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NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

S.C. Supreme Court

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APPEAL FROM ANDERSON COUNTY  
COURT OF COMMON PLEAS  
HON. ROGER L. COUCH

---

CASE NO.: 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself and all others  
similarly situated... APPELLANT

VS

JOEY PRESTON, in His Official Capacities and Individually; While Administrator of  
Anderson County; ANDERSON COUNTY, a political Subdivision of the State of South  
Carolina; ANDERSON COUNTY COUNCIL, The Legislative and Executive Body of  
Anderson County; RON WILSON, in His Official Capacities and Individually; BILL  
MCABEE, in His Official Capacities and Individually; LARRY GREER, in His Official  
Capacities and Individually; MICHAEL THOMPSON, in His Official Capacities and  
Individually; GRACIE FLOYD, in Her Official Capacities and Individually; ...  
RESPONDENTS

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NOTICE OF INTENT TO APPEAL

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Richard Freemantle, Appellant, hereby appeals the Order dated November 4,  
2014 granting the Defendants' Motion for Summary Judgment which was filed with  
lower court on November 6, 2014 and was received by Appellant's counsel on November  
8, 2014.

BY:

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Dated: December 8, 2014

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Individually; GRACIE FLOYD, in Her Official Capacities and Individually; ...  
RESPONDENTS

---

CERTIFICATE OF SERVICE

---

The undersigned does hereby certify that on December 8, 2014 he served the  
Appellant's Notice of Appeal on the Respondents by depositing in the U.S. Mail with  
postage prepaid addressed to the following:

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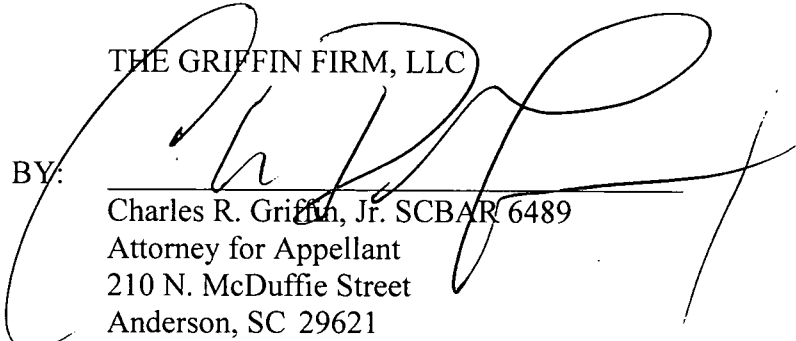
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Attorney for Appellant

Dated: December 8, 2014



A TRUE COPY

NOV - 6 2014

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

Civil Action No. 2009-CP-04-4528

*Richard W. Harty*  
CLERK OF COURT

Richard Freemantle, individually and on  
behalf of himself and all others  
similarly situated,

Plaintiff,

v.

Joey Preston, in His Official Capacities  
and Individually While Administrator of  
Anderson County; Anderson County, a  
political Subdivision of the  
State of South Carolina; Anderson County  
Council, The Legislative and Executive  
Body of Anderson County; Ron Wilson,  
in His Official Capacities and  
Individually; Bill McAbee, in His Official  
Capacities and Individually; Larry Greer,  
in His Official Capacities and Individually;  
Michael Thompson, in His Official  
Capacities and Individually; Gracie Floyd,  
in Her Official Capacities and Individually,

Defendants.

**ORDER GRANTING DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

COMMON PLEAS AND  
GENERAL SESSIONS

2014 NOV - 6 AM 11: 44

FILED-CLERK'S OFFICE  
ANDERSON SC

This matter comes the Court pursuant to the Defendants' respective motions for summary judgment on the remaining Freedom of Information Act claims pending in this action.

**I. FACTS AND PROCEDURAL HISTORY**

On November 16, 2009, the Plaintiff (*hereinafter* "Freemantle" or "Plaintiff") filed a Complaint "on behalf of himself and all others similarly situated" against Defendants, Joey Preston, Ron Wilson, Bill McAbee, Larry Greer, Michael Thompson, and Gracie Floyd, in their official and individual capacities, along with Anderson County Council and Anderson County seeking money damages and a declaratory judgment regarding a Severance Agreement between Anderson County

*[Handwritten signature]*

and former Anderson County Administrator, Defendant Joey Preston. The Plaintiff asserted various causes of action, including, but not limited to, covin and collusion, breach of fiduciary duty, illegal gift of county funds, misfeasance, malfeasance, civil conspiracy, violations of South Carolina Freedom of Information Act (*hereinafter* FOIA), S.C. Code Ann. § 30-4-10, *et seq.*, violations of public policy, and purporting to set forth “class action allegations.”

Defendant McAbee filed a Motion to Dismiss on December 30, 2009. Anderson County and Anderson County Council filed Motions to Dismiss on January 15, 2010. The remaining Defendants, Preston, Floyd, Greer, Thompson, and Wilson filed Motions to Dismiss on January 19, 2010. Defendants’ motions were made pursuant to Rule 12(b)(6) and 12(b)(8) SCRPC and based upon numerous grounds including that (1) the Plaintiff lacked constitutionally required standing as neither he nor the uncertified class members suffered a particularized injury in fact; (2) Plaintiff’s claim was barred by Rule 12(b)(8) as another case currently pending seeks the same or similar relief and involves the parties in interest; and (3) Defendants were entitled to immunity for their alleged actions.

