUM

17 Q Ms Duncan, I am Liz Crum, and I represent the
18 state election commission, and if I ask a question and
19 you don't understand, will you please get me to repeat it
20 because we lawyers often think we're models of clarity
21 and we're not quite as clear as we meant to be, okay?
22 Thank you

23 Now, there was an e-mail that has already
24 been admitted as an exhibit where you say multiple sets
25 of eyes had looked at the documents for certification

1 purposes Who did those multiple sets of eyes belong to?

2 A They belonged to the ladies that were -- you want
3 the names?

4 Q Yes, ma'am

5 A Actual names? There was Barbara Mojonnier, Ann
6 Shields I believe is up there, Janette Chipas, Tony
7 Piscatella, and I think Hunter was up there too

8 Q Hunter? Who is Hunter? I'm sorry

9 A Mikki Hunter She's a volunteer

10 Q You also said there were numerous people that had
11 access to the office Approximately how many people had
12 access to the Dorchester County Republican party office?

13 A I want to say as far as sets of keys, there may be
14 only four or five, but we've given out -- there is a lot
15 of locks on the door, and in that lock box there is
16 another set of keys, and so we've given out that code to
17 different people for different purposes

18 Q And about how many people have the code to the
19 lock box, in addition to those that have keys?

20 A Well, back then, probably ten people, maybe eight
21 to ten, now that it's been changed, but back then maybe
22 eight to ten

23 Q So am I correct that there would have been
24 somewhere between 12 and 14 people that had access to the
25 office?

1 A That's sounds correct

2 Q And was the file cabinet in which the filing
3 documents kept, was that locked?

4 A Unfortunately not

5 Q Okay Ms Duncan, the party -- and you had an
6 opportunity, I believe it was a party checklist

7 A Yes, ma'am

8 Q And it was exhibit No -- let's see 2 Do you
9 have a copy of that?

10 A No, I don't

11 MS CRUM Your Honor, could I just use one
12 of the party checklists?

13 THE COURT Yes You mean as an exhibit to
14 her affidavit?

15 MS CRUM No It was Exhibit No 2 by Mr
16 Robbins

17 THE COURT I got it right here You have
18 that other evidence?

19 THE WITNESS Yes, sir

20 THE COURT All right Go ahead

21 BY MS CRUM

22 Q One of the things the checklist asks for, does it
23 not, the SEI and it has parenthesis, proof of on-line
24 filing? See, it's kind of like the second thing down,
25 candidate packet checklist?

1 A Yes, ma'am

2 Q Now, you can show prove of filing, and this is
3 not -- I'm not looking at Anderson now, but there are two
4 ways you can show prove of filing The first would be to
5 show your confirmation number, right?

6 A Yes, ma'am

7 Q The second would be to print out a hard copy of
8 your SEI, right?

9 A Yes, ma'am

10 Q So there are two ways to show proof of filing?

11 A Yes

12 Q So if somebody looked at the candidate checklist,
13 they could take proof of filing to either mean
14 confirmation number or print out a hard copy, right?

15 A Yes

16 Q And you printed out a hard copy?

17 A Yes

18 Q Okay Now, the long affidavit that Judge King
19 just referred to --

20 A Yes, ma'am

21 Q If you would look at page seven at the bottom of
22 the page?

23 A Uh-huh

24 Q Last paragraph, it talks about the South Carolina
25 state election commission had concerns with whether you

1 had the authority to make certifications and
2 decertifications, correct?

3 A Yes

4 Q And the state election commission has concerns
5 that you do not have the authority to decertify numbers
6 of the House or Senate, isn't that correct?

7 A Yes

8 Q And isn't it correct that's based on the South
9 Carolina election laws, section 7-12-15 subparagraph two?

10 A I'll take your word for it about the number I
11 don't know

12 Q Isn't it correct that the South Carolina state
13 election commission has taken the position that only the
14 state party has the authority to decertify House or
15 Senate members?

16 A Yes, they took that position

17 Q And they have taken that position pursuant to
18 South Carolina state law, correct?

19 A Yes

20 Q Okay Look on top of page eight of your
21 affidavit -- well, let me just read a statement you made,
22 and I'm going to ask you really quickly about it I have
23 to admit I am completely unconcerned about whether I have
24 the authority to make those decisions, that being the
25 decertification decisions, right?

1 A Yes

2 Q What I am concerned with is whether the Supreme
3 Court of South Carolina would believe I have duty to do
4 what I have done, right?

5 A Yes

6 Q Do you have any belief as to whether or not the
7 Supreme Court would attempt to impose a duty upon you
8 that is not imposed by law?

9 A The ruling from the -- the order from the Supreme
10 Court that was stated in, I believe, it was the second
11 one, Florence, made it my duty

12 Q Do you know whether or not it made it the duty for
13 appropriate election official to decertify the candidate?

14 A No

15 MS CRUM Thank you I don't have any
16 additional questions

17 THE COURT All right Mr Murphy --

18 MS CRUM Your Honor, I'm sorry I do have
19 one more I apologize

20 THE COURT That's all right

21 BY MS CRUM

22 Q I want to show you an e-mail, Ms Duncan, and see
23 if you recognize this e-mail, if you could authenticate
24 it for me It's an e-mail dated June 19th at 1 16
25 purporting to be from Mr Rose to you and him See if

1 you recognize that e-mail

2 A Yes

3 Q Okay

4 MS CRUM Your Honor, I would like to mark
5 this and introduce it It is an e-mail from Mr Rose to
6 Mrs Carroll I got this e-mail from the package that
7 Mr Rose actually gave as a statement of fact I don't
8 have a copy of it, but all parties should have a copy of
9 it

10 THE COURT What is the date?

11 MS CRUM June 19th, 2012 at 1 16 p m

12 THE COURT It's an e-mail from Mr Rose to
13 Ms Duncan?

14 MS CRUM Yes

15 THE COURT Any objection to it being
16 admitted as Defendant's Exhibit 11?

17 All right Go ahead and give it to the
18 reporter and she can get a copy back to her

19 (E-mail marked for identification and
20 admitted into evidence as Defendant's Exhibit No 11)

21 BY MS CRUM

22 Q Ms Duncan, it's addressed to you and Tim Who is
23 Tim?

24 A Tim Huber is the vice-chairman of the Dorchester
25 County Republican party

1 Q Okay And the sentence says given the present
2 circumstances, I want to appeal the certification of Sean
3 Bennett as the Republican party's candidate in the
4 upcoming general election for Senate District 38,
5 correct?

6 A Correct

7 Q Okay Now, the appeal is that the party appeal
8 process set out in the code, the election code, so that
9 you protest to the election -- the local election
10 commission? I'm sorry, not the electric commission, the
11 local party

12 A Honestly, I was unaware of what the actual -- you
13 know, law was, but he was referring to an appeal to the
14 South Carolina Republican party

15 Q Okay And you are aware that a candidate who has
16 a problem with an election has the right to appeal
17 pursuant to 7-17-5 10, et cetera, don't you, to the
18 Republican party?

