

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Howard P. King, Circuit Court Judge

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AUG 27 2012

S.C. Supreme Court

Case No. 2012-CP-18-1632
Appellate Case No. 2012-212691

Dorchester County Democratic Party and Richard
Hayes,.....Respondents,

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 (Marci Andino, as Executive Director
& Chris Whitmire as Director of Public Information and Training);
Sean Bennett; Mike Rose; and Tony Piscatella,.....Defendants,

of whom 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; and Tony Piscatella, are Respondents, and

Mike Rose is.....Appellant.

**APPELLANT’S RETURN TO RESPONDENT SEAN BENNETT’S MOTION TO
DISMISS APPEAL**

FACTUAL/PROCEDURAL BACKGROUND

Appellant Mike Rose, the incumbent candidate for the South Carolina Senate District 38, has appealed the Order of the Circuit Court ruling his opponent in the Dorchester County Republican Primary, Sean Bennett, filed his Statement of Economic Interests (“SEI”) in accordance with S.C. Code Ann. § 8-13-1356, as interpreted by this Court 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, 398 S.C. 124, 727 S.E.2d 418 (2012).

The Dorchester County Democratic Party (“DCDP”) filed this action for declaratory judgment, writ of mandamus, and injunction on June 29, 2012. On July 25, Plaintiff’s First Amended Verified Complaint for Declaratory Judgment, Writ of Mandamus, and Injunctive Relief dated July 20 was filed. (Ex. A, First Amended Complaint). This Amended Complaint added, inter alia, Mr. Bennett and Mr. Rose as defendants. On July 27, Mr. Rose filed his Answer to the First Amended Verified Complaint. In his Answer, Mr. Rose asserted Mr. Bennett violated § 8-13-1356 by failing to file his SEI at the same time as his SIC and, assuming Mr. Bennett did file a SEI, by failing to file it for the preceding calendar year. (Ex. B, Rose Answer ¶¶ 4-7). On August 2, Mr. Rose filed a Motion for Leave to File Cross-Claim, seeking leave to re-designate and have his Answer considered as an Answer and Cross-Claim against all other Defendants. In the alternative, Mr. Rose moved for leave to file an Amended Answer and Cross-Claim to the Plaintiff’s first amended complaint. (Ex. C, Motion for Leave to File Cross-Claim). The following day, Mr. Rose filed an Amended Answer and Cross Claim. (Ex. D, Rose Amended Answer).

A hearing was held before the Honorable Howard P. King on the merits of the action, as well as all outstanding motions, on August 6, 2012. By Order filed August 9, 2010, Judge King

denied all parties' motions, including Mr. Rose's motion for leave to file a cross-claim, and declared Mr. Bennett's SEI met all the requirements of § 8-3-1356(B). Mr. Bennett was therefore found to be fully eligible to be on the Republican Party primary ballot and for certification on the general election ballot. (Ex. E, Order dated August 9).

Mr. Rose has appealed the Order of the Circuit Court ruling Mr. Bennett filed his SEI at the same time as his SIC and that Mr. Bennett's SEI was for the preceding calendar year, as required by § 8-13-1356(B). Mr. Bennett has moved to dismiss the appeal on the basis that Mr. Rose lacks standing to seek appellate review of the Circuit Court's decision because he did not appeal the Circuit Court's finding that he failed to exhaust his administrative remedies. For the following reasons, Mr. Bennett's argument is without merit and his motion to dismiss must be denied.

LAW/ANALYSIS

In his motion, Mr. Bennett contends Mr. Rose is precluded from seeking appellate review of the Circuit Court's Order because the Circuit Court's ruling that Mr. Rose did not exhaust his administrative remedies is the law of the case. However, Mr. Bennett's argument mischaracterizes and ignores a crucial portion of the Circuit Court's ruling.

Contrary to Mr. Bennett's contention, the Circuit Court did not find "[Mr. Rose] could not utilize the court system to challenge the validity of the election because [he] failed to exhaust his administrative remedies." (Resp. Mtn. to Dismiss, p. 3). The Circuit Court's finding that Mr. Rose did not exhaust his administrative remedies arose in the context of the ruling denying Mr. Rose's motion for leave file an amended answer and cross-claim. Judge King denied Mr.

Rose's motion to amend his answer to assert a cross-claim, in part, on the basis that Mr. Rose did not exhaust his administrative remedies.¹ (Ex. E, p. 4).

However, Judge King went on to rule that Mr. Rose "is not prejudiced by the denial of the motion [to amend]. 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." (Ex E., p. 4) (emphasis added); (see also Ex. F, Transcript, p. 18, lines 8-16, p. 23, line 13-p. 25, line 2). Those issues are the very issues addressed in the Circuit Court's Order and presented by this appeal, i.e., whether Mr. Bennett complied with § 8-13-1356(B): 1) by filing a SEI at the same time and with the same official as his SIC; and 2) by filing a SEI for the preceding calendar year where his purported SEI was made on a 2011 SEI report form rather than the requisite 2012 report form.

