

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

AUG 16 2012

S.C. Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

George Tempel,..... Plaintiff,

v.

South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training); South Carolina Republican Party (Matt Moore, as Executive Director, and Chad Connolly, as Chairman); Charleston County Republican Party (Lin Bennett, as Chairman); Charleston County Board of Elections and Voter Registration (Joseph L. Debney, as Director, and Dan Martin, as Chairman); and Paul Thurmond,..... Defendants,

Of Whom South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training) is the..... Appellant-Defendant.

**MOTION FOR EXPEDITED HEARING OF APPELLANT-DEFENDANT
SOUTH CAROLINA STATE ELECTION COMMISSION**

Pursuant to Rule 263(b), SCACR, Appellant-Defendant South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training) (collectively, SEC) respectfully requests that this Court issue an Order expediting the above-captioned appeal, which involves time sensitive State election issues, for the following reasons:

1. This case was filed with the Circuit Court for the Ninth Judicial Circuit on June 8, 2012. Plaintiff's Verified Complaint alleged, *inter alia*, that Defendant Paul Thurmond was erroneously certified by the South Carolina Republican Party (SCRCP) in violation of S.C. Code Ann. § 8-13-1356(B) and (E) (2011) and *Anderson v. South Carolina Election Comm'n*, 397 S.C. 551, 725 S.E.2d 704 (2012) *reh'g denied* by way of clarification. Plaintiff sought a temporary restraining order (TRO) prohibiting Defendant Thurmond's name from appearing on the June 12, 2012 Republican Party ballot and the nominee for South Carolina Senate District 41 on the ground that he did not file his statement of economic interest (SEI) and statement of intention of candidacy (SIC) at the same time and with the same official, and the SCRCP certification was in violation of S.C. Code Ann. §§ 8-13-1356(B) and (E) (2011) and this Court's decisions in *Anderson*.

2. On June 11, 2012, Defendant Thurmond filed a Petition for an Extraordinary and Expedited Writ with this Court. On June 11, this Court denied Defendant Thurmond's Extraordinary and Expedited Writ.

3. On June 11, 2012, the Honorable Deadra L. Jefferson held a hearing on the TRO Motion and denied Plaintiff's request for a TRO prohibiting Mr. Thurmond's name from appearing on the Republican Party Primary ballot for Senate District 41 and his name appeared on the Republican Party Primary Ballot. Mr. Thurmond's name appeared on the June 12, 2012 Republican Party primary ballot for Senate District 41 and he received a majority of the votes in the primary.

4. Plaintiff George Tempel filed a First Amended Summons and Complaint on June 12, 2012.

5. A status conference was held before Judge Jefferson on July 10, 2012. During the status conference, Defendant Thurmond requested discovery and Judge Jefferson established a scheduling order and set the hearing for August 13, 2012. The Honorable J. Ernest Kinard, Jr., was appointed to hear this matter on the merits.

6. On August 13, 2012, Judge Kinard held the merits hearing on this matter. His order was entered on August 14, 2012. As part of his order, Judge Kinard ordered that the SCRCP could hold a special primary pursuant to S.C. Code Ann. § 7-11-55 (Supp. 2011) on the ground that Mr. Thurmond, the Republican Party primary nominee for Senate District 41, had been disqualified because he did not meet the exception contained in S.C. Code Ann. § 8-13-1356(A) (2011) and did not file his SEI and SIC at the same time and with the same official as required by S.C. Code Ann. § 8-13-1356(B) (2011).

7. SEC will argue on appeal that it was error to order a special primary by way of S.C. Code Ann. §§ 7-11-90 (“After the closing of entries if any candidates shall be unopposed”), 7-17-620 (“All unopposed candidates in primary elections shall be declared the nominees”) and 7-11-55 (“If a party nominee dies, becomes disqualified after his nomination, or resigns his candidacy”) (Supp. 2011) because each of these sections applies to “candidates”. The SEC takes the position that under *Anderson* and *Florence County Democratic Party v. Florence County Republican Party*, 727 S.E.2d 418, 420 (S.C. 2012) Mr. Thurmond’s was ineligible to be on the Republican Party primary ballot because, as found by the Circuit Court, he did not comply with the requirements of S.C. Code Ann. § 8-13-1356 (2011). Not having been eligible to be a candidate, he cannot be disqualified. Therefore, not having been a candidate on the primary ballot, the Circuit Court erred in finding that Mr. Thurmond was disqualified after the primary election since his candidacy was void *ab initio*.