19 A I'm aware of it now, yes, ma'am

20 Q Okay Whatever happened with this letter where
21 Mr Rose asked for an appeal?

22 A It's my understanding that his request for an
23 appeal before the state party was too late It's my
24 understanding that in that law it specifies, you know,
25 the period of time that you can actually appeal to the

1 party

2 Q So his process to the Republican party then was
3 not timely?

4 A Correct

5 MS CRUM Thank you, ma'am Thank you

6 THE COURT All right Mr. Murphy?

7 EXAMINATION

8 BY MR. MURPHY

9 Q Thank you, just a couple questions, Ms. Duncan,
10 that came up on the cross-examination by Mr. Robbins

11 Regarding Defendant's Exhibit 10, which was the
12 press release --

13 A Uh-huh

14 Q Mr. Robbins asked you a question about did you
15 prepare that, the attorney prepared that, did you read
16 it, and your testimony was absolutely I read everything

17 A That I sign, in a lawsuit? Yes, sir

18 Q So you absolutely read everything that your
19 signature is required on

20 A For this lawsuit, I certainly have

21 Q All right So -- but your testimony is you
22 absolutely didn't read everything when your signature was
23 required to certify candidates?

24 A I depended on Mr. Piscatella's referencing, yes

25 Q Now, Mr. Robbins asked you about the May 4th

1 e-mail that you sent out And I don't remember the
2 exhibit number, Your Honor

3 A Is this it? No, that's June

4 THE COURT I got all the exhibits right
5 here, Mr Murphy, except for that one that she's got
6 BY MR MURPHY

7 Q That's the Defendant's Exhibit 3 Again, you
8 state in that e-mail that you had multiple sets of eyes
9 view the documents, including the SEIs, correct?

10 A What I said were multiple sets of eyes reviewing
11 what needed to go specifically to the S C GOP

12 Q But the SEI was not included?

13 A That's correct

14 Q But you referenced in your e-mail on May 4th that
15 we had multiple sets of eyes to include the SEI which was
16 now relevant after Anderson?

17 A No What I said was that actually it was -- let's
18 see Going over all the requirements being sent to
19 S C GOP and kept the SEI copies in the office, that's
20 what I said

21 Q And you further state in that e-mail but
22 unfortunately only one candidate, Mr John Mondo, didn't
23 have a paper copy of SEI He did not comply with the
24 statute

25 A That's correct

1 Q All right Now, Mr Robbins asked you regarding
2 the -- your testimony, I would assume, and correct me if
3 I'm wrong, would be the members that were on the e-mail
4 that were copied with that e-mail, correct?

5 A Yes

6 Q And so that's Barbara Mojonnier, Angela Shields
7 Janette Chipas, and everybody else?

8 A When I was referring to the team, that was the
9 team that worked before the candidate filing, getting
10 everything prepared, things like that As far as each of
11 them having, you know, been there that last day, they
12 weren't

13 Q What -- after Anderson, no one on the multiple --
14 no one, including the multiple set of eyes referenced in
15 that e-mail communicated to you that Sean Bennett did not
16 have a paper copy of an SEI?

17 A No They didn't review the files, as far as I
18 know

19 Q Did you feel it to take it upon yourself to
20 interview and talk with Janette Chipas, talk with Ann
21 Shields, talk with Barbara Mojonnier regarding whether or
22 not Sean Bennett properly filed?

23 A Mr Murphy, you're talking about when that first
24 Supreme Court ruling came down?

25 Q I'm saying, did you take it upon yourself to talk

1 with anybody else on whether or not Sean Bennett filed a
2 paper copy?

3 A Of any of these people?

4 Q Yeah

5 A No, because a paper copy at the time these people
6 were up there March the 30th was not a concern

7 Q So when you state in your press release that you
8 had an obligation to investigate the matter, you didn't
9 investigate it

10 A I certainly did

11 Q Did you talk with Janette Chipas?

12 A About whether she ever saw on that day -- I'm
13 confused I'm sorry, Mr Murphy

14 Q Understandably Did you talk with Janette Chipas
15 after Tony Piscatella, who you can't trust now, who was
16 your right hand, who was your hero --

17 THE COURT Okay No jury argument Let's
18 go

19 MR MURPHY Judge, I'm trying

20 BY MR MURPHY

21 Q Did you take it upon yourself to talk with them on
22 whether or not Sean Bennett presented a paper copy of an
23 SEI?

24 A Okay Now I understand Yes Later on after
25 these -- after the election, after all the questions came

1 up, that's when I talked to him That's when I talked to
2 him

3 Q And to your knowledge, and based on your
4 investigation, did any of those people that you talked to
5 tell you that Sean Bennett did not provide an SEI at the
6 time that he filed?

7 A They had no reason to know that he filed a paper
8 copy, so no, they didn't know

9 Q So there is no affidavit that states that Sean
10 Bennett did not provide an SEI at the time, a paper copy
11 of the SEIs at the time he filed?

12 A Not that I'm aware of, no

13 Q Now, in your first affidavit, you talk about your
14 concern that Sean didn't file properly, that Sean didn't
15 file a paper SEI Remember it?

16 A Yes I certainly had a concern because of all the
17 things going on, yes

18 Q So at that point, on July 18th, you were concerned
19 that Sean Bennett did not file a paper copy at all, just
20 like you told Mr Robbins

21 A It's a disability

22 Q Well, it's your affidavit Look at it

23 THE COURT I've got it

24 THE WITNESS Was I concerned? Yes I was
25 concerned Is that your question?

1 BY MR MURPHY

2 Q Yes

3 A Yes

4 Q That he didn't file a paper copy of an SEI at all

5 A That was a concern, yes

6 Q Then, when you gave this 24 page affidavit on
7 August 2nd, approximately four days ago, now you're
8 concerned with his SEI not having the correct calendar
9 year

10 A That's correct

11 Q Okay So now we've kind of switched gears a
12 little bit, and now we're saying, well, he didn't file an
13 SEI on July 18, and I swear to that, but now I'm
14 concerned on August 2nd that he didn't file an SEI with
15 the correct date

16 A That was a problem that was discovered maybe a
17 week or so ago

18 Q Okay And that was discovered, and you had
19 conversations with your attorney?

20 MR KINCANNON Objection, Your Honor He's
21 asking for attorney-client privilege

22 THE COURT All right I'm not sure what
23 you're asking It sounds like you're asking if she had a
24 conversation with a lawyer, and I'm going to rule that as
25 being privileged

1 MR ROBBINS Thank you

2 MR MURPHY Thank you, Your Honor

3 BY MR MURPHY

4 Q You testified that Tony Piscatella called you on
5 June 13th and told you that Tony initiated the phone call
6 that told you that Sean Bennett's paperwork was missing

7 A He initiated the phone call to tell me that
8 Mr Rose had called him and said that there was a
9 question about it, so Tony called me

10 Q So the first time that you talked to Tony, Tony
11 called you?

12 A Correct

13 Q How did he call you?

14 A I'm sorry I don't understand

15 Q Did he call you on his cell phone? Was he at the
16 office?

17 A I don't know I don't remember

18 Q You don't remember whether he called you

19 A No I said I don't whether remember whether he
20 used cell phone office number, house phone, I don't know

21 Q When did you call Tony the first day, on June
22 13th? When did you talk to Mr Piscatella?

23 A When he called me

24 Q What time was that?

25 A I don't know, Mr Murphy

1 Q Was it in the morning or in the afternoon?

2 A I've already testified I do not know I don't
3 remember

4 MR MURPHY Thank you, Your Honor No more
5 questions

6 THE COURT All right Anyone? Mr Collins?

7 MR COLLINS Yes, sir

8 EXAMINATION

9 BY MR COLLINS

10 Q Ms Duncan, is it true that as of the date of that
11 primary election, your office was following the
12 instructions given you by state Republican party?