Accordingly, the finding that Mr. Rose did not exhaust his administrative remedies is not dispositive of this case. The Circuit Court plainly found the issues Mr. Rose raised concerning Mr. Bennett's candidacy were properly before the Court by virtue of Mr. Rose's Answer despite Mr. Rose's failure to exhaust administrative remedies. The Circuit Court then ruled on the merits of those issues. Mr. Rose is certainly aggrieved by the Circuit Court's decision on the merits of these issues and therefore he has standing to challenge these rulings on appeal. See Rule 201(b), SCACR ("Only a party aggrieved by an order, judgment, sentence or decision may

¹ The Circuit Court denied Mr. Rose's motion to amend, in part, because he did not exhaust his administrative remedies under § 7-17-560. (Ex. E, p. 4). However, this statute applies to irregularities in the election itself and not to challenges regarding the validity of a candidacy. Furthermore, as discussed in detail in the Initial Brief of Appellant, Republican Party officials on both the state and county levels effectively prevented Mr. Rose from challenging Mr. Bennett's candidacy by misleading Mr. Rose and withholding access to the necessary public candidate documents and information until the Circuit Court ordered them to be produced on July 24, well after this lawsuit was commenced. (See App. Br. pp. 8-10, p. 21; Ex. F, p. 276, line 18-p. 278, line 1; Ex. G, Rose Aff., ¶¶ 6-18).

appeal”); Bivens v. Knight, 254 S.C. 10, 173 S.E.2d 150 (1970) (a party is aggrieved when the judgment operates on his rights or bears directly on his interests). In fact, Mr. Bennett has not challenged the ruling of the Circuit Court finding Mr. Rose’s issues were properly before the court, making that ruling the law of the case. See Richland County v. Palmetto Cablevision, 261 S.C. 222, 199 S.E.2d 168 (1973) (stating an unchallenged ruling, right or wrong, becomes the law of the case); Neal v. Clark, 196 S.C. 139, 12 S.E.2d 921 (1941) (finding a party may appeal adverse portions of an otherwise favorable order). Instead, Mr. Bennett attempts to contort the Circuit Court’s order into containing a dispositive, “threshold” ruling that Mr. Rose was not allowed to participate in the litigation because he did not exhaust his administrative remedies. It is patently clear that the Circuit Court ruled Mr. Rose’s issues and arguments were before the court for adjudication even though he did not exhaust his administrative remedies because he was named as a defendant in the declaratory judgment action and asserted these issues in his timely filed Answer. The Circuit Court by no means ruled, as Mr. Bennett argues, that Mr. Rose could not participate in the lawsuit or receive a ruling on the merits of his allegations because he did not exhaust his administrative remedies. Although the Circuit Court disallowed Mr. Rose’s motion to cross-claim because he failed to exhaust his administrative remedies, the Circuit Court essentially ruled his failure to exhaust administrative remedies was not fatal and did not preclude the court from considering and ruling on the merits of his position. The Circuit Court made it a point to rule on the merits and to so state.

CONCLUSION

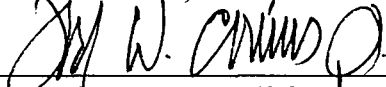
To seek appellate review of the merits of the Circuit Court’s decision, it was not necessary for Mr. Rose to appeal the finding that he did not exhaust his administrative remedies. That finding was not dispositive to the Circuit Court’s decision and is not dispositive to this

Court's review. Furthermore, Mr. Bennett has not challenged the Circuit Court's ruling finding Mr. Rose's position was properly before the court, making that ruling the law of the case. Accordingly, Mr. Bennett's motion to dismiss the appeal must be denied.

Respectfully submitted,

COLLINS & LACY, PC


By:



JOEL W. COLLINS, JR. (SC Bar No. 1341)
jcollins@collinsandlacy.com
AMY L. NEUSCHAFER (SC Bar No. 73922)
aneuschafer@collinsandlacy.com
LOGAN M. WELLS (SC Bar No. 78434)
lwells@collinsandlacy.com
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

-and-

By:



MICHAEL T. ROSE (SC Bar No. 4910)
409 Central Avenue
Summerville, South Carolina 29483
(843) 871-1821
mrose5@sc.rr.com
PRO SE

Columbia, South Carolina
August 27, 2012

EXHIBIT A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) IN THE FIRST JUDICIAL CIRCUIT
COUNTY OF DORCHESTER)

DORCHESTER COUNTY) Civil Action No. 2012-CP-18-1632
DEMOCRATIC PARTY,)
)
Plaintiff,)

vs.)

**FIRST AMENDED VERIFIED
COMPLAINT FOR DECLARATORY
JUDGMENT, WRIT OF MANDAMUS,
AND INJUNCTIVE RELIEF**

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.)