The Court was set to hear arguments on Defendants’ motions on March 17, 2010. On March 16, 2010, Defendant Preston filed a memorandum in support of Defendants’ motions with the Court. That same day, the Plaintiff filed an Amended Complaint with the court, adding a cause of action alleging violations of the federal Racketeer Influenced and Corrupt Organizations Act (*hereinafter* RICO), 18 U.S.C. § 1961 *et seq.* On March 17, 2010, a hearing on Defendants’ Motions to Dismiss was held in the Anderson County Court of Common Pleas before the Honorable J. Cordell Maddox. Following arguments of counsel, the Court ruled from the bench, dismissing Plaintiff’s Complaint upon the grounds he lacked standing to proceed. Plaintiff’s filing of the Amended Complaint the day prior prompted Defendants to file additional motions to dismiss that addressed the RICO cause of action, which the Court consolidated and heard on September 7, 2010. Defendants submitted

*McAbee*  
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memorandum in support of the additional motions to dismiss on September 7, 2010. At the September 7<sup>th</sup> hearing the Court dismissed Plaintiff's RICO claims upon the same grounds as well as upon a finding that Plaintiff failed to comply with the requirements for amending the pleadings as set forth in Rule 15 SCRPC.

On September 28, 2010 the Court signed an Order dismissing Plaintiff's claims contained in the original Complaint. On October 15, 2010, Plaintiff filed a Motion to Reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure challenging the Court's September 28, 2010 Order. An Amended Order was entered on November 22, 2010, again dismissing Plaintiff's original claims along with those contained in the Amended Complaint. In the Amended Order the Court held that (1) Plaintiff lacked standing to maintain the action; (2) the case did not warrant application of the public importance exception; (3) the Plaintiff did not have standing under FOIA as he failed to allege any specific injury directly or proximately caused by Defendants' alleged violation of the statute; (4) Plaintiff's lack of standing precluded him from proceeding with any putative class causes of action; and (5) Rule 12(b)(8) further barred the Plaintiff from pursuing the action. On December 9, 2010, prior to the trial Court's consideration of Plaintiff's October 15<sup>th</sup> Motion for Reconsideration and without filing an amended motion for reconsideration addressing the Court's Amended Order of November 22<sup>nd</sup>, Plaintiff filed a Notice of Intent to Appeal the Amended Order.

The South Carolina Supreme Court affirmed the dismissal of all of the Plaintiff's causes of action except for the FOIA claims seeking declaratory and injunctive relief only. *See Freemantle v. Preston*, 398 S.C. 186, 728 S.E.2d 40 (2012). The Plaintiff is challenging the legality of the severance agreement between Anderson County and Joey Preston. Specifically, the Plaintiff contends that the alleged failure of the County Council to include the Preston severance discussion as an agenda item prior to the November 18, 2008 Council meeting violated FOIA S.C. Code Ann. § 30-4-80

*Pl*  
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The Defendants filed numerous motions for summary judgment on the Plaintiff's remaining FOIA claims on several grounds including:

1) The Plaintiff's remaining FOIA claim pertaining to the agenda for the November 18, 2008 Council meeting being barred by the recent decision of the Supreme Court in *Lambries v. Saluda County Council*, 2014 WL 2765640 (S.C. 2014), where the Court ruled that "FOIA's notice statute does not require an agenda to be issued for a regularly scheduled meeting." *Id* at \*10.

2) Because violations of the meeting notice and agenda requirements under the Freedom of Information Act (FOIA), are alleged S.C. Code Ann. § 30-4-80 places the responsibilities of compliance on the "public body." Therefore, there is no statutory authority for asserting a FOIA claim against any individual employees of a government entity or any elected official..

3) The Plaintiff's claim is barred by the applicable one year statute of limitation under S.C. Code Ann. § 30-4-100(a)

4) Plaintiff's claims are now moot under the circumstances; and

5) There was no FOIA violation because the agenda adequately notified citizens that the County Administrator's employment was an item to be discussed at the November 18, 2008 Anderson County Council meeting.

## II. LAW AND ANALYSIS

This Court finds that the Plaintiff's remaining FOIA claim pertaining to the agenda for the November 18, 2008 Council meeting is barred by the recent decision of the Supreme Court in *Lambries v. Saluda County Council*, 2014 WL 2765640 (S.C. 2014), where the Court ruled that "FOIA's notice statute does not require an agenda to be issued for a regularly scheduled meeting." *Id* at \*10. The agenda for the November 18, 2008 meeting included an agenda item entitled "Discussion of the Authority of the County Council to employ the Administrator." As such, the

*JL*  
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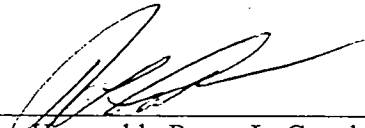
public was on notice that the issue of the employment of the County Administrator was a subject of discussion at that Council meeting. Nonetheless, because the Supreme Court in *Lambries* has explained that no agenda was even statutorily required, the absence of a more specific agenda item (or even any agenda item) is not a FOIA violation. In short, the County Council was not even required to issue an agenda, and for that reason, the Court finds that all Defendants are entitled to summary judgment on that agenda-based FOIA claim. Therefore, it is not necessary for the Court to reach the other theories advanced by the Defendants.

**III. CONCLUSION**

Based on the foregoing, even viewing the facts in a light most favorable to the Plaintiff, there is no genuine issues of material fact and Defendants are entitled to judgment as a matter of law. Therefore, the Court **GRANTS** summary judgment in favor of the Defendants as to each of Plaintiff's remaining FOIA claims. S.C. R. Civ. Pro. 56.

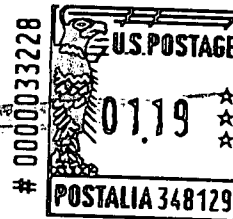
**IT IS SO ORDERED.**

11/4, 2014

  
 \_\_\_\_\_  
 The Honorable Roger L. Couch  
 Circuit Court Judge

The Law Offices of  
**The Griffin Firm, LLC**

210 North McDuffie Street • Ste 103  
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