13 A That's correct

14 Q And the state Republican party did not tell you,
15 did they, that you had to have a paper statement of
16 economic interest on every candidate?

17 A During the filing period is what you're talking
18 about?

19 Q Right

20 A Yes, sir

21 Q So it was consistent with party instructions that
22 you allow people to file for an office by only submitting
23 some proof that they had electronically filed their SEI?

24 A Yes, sir

25 Q Now, and so a paper copy was not something that

1 you required from every candidate who filed in the
2 Dorchester County Republican party?

3 A No, sir

4 Q You mentioned earlier that you were a supporter of
5 Senator Rose's

6 A Yes, sir

7 Q Did any decision you have made in this case come
8 about as a result of any support you feel or any
9 friendship you feel with Senator Rose?

10 A Absolutely not

11 Q Did Senator Rose either directly or indirectly in
12 any way attempt to influence any decisions you made,
13 especially the decision to decertify?

14 A No, sir

15 MR COLLINS Thank you

16 THE COURT Anything else? Mr Kincannon?

17 Mr Robbins has had his shot I'll give you a shot

18 MR KINCANNON Your Honor, I am mindful of
19 what you said about what's in the affidavit That's
20 direct testimony and that's good, and if this were a jury
21 argument I would go through and hit some more points that
22 we've been through I'm not going to do that

23 THE COURT No, you're not

24 MR KINCANNON I just have a couple quick
25 questions

EXAMINATION

BY MR KINCANNON

Q Carroll, when you certified the candidates through the various election commissions, did they accept your certification in the first go-round?

A Yes, they did

Q But now they say that you don't have the right to do that?

A Yes, sir

Q Do you -- is it fair to say that you feel -- since you did it the first time, you have an obligation from the Supreme Court to correct it if it's wrong?

A Yes

Q Are you aware in the Florence County decision that the Supreme Court said that county political parties that don't follow the directions of the Supreme Court and ignore them do so at their own peril?

A Yes, I'm well aware of that

Q Are you highly concerned that if you don't do exactly what the Supreme Court expects here, there will be serious sanctions on him?

A Ph, yes

MR KINCANNON That's all I have

THE COURT All right

MR ROBBINS I have one question

1 THE COURT I'll believe it when I hear it
2 EXAMINATION

3 BY MR ROBBINS

4 Q Mr Collins just asked you about the procedure
5 that y'all have followed with the state party

6 A Yes

7 Q The -- with respect to the online filing
8 instructions? And I know that you've testified that you
9 didn't observe the files on March 30th So would it come
10 as a surprise to you to know that Mr Rose filed a hard
11 copy of a statement of economic interest with the
12 Dorchester County Republican party?

13 A Yes

14 Q That would come as a surprise?

15 A Yes

16 Q Do you know that he did?

17 A No

18 Q And do you know, based on -- as Mr Kincannon just
19 said, based on the Florence County decision, he wasn't
20 even required to do that with a local party because he
21 was an incumbent?

22 A Yes

23 Q But he did?

24 A If he did, he did I don't know

25 MR ROBBINS Okay Thank you ma'am

1 MS CRUM I have a very brief follow-up with
2 regard to what Mr Kincannon asked

3 THE COURT All right Yes, ma'am?

4 EXAMINATION

5 BY MS CRUM

6 Q Ms Duncan, when you did your initial
7 certification Senate canons, isn't it a fact that the
8 Dorchester Republican party certified to the state party
9 candidate and the state party then certified the Senate,
10 House, solicitor, and congressional district candidates
11 to the state election commission?

12 A I believe that's true I don't remember if I sent
13 a copy to Mr Dickard or not I did on May the 4th, but
14 you're saying initially?

15 Q Yes, ma'am

16 A Yes

17 Q And that's the procedure that outlined by section
18 7-11-15 subparagraph 2, isn't it?

19 A I followed those instructions If that's what it
20 is, yes, ma'am

21 THE COURT All right Thank you, Ms
22 Duncan You may step down

23 MS CRUM Your Honor, a bad habit of a
24 lawyer I accidentally took the exhibit away

25 MR KINCANNON And, Judge, when Mr Collins

1 moved, some of his stuff disappeared This is her 24
2 page affidavit that originally signed

3 THE COURT All right I now have all the
4 exhibits that have been introduced into evidence by the
5 plaintiff through these witnesses and also the affidavits
6 of Ms Duncan and the affidavit authenticating exhibits
7 by Mrs Duncan as well as the exhibit -- I mean, as well
8 as the affidavits of the other two individuals who nobody
9 wanted to cross-examine

10 Now -- yes, sir?

11 MR KINCANNON Your Honor, I have the
12 original 24 page copy of that affidavit There are, I
13 think two typographical corrections, and I want to swap
14 with you

15 THE COURT Give it to your colleague

16 MR MURPHY I need to note an objection
17 The copy that that everybody -- Ms Duncan testified to,
18 that everybody that I have viewed shortly in the packet
19 of information that was e-mailed is not the same
20 affidavit

21 MR KINCANNON And I just said there is a --

22 THE COURT Let me hear him out Go ahead,
23 Mr Murphy

24 MR MURPHY He says typographical, however,
25 I will note for the record that the affidavit that has

1 been submitted, the signature page and everything else
2 here, the signature page is the last page The affidavit
3 that he intends to --

4 MR KINCANNON It's the same thing

5 MR MURPHY The affidavit that he has
6 intended to produce, Your Honor, is not the same
7 affidavit, and you can tell by where the signature lines
8 are, as you can clearly see I would object to this
9 affidavit We have had testimony all morning from her
10 about an affidavit that she did not admit that she had no
11 idea it contained --

12 THE COURT I know what she testified to
13 Tell me what the different in the two affidavits

14 MR MURPHY Judge, I don't know because he's
15 submitting a second affidavit

16 THE COURT Tell me about it

17 MR KINCANNON Typographical corrections
18 only, Your Honor

19 THE COURT What are they?

20 MR KINCANNON I believe there was one where
21 a word was left out There was a misspelling

22 THE COURT I'll keep them both and compare
23 them

24 MR KINCANNON Thank you, sir

25 THE COURT All right Anything else on

1 behalf of the plaintiff?

2 MR GOFF No, Your Honor

3 THE COURT All right Counsel, we're going
4 to recess for lunch at this time I want everybody back
5 by 1 45 That's about 50 minutes get a sandwich, get
6 something to eat, be prepared to go forward at 1 45
7 We'll be in recess for lunch

8 (Recess taken)

9 A F T E R N O O N S E S S I O N

10 THE COURT We are ready to go forward now,
11 and we have heard from the plaintiff, and I'll just kind
12 of follow the caption of the case as it reads right now

13 Is there anything that you wish to offer by
14 way of that evidence has not already been introduced?
15 Who is here on behalf of Dorchester County Republican
16 party?