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CLERK OF COURT
DORCHESTER COUNTY

Plaintiff, Dorchester County Democratic Party (DCDP), complaining of the
above-named Defendants alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff, by and through its undersigned counsel, seeks a Declaratory Judgment under Rule 57, Writ of Mandamus and Injunctive Relief under Rule 65 of the S.C. Rules of Procedure in connection with a dispute as to whether the Defendants must comply with the S.C. Supreme Court's Order in *Anderson v. S.C. Election Comm'n*, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012) (*interpreting* S.C. Code Section 8-13-1356 and *holding* that given its plain language, Section 8-13-1356 should be applied as written).

PARTIES, JURISDICTION AND VENUE

2. Plaintiff is a county committee of the South Carolina Democratic Party - certified by the South Carolina Election Commission and the Dorchester County Election Commission to nominate candidates for offices to be voted on in a general or special election and nominates candidates of that party by party primary.

3. Defendant, Dorchester County Republican Party (DCRP), is a county committee of the South Carolina Republican Party—certified by the South Carolina Election Commission and the Dorchester County Election Commission to nominate candidates for offices to be voted on in a general or special election and nominates candidates of that party on a regular basis by party primary. Carroll Duncan is named in her capacity as Chairman of DCRP.

4. Defendant, Colleton County Republican Party (CCRP), is a county committee of the South Carolina Republican Party - certified by the South Carolina Election Commission and the Colleton County Election Commission to nominate

candidates for offices to be voted on in a general or special election and nominates candidates of that party by party primary.

5. Defendant, Berkeley County Republican Party (BCRP), is a county committee of the South Carolina Republican Party - certified by the South Carolina Election Commission and the Berkeley County Election Commission to nominate candidates for offices to be voted on in a general or special election and nominates candidates of that party by party primary.

6. Defendant, Charleston County Republican Party (CRP), is a county committee of the South Carolina Republican Party - certified by the South Carolina Election Commission and the Charleston County Election Commission to nominate candidates for offices to be voted on in a general or special election and nominates candidates of that party by party primary.

7. Defendant, South Carolina Republican Party (SCRCP), is a political party certified by the South Carolina Election Commission and operating subject to South Carolina Code of Laws §7-9-10, et. seq. Chad Connolly is sued in his capacity as Chairman of the SCRCP. Defendants DCRP, CCRP, BCRP, CRP and SCRCP are collectively referred to herein as "Party Defendants."

8. Defendant, Dorchester County Election Commission (DEC), has been codified by the South Carolina Legislature¹ as a government entity which conducts elections and registers electors in Dorchester County. Joshua Dickard is named in his capacity as the DEC Director.

¹ S.C. Code §7-27-375. 7 member board appointed by Governor.

9. Defendant, Colleton County Election Commission (CEC), has been codified by the South Carolina Legislature² as a government entity which conducts elections and registers electors in Colleton County. CEC is a necessary party to this action to ensure complete relief.

10. Defendant, Berkeley County Election Commission (BEC), has been codified by the South Carolina Legislature³ as a government entity which conducts elections and registers electors in Berkeley County. BEC is a necessary party to this action to ensure complete relief.

11. Defendant, Charleston County Election Commission (CCEC), has been codified by the South Carolina Legislature⁴ as a government entity which conducts elections and registers electors in Charleston County. CCEC is a necessary party to this action to ensure complete relief.

12. Defendant, South Carolina State Election Commission (SEC), 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, participate in fair and impartial elections, and have the assurance that their votes will count. SEC is a necessary party to the action to ensure complete relief.

13. Defendant Mike Rose is a citizen and resident of Dorchester County, State of South Carolina and currently the Senator from District 38 of the South Carolina Senate.

² S.C. Code §7-27-375. 7 member board appointed by Governor.

³ S.C. Code §7-27-375. 7 member board appointed by Governor.

⁴ S.C. Code §7-27-375. 7 member board appointed by Governor.

14. Defendant Sean Bennett is a citizen and resident of Dorchester County running for election to District 38 of the South Carolina Senate.

15. All Dorchester County non-incumbent Republican candidates to include Defendant Sean Bennett and candidate for SC House District 97, Ed Carter, are hereinafter referred to as "Candidates."

16. Defendant Tony Piscatella is a citizen and resident of Dorchester County, and serves as the DCRP Treasurer and candidate filing officer.

17. This action is brought pursuant to the S.C. Uniform Declaratory Judgments Act under S.C. Code Section 15-53-10 through 15-53-140 for the declaration of rights, status, and other legal relations.

18. Incorporated in this action is a Petition for a Writ of Mandamus⁵ 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.

19. Plaintiff seeks a preliminary and permanent injunction pursuant to Rule 65 of the South Carolina and respectfully requests this Court to exempt Plaintiff from submitting a security as contemplated in Rule 65 (c).