17 MR BOWERS I'm sorry, Your Honor We don't
18 have anything

19 THE COURT Nothing further Okay The
20 other parties are listed in the caption, so just so that
21 I can keep them straight, how about Colleton County
22 Republican party? Anybody got anything they wish to
23 introduce or put forward other than what has already been
24 introduced?

25 MR BOWERS Nothing on behalf of Colleton

1 THE COURT Berkeley County Republican party?

2 MR BOWERS No, sir

3 THE COURT Charleston County Republican
4 Party?

5 MR BOWERS No, sir

6 THE COURT Okay Good Dorchester County
7 election commission? Anybody?

8 MR MURPHY That's who we're missing,
9 attorney Greg Hiland

10 THE COURT All right We'll come back
11 Colleton County election commission? Nothing? Okay
12 Berkeley County election commission?

13 MR HOWELL Nothing, Your Honor

14 THE COURT All right Charleston County
15 election commission?

16 MR HOWELL Nothing, Your Honor

17 THE COURT All right All right,
18 Mr Robbins That then -- well, South Carolina election
19 commission, Ms Crum?

20 MS CRUM Nothing, Your Honor

21 THE COURT All right Mr Robbins, that
22 brings us down to Mr Bennett as a party defendant

23 MR ROBBINS Your Honor, as far as testimony
24 goes, I filed a supplemental affidavit from Sean Bennett
25 and a supplemental affidavit from Rebecca Hyer Woods on

1 Friday afternoon, and that would be the only additional
2 evidence we would present, but, Judge --

3 THE COURT I would like to have those
4 affidavits, if you've got them I know they're on file
5 and I can look them up in here, but if anybody has a copy
6 of them, it sure would be a lot easier for me because
7 I've got the ones that we used on behalf of plaintiff
8 this morning

9 MR ROBBINS Yes, Your Honor

10 THE COURT They'll already filed with the
11 Court, isn't that right?

12 MR ROBBINS Yes, sir They were mailed to
13 all the parties Your Honor, before we introduce any new
14 testimony, I understood we would be allowed to make
15 motions based on the plaintiff's presentation of their
16 case

17 THE COURT Again, I'm back to my first
18 premise this morning that, you know, the motion for
19 directed verdict, I'll tell you right now, part of that
20 problem is going to be solved because I made up my mind
21 over the lunch recess that I was going to allow him to
22 make Mr Duncan a party plaintiff in this case, and that
23 solves the problem of having an individual plaintiff

24 MR ROBBINS Your Honor, my particular
25 motion would go much further than that That would

1 potentially deal with one part of the standing argument
2 The other part still is not satisfied in that the
3 Democrat party doesn't have a candidate in the Senate 38
4 race in the fall, but my motion for directed verdict
5 would be based on the fact that the plaintiff has the
6 burden of proof in this case, and the evidence that was
7 put up this morning, Your Honor, does not establish that
8 Sean Bennett did not simultaneously file an SEI with the
9 SIC, with the evidence that's already in the record,
10 the --

11 THE COURT And the circumstantial evidence
12 that he didn't It's a question of whether I believe the
13 testimony of the plaintiff's witnesses in this case
14 There is evidence that he didn't do it I mean, it's
15 circumstantial evidence by virtue of the fact that the
16 paper filing can't be found

17 I know your position is that he did it,
18 whether it be found or not, but isn't that a factual
19 determination for me to determine and doesn't that
20 overcome a motion for directed verdict?

21 MR ROBBINS I don't think the fact that the
22 paper filing can't be found is relevant to the issue of
23 whether he filed on March 20, 2012 That's the issue in
24 this case

25 THE COURT Isn't it in evidence that he did

1 not?

2 MR ROBBINS No, sir

3 THE COURT You don't think so?

4 MR ROBBINS No, I don't I think it's
5 evidence that after the election his paperwork was
6 missing That's all it is We reproduced evidence from
7 him, his business partner, and Mr Piscatella that he
8 filed, and there was nothing that was presented this
9 morning that would change that fact, that on March 20
10 that he filed And -- I mean, there wasn't any evidence
11 presented at all this morning that would change that
12 information

13 THE COURT Okay Let me hear from the
14 plaintiff on that, Mr Goff

15 MR GOFF Your Honor, clearly, we disagree,
16 and we take the Court's position that the fact it's not
17 been produced, it's not in the file, that the only one in
18 the file as far as I know is one that was filed
19 incorrectly for the incorrect year, and all the evidence
20 has been produced today, to point to the fact that he
21 never filed correctly for office

22 THE COURT Well, I think the issue is
23 important enough that it needs to be resolved in favor of
24 getting all of the facts before the Court, and I'll think
25 about it, but as far as the matter of going forward and

1 all, I'm going to deny the motion for directed verdict
2 and go forward and get the facts before the Court

3 MR WARING Your Honor, may I make a motion
4 on behalf of Ed Carter, please?

5 THE COURT Yes

6 MR WARING Will Waring for Ed Carter I'm
7 here today to represent exclusively Mr Carter's
8 interest, and I don't -- first of all, I would ask for a
9 motion of directed verdict in favor of Mr Carter because
10 there has been absolutely no evidence through -- that is
11 presented today to conclude that Mr Carter did not file
12 simultaneously his SEI with his SIC

13 In fact, the second affidavit of Ms Duncan
14 would probably present evidence to the contrary, that she
15 would believe that more probably than not that she would
16 recertify him at this point in time, so I don't think
17 there's been any evidence presented that would indicate
18 that Mr Carter did not file appropriately pursuant to
19 South Carolina statutes and pursuant to both Anderson and
20 Florence County Democratic party, and I would ask you to
21 dismiss this matter as to Mr Carter

22 THE COURT What say you to that, Mr Goff?

23 MR GOFF Your Honor, I would tend to agree,
24 however, I do disagree with the characterization as far
25 as the burden of proof goes in this case I believe the

1 Court has been pretty clear that once the issue is raised
2 they have the burden of proof to show that they did
3 comply

4 THE COURT Say that again now?

5 MR GOFF I believe that they have to show
6 they complied

7 THE COURT You're the plaintiff in this
8 case Don't you have the burden of proof?

9 MR GOFF Normally, yes, the plaintiff would
10 have the burden of proof

11 THE COURT How do you shift the burden of
12 proof to them simply by -- I'm not sure You got the
13 burden of proof, and I assume that everybody agrees that
14 the standard of proof is preponderance of the evidence
15 and not clear and convincing or anything else, unless
16 anybody thinks it's any different from that, but isn't
17 preponderance of the evidence the standard of proof, but
18 does anybody disagree with that?

19 How about burden of proof? You don't think
20 you got the burden of proof? You brought the lawsuit
21 You don't think you have the burden of proving that --
22 why did you spend this morning introducing the testimony
23 against Mr Bennett? If you didn't have the burden of
24 proof, all you had to do was bring the action and say you
25 disprove what I said in my summons and complaint

1 MR GOFF Your Honor, and that's simply what
2 I mean, that I believe we have shifted the burden of
3 proof and we've -- I'm particularly talking about
4 Mr Bennett now I'm not talking about Mr Carter now

5 THE COURT You apparently didn't think you
6 had to shift it to Mr Bennett You introduced evidence
7 to show that Mr Bennett didn't comply You called --
8 you presented Ms Duncan

9 MR GOFF That's correct, Your Honor, and I
10 think --

11 THE COURT If you felt like you didn't need
12 to present evidence, why did you present any?

13 MR GOFF Because I think it required more
14 than just the pleadings I think we did have to produce
15 evidence

16 THE COURT What evidence have you presented
17 against Mr Carter?

18 MR GOFF None, and that's why we don't
19 oppose his motion

20 THE COURT So you don't object to it
21 being -- to Mr Carter being dismissed for failure to
22 prove your case?

23 MR GOFF That's correct, Your Honor

24 THE COURT Does anybody object to dismissal
25 of Mr Carter at the directed verdict stage? Motion

1 granted

2 MR WARING Thank you, Your Honor

3 MR KINCANNON Your Honor, I would make the
4 exact same motion as Mr Waring as to Carroll Duncan as
5 county council candidacy No evidence presented that she
6 didn't do it right In fact, the evidence that was
7 presented was that she did

8 THE COURT As a candidate as opposed to the
9 Republican party?

10 MR KINCANNON Yes, sir She's still in as
11 chairman of the Republican party, but her candidacy was
12 challenged

13 MR MURPHY She was not a party as a
14 candidate She never has been

15 THE COURT I don't believe -- I don't see
16 her on here as a --

17 MR KINCANNON The Democrats's lawsuit says
18 that it seeks to order all of the candidates decertified,
19 and that would include Ms Duncan, even though she's not
20 named as a defendant

21 THE COURT Well, I'm not going to do that
22 I'm going by who's been made a party to this matter, and
23 I see I did allow -- by earlier motion I did allow
24 Mr Lofton and Mr Waring to make Mr Carter a party to
25 the lawsuit, and he is a named party Ms Duncan is not

1 She's named in the lawsuit only as a Dorchester County --
2 as a representative of the Dorchester County Republican
3 party, so I'm not going to dismiss her at this time

4 MR KINCANNON Your Honor, let me rephrase
5 I'm sorry I made a mistake by saying that I'm making
6 the exact same motion I'm not I'm making a motion for
7 a directed verdict solely as to the issue of her
8 candidacy That's it

9 THE COURT My ruling on that would be the
10 same as Mr Robbins I want to get the testimony before
11 the Court I think there is probably some question as to
12 possibly all the candidates but -- and some
13 circumstantial evidence as to Ms Duncan, but as far as
14 being a party, I think that this is a matter that we need
15 to get before the Court, and the only reason I'm
16 dismissing Mr Carter is because, basically, the
17 plaintiff agrees

18 Yes, Mr Robbins?

19 MR ROBBINS Judge, do you need me to hand
20 up the original affidavits of Sean Bennett, Rebecca
21 Woods, and Tony Piscatella for your immediate
22 observation?

23 THE COURT I need a copy of them if an
24 original has been filed with the Court

25 MR ROBBINS Yes, sir

1 THE COURT Do you have a copy I can have
2 just to put with the things that I'm going to consider?

3 MR ROBBINS Yes, sir

4 THE COURT Okay

5 MR ROBBINS Those are the ones that have
6 been filed with the statement of facts and were alluded
7 to in our original motion to intervene

8 THE COURT Just so I can make sure there is
9 no misunderstanding here and to make sure there is no
10 question, Mr Waring and Mr Lofton, tell me a little bit
11 about -- I understand nothing has been presented that
12 Mr Carter did not comply Did he win? Did he lose?
13 What's his status?

14 MR WARING Your Honor, he won

15 THE COURT Okay And has he been certified
16 by the party or decertified by the party?

17 MR WARING That's a good question, Your
18 Honor I believe procedurally where we stand he was
19 originally certified

20 THE COURT Attempted decertification by
21 Ms Duncan, which Ms Crum says she can't do

22 MR WARING Well, there was a TRO that was
23 issued by another judge, her name escapes me, I
24 apologize, but that TRO expired, so our position is he is
25 currently certified

1 THE COURT What is the state election
2 commission's position as far as Mr Carter is concerned?
3 Is he currently certified?

4 MS CRUM Yes, sir, because only the state
5 Republican party can actually decertify a House or Senate
6 candidate pursuant to 7-11-15 subparagraph 3

7 THE COURT The same matters you were
8 bringing on Ms Duncan a little while ago?

9 MS CRUM Yes, sir It's applicable to the
10 House and Senate cabinets

11 THE COURT And so with the State election
12 commission he is currently certified?

13 MS CRUM He was certified as the winner of
14 the primary election The state Republican party has to
15 certify on or about August 15th all candidates for the
16 general election

17 THE COURT I understand Okay Then that
18 answers that question, he has not been decertified
19 appropriately, so the Republican party at this point
20 would have to -- the state Republican party would have to
21 file a certification of his candidacy on or about August
22 15th Okay?

23 All right That takes care of Mr Carter's
24 situation

25 Now, we are -- and as I said, Mr Robbins, I

1 understand what you're saying as far as directed verdict
2 motion is concerned I'm mindful that the level of proof
3 and the degree of proof, I think you would probably
4 disagree with Mr Goff's statement that he didn't have
5 the burden of proving his case, but I think that there is
6 enough evidence in the record at least to go forward, and
7 let's get the issues before the Court so this matter can
8 be litigated and cleared up all at one time and not back
9 before the Court at a later date

10 So I will respectfully deny the motion for
11 directed verdict and also on the standing issue because
12 to solve a standing issue and because I don't think that
13 it's going to prejudice anyone at this stage of the
14 proceeding where we are, I'm going to allow the
15 intervention of -- did you say Mr Duncan? What's his
16 name?

17 MR GOFF Mr Richard Hayes is chairman of
18 the Republican party

19 THE COURT All right Richard Hayes, he's
20 chairman of the party, but he's also, as I believe if you
21 told me correctly --

22 MR GOFF He's a registered voter

23 THE COURT He's a member of the district
24 that is involved and a resident of Dorchester County,
25 correct?

1 MR GOFF That's correct

2 MR BOWERS That's correct, Your Honor

3 THE COURT So as an individual citizen, Mr
4 Hayes, you would be joining as a plaintiff in this case,
5 is that agreeable with you?

6 MR HAYES Yes, sir

7 THE COURT Not a as representative of the
8 party, but as an individual citizen?

9 MR HAYES Yes, sir

10 THE COURT All right

11 Mr Robbins, I've got your affidavits that
12 you handed up The affidavits, Mr Piscatella,
13 Ms Woods, and Mr Bennett Are there any other matters
14 that you wish to present in the way of proof of your
15 position that you did file?