20. Plaintiff has substantial interest in the subject matter of this complaint and will be directly affected by the non-enforcement of the statute and Order⁶ questioned.

21. A Declaratory Judgment by this Court would terminate the uncertainty and controversy as complained of below.

⁵ Writ of Mandamus is a form of relief. *Plum Creek Development Co. Inc. v. City of Conway*, 334 S.C. 30 (1999)

⁶ *Anderson v. S.C. Election Comm'n*, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012)

22. A Writ of Mandamus is needed to command those Defendants with ministerial duties, to perform those duties which Plaintiff (Petitioner) have a specific right therein, and which the Plaintiff (Petitioner) have no other legal remedy.

23. If injunctive relief is granted against any or all of the Defendants, Plaintiff believes it is entitled to an award of attorney's fees for the cost associated with bringing this action as this Court deems appropriate, based on Defendants who have violated the Order⁷ of the South Carolina Supreme Court.

24. Jurisdiction and venue are proper before this Court.

GENERAL ALLEGATIONS

25. Plaintiff seeks to enforce the rule of law and protect the integrity of the election process. The General Election is scheduled for November 6, 2012 and certification of candidates for the General Election is to be completed by August 15, 2012. Time is of the essence. The Court should not permit an ineligible candidate to be certified for the General Election. The Court should immediately take action to prevent fraudulent ballots from being printed. Plaintiff submits that the Candidates' candidacies are *void ab initio* inasmuch as they has never been eligible candidates for the November 6, 2012 General Election. All Candidates must be removed from the ballot in order for the election process to proceed in a lawful manner.

26. The gravamen of the Declaratory Judgment, Writ of Mandamus and Injunctive Relief causes of action is that the Candidates failed to (1) comply with the provisions of Section 8-13-1356; (2) were unlawfully certified by the Party Defendants;

⁷ Id.

(3) were held ineligible to appear on a ballot by the Supreme Court; and (4) must not be certified as candidates for the general election and must be removed from the ballot.

27. Plaintiff has brought this action to seek enforcement of South Carolina law S.C. Code Sec 8-13-1356 and recent SC Supreme Court decisions. The South Carolina Supreme Court held in *Anderson v. S.C. Election Comm'n*, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012) that S.C. Code Section 8-13-1356 requires non-exempt candidates to file a paper copy SEI simultaneously with a SIC as the only method by which a non-exempt individual can comply with Sec. 8-13-1356. *Id.* The remedy is removal of the ineligible candidate from the ballot.

28. Under Code Section 8-13-1356(B), non-exempt individuals must file a Statement of Economic Interest *at the same time* and with the same official with whom the individual files a Statement of Intention of Candidacy. (Emphasis Added).

29. Under Code Section 8-13-1356(E), an officer authorized to receive declarations of candidacy and petitions for nominations *may not* accept a Statement of Intention of Candidacy unless it is accompanied by a Statement of Economic Interest. (Emphasis Added).

30. Upon information and belief the Candidates failed to provide their SEI at the same time as their SIC, all failing to comply with Sections 8-13-1356 (B) and 8-13-1356(E).

31. Indeed, the DCRP followed instructions provided by the SCRP that incorrectly directed the DCRP to advise non-incumbent candidates filing for office not to provide a paper copy of the SEI.

32. On May 2, 2012, the South Carolina Supreme Court issued a Declaratory Judgment holding that any individual who did not comply with the plain language requirements as 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 and SEI and an SIC as required by Section 8-13-1356(B)." *Anderson* at 27.

33. On May 4, 2012, per the Supreme Court's Order dated May 2, 2012, the SCRP submitted to the SEC a list of individuals who were qualified to be certified by the SCRP.

34. In spite of the Supreme Court's Order⁸, the Party Defendants did unlawfully certify the candidacies of the Candidates for the June 12, 2012 Republican Primary election.

35. The Candidates are unlawful and ineligible for the General Election Ballot.

36. 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."

37. The Candidates must not be certified by the Party Defendants for the General Election ballot.

⁸ *Anderson v. S.C. Election Comm'n, Op. No. 27120* (S.C. Sup. Ct. filed May 2, 2012)

38. The Candidates and Party Defendants actions are in direct conflict with the Court's decision in *Anderson* and are in absolute denial of the main premise on which the conflict stemmed.

39. The Candidates and Party Defendants were aware of the significant election issues before our Highest Court. And further that they understood and yet willfully disregarded the clear language of the statute and the Supreme Court's Order in *Anderson*.

**FOR A FIRST CAUSE OF ACTION AGAINST
THE CANDIDATE AND PARTY DEFENDANTS**
(DECLARATORY JUDGMENT)

40. The foregoing paragraphs as referred to and incorporated as if set forth herein verbatim.

41. The candidacies of each Candidate is *void ab initio* in as much as their failure to comply with SC Code Section 8-13-1356 renders their candidacy ineligible and their name may not be placed on the ballot.

42. Pursuant to the S.C. Uniform Declaratory Judgments Act, Plaintiff is informed and believes it is entitled to an order of this court declaring the Candidates ineligible for the November 6, 2012 General Election ballot and further declaring their candidacies declared *void ab initio*.

FOR A SECOND CAUSE OF ACTION AGAINST ALL DEFENDANTS
(WRIT OF MANDAMUS)

43. The foregoing paragraphs as referred to and incorporated as if set forth herein verbatim.

44. Having their candidacies been declared *void ab initio* and their names ineligible for the November 6, 2012 General Election ballot, Plaintiff is informed and believes it is entitled to an order directing those Defendants responsible for the ministerial acts of certifying candidates to the ballot and placing the names on the ballots and counting the ballots, not to certify the Candidates and not to count any votes cast for the Candidates.

FOR A THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS
(INJUNCTIVE RELIEF)

45. The foregoing paragraphs as referred to and incorporated as if set forth herein verbatim.

46. The integrity of our electoral process is fundamental to our Democracy and conduct which would allow illegal and ineligible candidates on the ballot would cause irreparable harm to the Plaintiff and the electoral process.

47. To the extent the Court should determine that injunctive relief is necessary to effectuate the order of this Court enjoining Defendants from certifying Candidates to the ballot and placing their names on the ballots and counting the ballots, Plaintiff is informed and believes it is entitled to such an order.

FOR A FOURTH CAUSE OF ACTION AGAINST TONY PISCATELLA
(SPOLIATION)

48. The foregoing paragraphs as referred to and incorporated as if set forth herein verbatim.

49. Upon information and belief Defendant Piscatella has in his possession, custody or control the Dorchester County Republican Party candidate filing documents

which Plaintiff considers to be critical evidence in this matter that has been removed from its proper location.

50. Further that Defendant Piscatella has failed to comply with SC Code Section 8-13-1356(C) and has further impeded others from complying with the same section.

51. Upon information and belief Defendant Piscatella has been removed by the Dorchester County Republican Party Chair as the records custodian for the DCRP and he is currently concealing the filing documents and denying access by the public and others without the authority to do so.

52. Upon information and belief, Defendant Piscatella allowed for the spoliation of some of critical evidence in this matter.

53. Plaintiff is informed and believes, Defendant Piscatella should be order by this Court (1) to turn over all original filings and filing related documents to the Court to preserve this evidence and control the chain of custody, and (2) provide a complete and identical copy of the same documents to each party on this lawsuit.

WHEREFORE, the Plaintiff prays that this Court expedite and set this matter to be heard as soon as this Court deems appropriate under the circumstances. Plaintiff prays, in the interest of Justice, that this Court (1) immediately order Defendant Piscatella to turn over to the Court all candidate filing and related records and further inquire as to whether or not the records are complete; (2) declare the Candidates ineligible for the November 6, 2012 General Election ballot; (3) issue a Writ of Mandamus against those several Defendants to require compliance in their various ministerial duties consistent

with S.C. Code and *Anderson*; (4) grant injunctive relief to enforce the Supreme Court's clear command under *Anderson*. Further, the Plaintiff specifically requests that this Court ORDER all Defendants to:

- (1) Comply with the holdings in *Anderson and Florence County Democratic Party v. Florence County Republican Party*, Op. No. 27128 (S.C. Sup. Ct. filed June 5, 2012);
- (2) Not certify the names of all Candidates to the General Election. *Anderson* is clear: the names "must be removed."⁹;
- (3) Grant a Writ of Mandamus to all Defendants tasked with the necessary ministerial duties to comply with the terms on the declaratory judgment and injunctive relief.
- (4) Award court costs and attorney's fees to Plaintiffs pursuant to Rule 65 of S.C. Rules of Civil Procedure.

⁹ Id. at 27.

(5) Due to the egregious nature of the Defendants' actions, if this Court so finds contempt or other such conduct deserving sanctions, to grant whatever the Court deems appropriate and as may be requested by the Plaintiff.

RESPECTFULLY SUBMITTED

JAMES E. SMITH, JR., P.A.

By: 

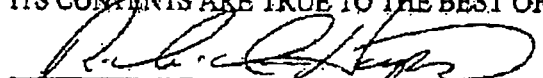
James E. Smith, Jr., Esquire
1422 Laurel Street
Columbia, S.C. 29201
(803) 933-9800

Attorneys for Plaintiff

Columbia, South Carolina
July 20, 2012

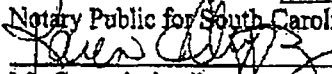
VERIFICATION

I HAVE READ THE ABOVE COMPLAINT IN ITS ENTIRETY AND VERIFY THAT ITS CONTENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE.