16 MR ROBBINS Could I have a second, Your
17 Honor?

18 THE COURT Yes, sir While you're doing
19 that, I'll call on one of the others and see -- how about
20 you? You're standing up

21 MR COLLINS Your Honor, I have an issue
22 while they're conferring We have an expert whose
23 affidavit has been provided to all the parties He is
24 available for us to call, and since he's charged with my
25 client, we would love to know if there are those in the

1 case that wish to cross-examine him or not

2 If they don't need him, we would send him
3 home, and if they do, we would respectfully ask that
4 perhaps he be allowed to testify maybe out of turn so he
5 doesn't have to wait all day

6 THE COURT All right Is this a witness
7 other than the one you mentioned the other day in the
8 e-mails, Mr Collins, that would not be available whose
9 affidavit you wanted to introduce?

10 MR COLLINS It's a different witness, Your
11 Honor That witness is the lady you heard made reference
12 to Her name is Janette Chipas She is apparently on
13 vacation out of the state I think she's in California

14 THE COURT I don't think I can admit a
15 testimony of a witness who is not available for
16 cross-examination, so in view of the objection of several
17 of the parties who have already indicated an objection to
18 that, but --

19 MR COLLINS The other witness I'm referring
20 to now, Your Honor, is an expert named Steven Abrams, and
21 he gave an affidavit that's been shared with all the
22 parties

23 THE COURT I don't have any problem with
24 taking him out of order, Mr Robbins, and allowing you to
25 come back and see if there is anything else you want to

1 proceed on Tell me your position as far as accepting
2 the affidavit of the witness, both from content and from
3 the standpoint of expertise? Do you challenge his
4 expertise under State vs Council? And, if so, we'll
5 probably have to have a hearing on that, and also from
6 the standpoint of the content of his testimony

7 MR COLLINS Is Mr Abrams in the courtroom?
8 There he is

9 MR ROBBINS I'm not going to challenge his
10 expertise, Your Honor, because, quite candidly, I haven't
11 had an opportunity to do any research on his expertise,
12 and if you're inclined to hear it all today, let's hear
13 it all today

14 THE COURT Let's hear from Mr Collins what
15 he's an expert in

16 MR COLLINS He's an expert in computer
17 forensics

18 MR ROBBINS But I would have a brief
19 examination of him, and, Your Honor, I do want to hand
20 up -- I do want to hand up an affidavit from Mr Bennett
21 that was prepared in response to Mr Rose's partial
22 motion for summary judgment, along with his statement of
23 economic interest form that was previously filed Both
24 of these have been previously filed with the Court, and I
25 would like you to consider those

1 THE COURT If they have been filed with the
2 Court, the Court will accept them Now, let's -- you're
3 not questioning -- let's go around the room kind of from
4 the standpoint of how much we got, whether I got to act
5 as a gatekeeper as far as an expert witness is concerned
6 to determine his expertise as an expert in the field of
7 computer forensics Under State vs Council and Daubert
8 and the other cases, do any of the parties desire to
9 challenge the witness's competency to testify as an
10 expert, Mr Goff?

11 MR GOFF No, Your Honor

12 THE COURT Mr Robbins, you've indicated you
13 do not?

14 MR ROBBINS No, sir, Your Honor

15 MS CRUM No, sir, Your Honor

16 MR KINCANNON No, Your Honor

17 MR HOWELL No

18 MR MURPHY No

19 THE COURT No objection That will take
20 care of that and shorten it up somewhat

21 The other -- I believe, Mr Robbins, you
22 indicated you might want to have some cross-examination
23 of his -- the content of his testimony, and so that would
24 require him to be a here a little while, Mr Collins

25 MR COLLINS He's here, and we will offer

1 him at this time

2 THE COURT Wait just a minute before I do
3 that I've got the affidavits that have been presented
4 on behalf of Mr Robbins, and we would come back and
5 allow the parties to cross-examine those affidavits,
6 including Mr Piscatella's affidavit, and I believe,
7 Mr Murphy, I have this affidavit I assume this is the
8 affidavit you're going to offer on behalf of
9 Mr Piscatella, is that correct?

10 MR MURPHY This big thick one? Yes, sir

11 MR ROBBINS Your Honor, I apologize, but I
12 got one more offer

13 THE COURT That's all right

14 MR ROBBINS Since Mr Carter -- since Mr
15 Lofton is over there in the catbird seat right, now I'm
16 going to have to do his work for him I need to offer
17 Mr Carter's affidavit, the affidavit of representative
18 Jenny Horne, and the affidavit of Yvonne Caruso as well

19 THE COURT All right All of these have
20 been -- all these witnesses available?

21 MR ROBBINS Yes, sir

22 THE COURT Ms Caruso, Ms Horne, and
23 Mr Carter, are they all here?

24 MR ROBBINS Yes, sir

25 THE COURT How about Ms Horne? Okay And

1 Ms Caruso? Okay So somebody needs to cross-examine
2 them on their affidavits They'll be available to do so
3 as well All right

4 Then in the -- we'll come back to the
5 cross-examination of the witnesses proffered by
6 Mr Robbins, but in the meantime, to facilitate the
7 expert, Mr Collins, do you have an affidavit from him?

8 MR COLLINS I do, Your Honor I'll hand up
9 to you at this time the affidavit of Steven M Abrams and
10 he is in the courtroom, Your Honor

11 THE COURT All right And I believe, Mr
12 Robbins, you've indicated you have some questions of this
13 witness At least you do?

14 MR ROBBINS Yes, sir, Your Honor

15 THE COURT All right Good Mr Abrams, if
16 you'll come around, please

17 STEVEN ABRAMS,
18 having been first duly sworn,
19 was examined and testified as follows

20 EXAMINATION

21 BY MR ROBBINS

22 Q May it please the Court, good afternoon,
23 Mr Abrams

24 A Good afternoon

25 THE COURT For the record, before we start,

1 Mr Robbins, I think we've already got in the record but
2 by stipulation of the parties, Mr Abrams is qualified as
3 an expert on digital and computer forensics by the Court

4 Okay? Proceed

5 BY MR ROBBINS

6 Q You were retained in this case by Mr Rose?

7 A That's correct

8 Q When were you first contacted by him or anybody
9 affiliated with him?

10 A A couple weeks ago

11 Q When a couple weeks ago?

12 A I don't know the exact date

13 Q You don't know the exact date that you were
14 contacted?

15 A No, I do not

16 Q So it was sometime in the latter part of July?

17 A That's correct

18 Q Okay Your affidavit is dated July 30 Who
19 prepared that affidavit?

20 A I did

21 Q You did yourself?

22 A Yes

23 Q And you're a licensed attorney in South Carolina?

24 A South Carolina and the District of Columbia, yes,

25 Sir

1 Q So if I understand your affidavit correctly, you
2 did some testing on the South Carolina ethics commission
3 web site, is that correct?

4 A That is correct

5 Q Have you been in the courtroom all day?

6 A No, I've not I just arrived after lunch

7 Q So you didn't hear any of the testimony from this
8 morning then

9 A No, I did not

10 Q Okay All right Have you talked to Mr Rose or
11 Mr Collins or anybody affiliated with their team about
12 the allegations of the case?

13 A I talked to Mr Rose on a couple of occasions,
14 just about the fact that in light of the Supreme Court
15 decision that both the statement -- candidates' statement
16 of economic interest needed to be filed and paid for
17 together

18 Q Okay All right And according to your work that
19 you did on the web site, it's your testimony you can
20 alter the date a document is downloaded from the ethics
21 commission web site?

22 A No You can alter the date that the document was
23 printed to make it appear that it was printed on any date
24 that you desire

25 Q Okay So you can make the date stamp that is at

1 the bottom of Sean Bennett's statement of economic
2 interest as March 19, 2012?

3 A Right

4 Q Correct?

5 A I could print it today with the same date on it

6 Q I didn't ask you that I asked you what the date
7 stamp was on the bottom of the statement of economic
8 interest that's at issue in this case It's March 19,
9 2012, is it not?

10 A If you say so I haven't seen that form

11 Q You haven't seen that form?

12 A I have not

13 Q Okay All right

14 A In fact, I think I may have seen it on one of the
15 attachments that Mr Rose sent to me He sent to me a
16 lot of forms

17 Q If you are opining in this court for Judge King on
18 the validity what this man did on March 30, 2012, you
19 haven't looked at the document that's at issue in this
20 case?

21 A I looked at several economic interest forms, and
22 his name was actually one I looked at because when I went
23 to print mine, I found someone named Bennett as well

24 Q Were you aware that Sean Bennett's testimony under
25 oath, that Tony Piscatella 's testimony under oath is

1 that Sean Bennett downloaded that form on March 19, 2012
2 and then had an appointment the very next day at the
3 Dorchester County Republican party office and presented
4 that document to Mr Piscatella? Are you aware of that?

5 A I am now

6 Q Okay So is it your testimony then that Sean
7 Bennett is committing perjury in this Court because he
8 downloaded that document on some other date and created
9 that date stamp on that document? Is that your
10 testimony?

11 A That's not my testimony

12 Q Okay

13 A My testimony is simply that if, in fact, you want
14 to know the date the document was printed, you have to go
15 to some extrinsic evidence There is no evidence on the
16 page itself that will tell you when it was printed, that
17 will reliably tell you when it was printed

18 Q The date stamp is not evidence?

19 A It's not evidence

20 Q What is evidence?

21 A Evidence would be extrinsic evidence For
22 example, if Mr Bennett's testimony is believable to the
23 trier of fact, then that's evidence If you were to look
24 on his computer and see the date that it was printed,
25 either in the print spooler or in the internet temporary

1 cache or internet history, that would be evidence, but as
2 it stands here, the date that's printed on the bottom of
3 any candidate, not just Mr Bennett, but any candidate,
4 that the date that's presented at the bottom right-hand
5 corner of the page comes from the web browser, not from
6 the State Elections Commission, and, in fact, you can
7 change that date simply by changing the date on your
8 computer to whatever date you want

9 Q But my question, Mr Abrams, is if the statement
10 of economic interest says March 19, 2012 at 2 07 in the
11 afternoon, if that is not when he downloaded that
12 document, then you are saying that he committed perjury?

13 A I'm saying whoever printed it had a date, and I
14 don't know that he printed the document, so I don't know
15 if he committed perjury

16 Q That's exactly right You don't know who printed
17 the document?

18 A That's correct

19 Q You're talking about best evidence You're
20 talking about hard drives This is still reliable
21 evidence, is it not?

22 A No, it's not

23 Q It's not In your opinion it's not?

24 A No Because as I show him my experiment, I could
25 print it on any date I want, make it appear that I

1 printed it on any date I wanted

2 Q You said you got a law degree, so you understand
3 what circumstantial evidence is, don't you?

4 A I absolutely do

5 Q So don't you think if he testifies he downloaded
6 it on March 19 in anticipation of going to the Republican
7 party headquarters the next day that the date stamp is
8 circumstantial evidence that he's headed over there the
9 following day?

10 A Again, you're relying on some extrinsic evidence,
11 so if his testimony is believable, then that's extrinsic
12 evidence and it's believable, but the paper itself isn't
13 really

14 Q So the hard drive is the only way?

15 A The hard drive is the only way

16 Q And you got retained some time a couple weeks ago
17 by Mr Rose

18 A Actually, the date, I haven't actually been paid
19 anything, but he has a check for something So I guess
20 I've been retained but I haven't actually been hired

21 Q And you personally prepared this affidavit where
22 you just went around playing on the computer and creating
23 some dates?

24 A I wasn't playing on the computer I was
25 conducting an experiment

1 Q Conducting an experiment and mixing in some dates
2 on a computer, and that's all you did?

3 A I wanted to show that that date was unreliable

4 Q You never made a request nor did you ever issue a
5 subpoena for the hard drive of his computer, did you?

6 A I couldn't issue a subpoena I'm not one of the
7 attorneys on the case

8 Q You never made a request for one, did you?

9 A I discussed it, but there wasn't time It takes
10 me about a month to do the forensics on a computer

11 MR ROBBINS All right That's all I have
12 for him, Your Honor

13 THE COURT Anyone else by way of
14 cross-examination?

15 MS CRUM Your Honor, I have just a couple
16 questions

17 EXAMINATION

18 BY MS CRUM

19 Q Mr Abrams, did you go on the state ethics
20 committee web site to look at the activity with regard to
21 Mr Bennett's statement of economic interest?

22 A I did not

23 Q Now, I don't pretend to be a computer forensic
24 specialist, but could you go on a web site and look at
25 the dates on the state ethics committee web site and look

1 at the dates that someone actually touched Mr Bennett's
2 statement of economic interest and compare those dates to
3 the days they say they were printed?

4 A I could, but I don't think that's meaningful Let
5 me explain why There are actually two days that are
6 printed on the statement of economic interest There is
7 one date which appears close to the upper left-hand
8 corner, and that date is the date that the form was
9 actually filed with the state ethics commission There
10 was another date which appears on the bottom right-hand
11 corner, and that is the date that comes out of the web
12 browser as the date it was printed, so there is no doubt
13 that the date -- unless somebody really went to the
14 extent of putting a form into Adobe illustrator and
15 changing the upper left-hand corner date, which could be
16 done, I did the analysis in the Al Parrish case and how
17 he falsified reports That was by the illustrator, but
18 in this case, assuming that date is correct, then there
19 is at least one date that's accurate on the form, which
20 is the date it was filed by the ethics commission

21 Q Okay And let me see if I put this into English
22 so I can understand what you said So if you looked at
23 the date that it was filed with the ethics commission,
24 you could also look to see if that was anywhere close to
25 the date that it was printed, right?

1 A You could, however, what I did in my experiment is
2 I actually told --

3 Q I'm not asking what did you in your experiment

4 MR COLLINS I believe he was in the middle
5 of answering a question

6 THE COURT No, I'm going to allow her Go
7 ahead, Ms Crum Rephrase your question

8 MS CRUM Let me try it again, Your Honor
9 BY MS CRUM

10 Q My question to you is, you just testified, if I'm
11 not mistaken, that you could look on the ethics
12 commission web site and see when he filed, time and date,
13 right?