RICHARD NAVES

Sworn before me on ~~June~~ ^{July} 20 2012.
Notary Public for South Carolina



My Commission Expires 10/30/2016

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CHERYL D. ...
CLERK OF COURT
DORCHESTER COUNTY

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF DOCHESTER)

IN THE COURT OF COMMON PLEAS

FIRST JUDICIAL CIRCUIT

Dorchester County Democratic Party,)
)
Plaintiff,)

CIVIL ACTION NUMBER: 2012-CP-18-1632

vs.)

**ANSWER OF MIKE ROSE TO THE
FIRST AMENDED VERIFIED
COMPLAINT**

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); Mike Rose, and)
Tony Piscatella,)

Defendants.)

CERTIFIED COPY
2012 JUL 30 PM 1:07
Clayton H. Rose
CLERK OF COURT
DOCHESTER COUNTY

Defendant Mike Rose, answering the First Amended Verified Complaint of the
Dorchester County Democratic Party, would show unto this Court as follows:

- 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 (SC Sup.Ct.) filed May 2, 2012 and the case of Florence County Democratic Party v. Florence County Republican Party, Op. No. 27128 (SC 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.

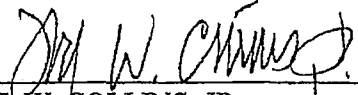
WHEREFORE, having fully answered Defendant Mike Rose, prays for this Court to enter its Order declaring:

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 (f)(2) of the South Carolina Rules of Civil Procedure, and
6. Such other and further relief as this Honorable Court deems just and proper.

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

Columbia, South Carolina

July 27, 2012


By 
for MICHAEL T. ROSE
Pro se

EXHIBIT C

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)	
(Marci 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 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.

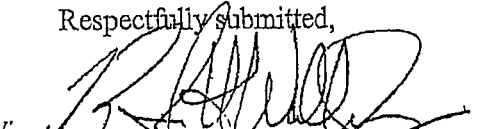
2. Earlier, on July 13, 2012, Rose had moved to intervene in the case. Attached as part of Rose's Motion to Intervene was a Complaint containing averments which challenged the candidacy of Sean Bennett. The Court's Order granted that Motion.
3. In accordance with the Court's accelerated Scheduling Order, 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)

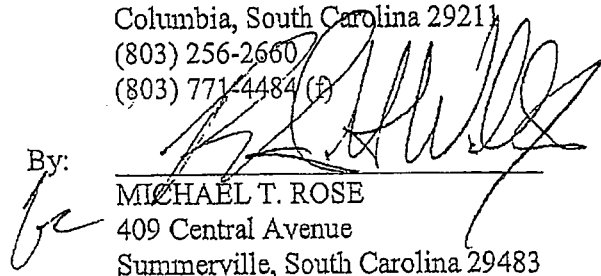
Post Office Box 12487

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)

Mrose5@sc.rr.com

PRO SE

ATTORNEYS FOR MICHAEL T. ROSE

Columbia, South Carolina
August 2, 2012

EXHIBIT D

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
	)	COMPLAINT, AND CROSS CLAIM
	)	AGAINST ALL OTHER DEFENDANTS
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.)	

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 SCRCP 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.
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10. Paragraph 43 requires no response.
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14. Paragraph 48 requires no response.
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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 realleges 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 (f)(2) of the South Carolina Rules of Civil Procedure, and
6. Such other and further relief as this Honorable Court deems just and proper.

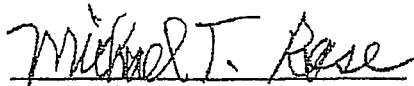
[Signature Page to Follow]

Respectfully submitted,

COLLINS & LACY, P.C.

By: 
JOEL W. COLLINS, JR.
LOGAN M. WELLS
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 3, 2012

EXHIBIT A

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 ("SCRCP") 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 who's 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 SEC 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 denial 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, SCRPC; 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:

JOEL W. COLLINS, JR.
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.rr.com

PRO SE

Columbia, South Carolina
July 12, 2012

EXHIBIT E

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

IN THE FIRST JUDICIAL CIRCUIT

DORCHESTER COUNTY)
DEMOCRATIC PARTY, and)
RICHARD HAYES)

Civil Action No. 2012-CP-18-1632

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 (*Marci*)
(*Andino, as Executive Director & Chris*)
(*Whitmire as Director of Public*)
(*Information and Training*); SEAN)
BENNETT; MIKE ROSE; TONY)
PISCATELLA; EDWARD B. CARTER,)

Defendants.

FILED - RECORDED
2012 AUG -9 AM 10:46
CLERK OF COURT
DORCHESTER COUNTY

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,

1 #12 *AKK*

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, SCRCP); 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 (Marci 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.