14 A The date, I think

15 Q Okay The date And my question to you was could
16 you then look to see if he printed that on that date?
17 Would that give you some sort of circumstantial evidence
18 that it was printed on the date it was filed, for
19 example?

20 A No, it would not because I could print that same
21 form today and simply change my computer date to the date
22 it says it was filed and could print it today with the
23 same date it was filed

24 Q So your testimony today really only goes to
25 whether or not the date on the form, the SEI, is a

1 reliable date?

2 A And, really, only one of the two dates that are on
3 that form, but just a form -- the lower right-hand corner
4 date, which is the date it purportedly had been printed
5 My testimony simply says looking at the SCI form and
6 looking at that date is that is not an accurate
7 reflection, necessarily, of when it was printed

8 Q You're not offering any testimony as to whether if
9 was actually printed that date or not?

10 A No, I'm not My own testimony is if you want to
11 know whether it was printed that day or not, you need to
12 go back to the computer and look

13 MS CRUM Okay

14 THE COURT Let's me ask you one question on
15 behalf of the Court, Mr Abrams As I understand it,
16 based as far as enough on what Ms Crum said, and see if
17 I understand it correctly, that the printed statement of
18 economic interest that the date on that statement, that
19 printed statement of economic interest, is not
20 necessarily accurate as to the date when the statement of
21 economic interest was actually filed?

22 THE WITNESS That's correct, my reason for
23 doing this is simply there is an allegation that these
24 were printed after the fact In fact, they could have
25 been or they could have been sent back

1 THE COURT Okay I understand Thank you

2 MR COLLINS May he be excused?

3 THE COURT Yes Anybody have any objection
4 to excusing the witness?

5 All right Mr Robbins, I have your
6 affidavits that you wanted to file on behalf of
7 Mr Bennett, and that is his case that you wish to
8 present at this time, is that correct?

9 MR ROBBINS Yes, sir, Your Honor

10 THE COURT Are they of attorneys who wish to
11 cross-examine Mr Bennett? All right Mr Bennett is
12 present, so his affidavit will be accepted

13 In addition, Ms Woods affidavit Ms Woods
14 is here Are there any attorneys that wish to
15 cross-examine Ms Woods with regard to the contents of
16 her affidavit?

17 MR GOFF I would very briefly, Your Honor

18 THE COURT All right Ms Woods, come
19 around, please

20 REBECCA HYER WOODS,
21 having been first duly sworn,
22 was examined and testified as follows

23 EXAMINATION

24 BY MR GOFF

25 Q Good afternoon, Ms Woods

1 A Hello

2 Q Your affidavit in paragraph four, do you have a
3 copy of your affidavit? I'm going to share mine with
4 you, unless somebody else has one they want to -- thank
5 you, Your Honor

6 MR ROBBINS Which one is he referring to?
7 Because she does a supplemental affidavit

8 THE COURT I just have one affidavit from
9 her

10 MR ROBBINS You should have two, Your
11 Honor, but he's referring to the first one That's find

12 MR GOFF There is a list of documents laid
13 out there in paragraph four

14 THE WITNESS Yes

15 BY MR GOFF

16 Q Where did that list come from?

17 A The packet of forms that were taken to the filing
18 office

19 Q But who created the list? You say in your
20 affidavit that Mr Bennett asked you to review a list,
21 checklist, make sure he had everything he had Who
22 generated that checklist?

23 A The checklist was a standard form that everybody
24 used

25 Q Okay

1 MR GOFF Your Honor, do we have that
2 exhibit? I think it was No 2, Defendant's Exhibit
3 No 2, the checklist

4 MR ROBBINS I don't believe that's the
5 document he's referring to --

6 MR GOFF That's what I want to ask her

7 THE COURT I'll let him ask her about it

8 MR ROBBINS Okay

9 MR GOFF Thank you

10 BY MR GOFF

11 Q The checklist I just handed to you, is that the
12 checklist you're referring to?

13 A Not exactly

14 Q When you say not exactly, you mean that it
15 differed in some significant way?

16 A It had the things that are printed in bold It
17 did not have the things that are printed in the letter
18 print

19 Q Okay And if I may --

20 A And there was a line before the drop in that you
21 checked There is a little blank, and then the headings

22 Q So it's your testimony that the bold categories
23 were on the checklists, but these subcategories were not?

24 A These were, the ones I listed here

25 Q Let me give these back to you, or give them back

1 to you so we don't lose them Thank you, Your Honor

2 Do you know where that checklist came from?

3 A I do not

4 Q Who did you get it from?

5 A I looked at it for Sean

6 Q That's not what I asked you Who did you get
7 from? How did you come to possess it?

8 A I don't possess it

9 Q I understand you don't have it with you here
10 today, but you had it in your hand at one time, correct?

11 A It was in a stack of papers in my office

12 Q Okay So at one point you possessed it, correct?

13 A Okay

14 Q Yes or no?

15 A It was on a desk in my office

16 Q Okay And I'm not trying to trick you here I'm
17 not trying to make a fine point about possession, but I'm
18 asking you, you had custody of it, correct?

19 A I saw it, yes, sir

20 Q Okay Where -- how did you come to have it? Who
21 gave it to you?

22 A Sean gave it to me

23 Q Sean gave it to you Okay Do you know if it was
24 something he prepared or did somebody give it to him?

25 A The checklist?

1 Q Yes

2 A The checklist was a part of the packet that you
3 checked over to see if you had all of your documents
4 together for the filing

5 Q Okay That's what it was, but that doesn't answer
6 my question My question was, was that something that he
7 prepared, or do you know was it something that was given
8 to him by someone else?

9 A I would guess he prepared it

10 Q Okay And that checklist, you recall specifically
11 having a requirement for the completed form in the state
12 of economic interest, that's your testimony?

13 A It had -- say that again?

14 Q It's just -- your testimony here today required a
15 completed hard copy form under statement of economic
16 interest?

17 A No, it did not

18 Q And I'm looking at your affidavit, paragraph 4(c),
19 for Charlie, statement --

20 MR ROBBINS That's not what the affidavit
21 stays I object

22 THE COURT You'll have your chance, Mr
23 Robbins

24 THE WITNESS Well, I can tell you that in
25 addition to the confirmation, the completed form was a

1 part of the packet

2 BY MR GOFF

3 Q That's what it says right here, right? Paragraph
4 4(c)

5 A The following documents were present in the file
6 Statement of intention of candidacy, pardon, statement of
7 economic interest filing confirmation, statement of
8 economic interest completed form, Dorchester County
9 Republican party candidates' support declarations
10 statement, candidate campaign --

11 Q Just (c), I should have stopped you sooner, but
12 just (c) And you assembled all those documents, did you
13 not?

14 A No, I did not

15 Q Did Mr Bennett assemble?

16 A Yes

17 Q And he handed them to you?

18 A He said, Please look these over and make sure we
19 have everything that's required in your opinion

20 Q Okay But the checklist you had, did the
21 checklist require a statement of economic interest, hard
22 copy?

23 A Well, it might

24 MR GOFF That's all I have Thank you,
25 Your Honor