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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

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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 candidate 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

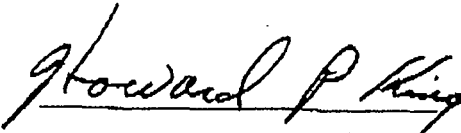
The complaint of the plaintiff, Dorchester County Democratic Party that Shawn Bennett be de-certified as the Republican candidate for Senate Seat 38 is denied and that by way of declaratory relief, as agreed by the parties, the Court does hereby declare that Sean Bennett has met the requirements of S.C. 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.

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AND IT IS SO ORDERED!



The Honorable Howard P. King

Presiding Judge

Sumter, South Carolina

August 9, 2012

EXHIBIT F

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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 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 clarifying things for the county and, I believe the state
2 election commission as well, so that is one thing we'll
3 ask the Court to pay attention to.

4 THE COURT: All right.

5 MR. HOWELL: And then we will take a
6 position, at least those two counties, we'll take a
7 position with regard to the motions to dismiss or summary
8 judgment, based on failure to exhaust administrative
9 remedies or latches, if they're still pending before the
10 Court. I mean, if they're not, I'll sit down.

11 THE COURT: Well, I haven't overruled them or
12 haven't ruled either way in connection with it. I just
13 really felt it was more important that we get into the
14 matter on the merits and the defenses, but I would like
15 to hear from you on that.

16 MR. HOWELL: I'll be very brief, Your Honor.
17 Thank you.

18 We agree with the Court's position on
19 judicial economy. Let's get it all decided in this case.
20 I think the Court narrowed the focus of this case
21 considerably on its July 23rd telephonic conference call
22 when the Court got rid of the various injunctive relief
23 being sought and focussed on declaratory judgment action.

24 That's what we have, declaratory judgment
25 action. It's been suggested -- of course and the motion

1 depends on and it's been suggested today that perhaps
2 Senator Rose should have exhausted his administrative
3 remedies by protesting his primary election, but we would
4 suggest to you that that would be completely futile, and
5 also probably beyond the capabilities, legal
6 capabilities, that is, of the forum.

7 The forum for the protest of the Republican
8 party was the South Carolina Republican party executive
9 committee. That's the forum. I don't think that's a
10 forum that can grant declaratory judgment. I think only
11 this Court can grant declaratory judgment, so it would
12 have been futile. They can talk all about how many votes
13 were cast this way and that and who was miscounted --

14 THE COURT: It's not binding on anybody?

15 MR. HOWELL: It's not binding on anybody,
16 just like the standing issue that the Court so wisely
17 decided earlier. We'll walk out of here and tomorrow be
18 new lawsuits, if that was the determination. Of course
19 it would have been futile to have gone -- for Senator
20 Rose to have gone to the South Carolina Republican party
21 executive committee because they're the same people who
22 ordered what we heard was the lock down on the files so
23 that no one could even take a look at the file to see if
24 there was evidence enough to support a protest.

25 So for those reasons we would also be in

1 opposition to that motion.

2 THE COURT: All right.

3 MR. HOWELL: Otherwise, we're just waiting
4 for the Court to tell us in a timely manner.

5 THE COURT: And I think you raised a very
6 good point, and I want to go ahead and this clarified
7 with counsel at this time, and let's decide what races
8 are at issue and what party -- I mean, what individual
9 certifications are before this Court for decision.

10 Obviously, the Senate seat 38 is definitely
11 one that is up for the decision of the Court. That's the
12 one that has involved most of the testimony today, and so
13 the certification of that is concerned, and then in
14 view -- also, I believe Mr. Lofton and Mr. Waring, in
15 view of the fact there doesn't seem to be any contest
16 about Mr. Carter, is that what I get from everybody,
17 there is no question about his seat? And exactly what
18 was his -- where is he standing in the political process?

19 MR. WARING: He is currently the Republican
20 nominee for House district 97, Your Honor.

21 THE COURT: And does he have Democratic
22 opposition?

23 MR. WARING: Yes, he does, Your Honor.

24 THE COURT: Is there any question, and I
25 don't think there is at this point, Mr. Goff, but is

EXHIBIT G

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 (Marci 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 ("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*. 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. 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 so.⁴ 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.

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 Primary.¹³ 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 Bennett.¹⁵

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 headquarters.¹⁶ 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 spoilation 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 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 copy.²⁸
- B. Paragraph 13: On June 13, 2012 Piscatella discovered that Bennett's official DCRP file did not contain a SEI or a Campaign Disclosure form.²⁹
- 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 Bennett.³⁰ 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 contains 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 document submitted to the Court on June 23, 2012, and the word “Affidavit” has been crossed out on both version’s Checklist.
- C. Bryngelson: 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.
- 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 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 Bennet and have helped withhold/secrete 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-incumbent 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

Virian 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@sc.rr.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@sc.rr.com
E-Mail2: dcrptony@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@MURPHYLAWFIRMLLC.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.murphylawfirmllc.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.

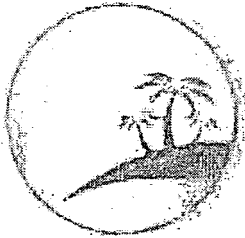
The originals should be maintained in a manner that will prevent tampering, and as explained in the letter, I am looking for a member of the South Carolina Bar not from Dorchester County to perform that service. It will also be important to establish a complete chain of custody of these documents for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

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
Appellate Case No. 2012-212691

Dorchester County Democratic Party and Richard
Hayes,.....Respondents,

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 (Marci Andino, as Executive Director
& Chris Whitmire as Director of Public Information and Training);
Sean Bennett; Mike Rose; and Tony Piscatella,.....Defendants,

of whom 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; and Tony Piscatella, are Respondents, and

Mike Rose is.....Appellant.

PROOF OF SERVICE

I hereby certify that I served Appellant's Return To Respondent Sean Bennett's Motion To Dismiss Appeal upon the parties listed below by placing a copy in the United States mail, postage prepaid, to their counsel of record at the addresses listed below, on August 27, 2012.

COUNSEL SERVED:

Christopher J. Murphy, Esquire
Murphy Law Firm, L.L.C.
136 West Richardson Avenue
Summerville, SC 29483

Counsel for Tony Piscatella

Robert D. Robbins, Esquire
Robert D. Robbins, Attorney at Law
110 N. Main Street
Summerville, SC 29483

Counsel for Sean Bennett

Mary Elizabeth Crum, Esquire
Amber B. Martella, Esquire
Ariail B. Kirk, Esquire
McNair Law Firm, PA
PO Box 11390
Columbia, SC 29211

Counsel for South Carolina Election Commission, Marci Andino & Chris Whitmire

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

J. Todd Kincannon, Esquire
The Kincannon Firm
PO Box 7901
Columbia, SC 29202
Counsel for Dorchester County Republican Party and Carroll Duncan

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

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S.C. Supreme Court

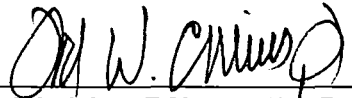
Tanya Gee, Esquire
Nexsen Pruet
P.O. Box 2426
Columbia, SC 29202

Counsel for Sean Bennett

Respectfully submitted,

COLLINS & LACY, PC

By:



JOEL W. COLLINS, JR. (SC Bar No. 1341)

jcollins@collinsandlacy.com

AMY L. NEUSCHAFER (SC Bar No. 73922)

aneuschafer@collinsandlacy.com

LOGAN M. WELLS (SC Bar No. 78434)

lwells@collinsandlacy.com

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

-and-

By:



MICHAEL T. ROSE (SC Bar No. 4910)

409 Central Avenue

Summerville, South Carolina 29483

(843) 871-1821

mrose5@sc.rr.com

PRO SE

**PROOF OF SERVICE— APPELLANT'S
RETURN TO RESPONDENT SEAN
BENNETT'S MOTION TO DISMISS APPEAL**

Columbia, South Carolina
August 27, 2012



Joel W. Collins, Jr. | Office: 803.256.2660 | E-Mail: jcollins@collinsandlacy.com

August 27, 2012

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VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
P.O. Box 11330
Columbia, SC 29211

S.C. Supreme Court

RE: Dorchester County Democratic Party and Ryan Hayes 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 (Marci Andino, as Executive Director & Chris Whitmire as Director of Public Information and Training), Sean Bennett, Mike Rose, and Tony Piscatella
Appellate Case No.: 2012-212691
C/A No.: 2012-CP-18-1632
C&L File No.: 1674-100

Dear Mr. Shearouse:

Please find enclosed for filing the original and seven (7) copies of Appellant's Return to Respondent Sean Bennett's Motion to Dismiss Appeal, along with the Proof of Service of same. Please return a clocked copy to me via my courier.

By copy of this letter, a copy of same is being served upon all counsel.

Thank you for your time and attention. As always, please contact me with any questions or concerns.

Sincerely,

Joel W. Collins, Jr.

JWCjr:lcc
Enclosures

The Honorable Daniel Shearouse

August 27, 2012

Page 2

cc: *(via email and U.S. Mail)*
All counsel of record
Michael T. Rose, Esquire
J. Todd Kincannon, Esquire
James Emerson Smith, Jr., Esquire
Dylan W. Goff, Esquire
Karl S. Bowers, Jr., Esquire
M. Todd Carroll, Esquire
Mary Elizabeth Crum, Esquire
Ariail Kirk, Esquire
Amber B. Martella, Esquire
Christopher J. Murphy, Esquire
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Andrew T. Shepherd, Esquire
Samuel W. Howell, IV, Esquire
Alan B. Linkous, Esquire
Lionel S. Lofton, Esquire
William H. Waring, III, Esquire
Nicole Scott Ewing, Esquire
Tanya Gee, Esquire