8. There are several other legal challenges regarding certification of primary candidates pending before Circuit Courts in South Carolina, based upon the determination of the particular Court, that could result in a state political party nominating candidates by primary to determine that the party, under the Circuit Court's reasoning herein, could conduct a special primary to fill the vacancy in the primary party nominee for the General Election. Those cases include: *Tinsley v. S.C. State Election Commission*, Civil Action No. 2012-CP-24-732 (Order requiring/approving decertification entered August 13, 2012 and attached hereto as Exhibit 2; *Greenville County Democratic Party v. Greenville County Republican Party*, (Order requiring decertification entered August 15, 2012 signed but not yet filed attached hereto as Exhibit 3); *Skelton v. South Carolina Election Commission*, Civil Action No. 2012-CP-40-4464 (Order requiring decertification entered August 15, 2012 attached hereto as Exhibit 4); *Sellers v. Colleton County Republican Party*, Civil Action No. 2012-CP-15-599 (Complaint filed Aug. 1, 2012) case not set for hearing; and *Thompson v. Bowers*, Petition in the Original Jurisdiction filed August 9, 2012 before this Court.

9. S.C. Code Ann. § 7-13-350(A) requires that, on or before noon on August 15, 2012, South Carolina political parties that nominate candidates by primary election certify to the SEC its candidates for inclusion on the November 6, 2012 General Election ballot to the South Carolina House of Representatives, State Senate, congressional, and solicitor offices, and county political parties must certify to the respective county election commissions county wide or less than county wide candidates for inclusion on the for the General Election ballot. See Affidavit of Marci B. Andino, dated August 15, 2012, attached hereto as Exhibit 1 and incorporated by reference (Andino Affidavit). As of August 1, 2012, the SEC began preparing ballot data sets (definitions) and ballot forms so that the candidate names may be added and will need the entire

allotted statutory time before the General Election to accomplish that task. See Ex. 1, Andino Aff., ¶ 7.

10. Pursuant to 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. § 7-15-406 (Supp. 2011), absentee ballots must be sent to all military and overseas qualified electors (UOCAVA voters) at least forty-five (45) days prior to the November 6, 2012 General Election. Therefore, the UOCAVA ballots have to be sent out not later than September 22, 2012. The UOCAVA absentee ballots include the offices for all federal, state, and county wide or less than county wide offices on the General Election ballot. See S.C. Code Ann. § 7-15-460 (Supp. 2011).¹ Because of the tight time constraints inherent in the election process, the SEC believes a ruling in this case as soon as is reasonably possibly is essential to ensure the Appellant and the Defendants are able to fulfill their duties regarding preparations for the General Election.

11. If a special election were to be held pursuant to S.C. Code Ann. § 7-11-55 (Supp. 2012), as ordered in this matter, the statutory timetable is:

- Order “disqualifying”² Mr. Thurmond entered August 14, 2012;³
- Filing opens August 28, 2012, the second Tuesday after “disqualification”;
- Filing closes September 4, 2012, one week later;
- Primary held September 18, 2012, the second Tuesday following close of filing;
- County Election Commission (Board of Canvassers) certifies September 20, 2012, the Thursday after the election;

¹ This section was precleared by the United States Department of Justice on August 22, 2011.

² Appellant does not agree with the Circuit Court’s characterization that Defendant Thurmond was “disqualified.” Rather, the SEC contends that Mr. Thurmond’s candidacy was *void ab initio* because the Circuit Court found that he did not meet the S.C. Code Ann. § 8-13-1356(A) (2011) public official exemption and admittedly did not file a paper copy of his SEI and his SIC at the same time and with the same official. Because Mr. Thurmond was never a proper candidate and should never have been on the ballot, he could not be “disqualified.”

³ The Order was entered August 14, 2012, but page 7 was missing from the Order. See e-mail from Michael A. Timbers, attached hereto as Exhibit 5. Appellant did not receive a complete copy to provide to the Court until August 15, 2012.

- State Election Commission certifies election September 21, 2012;
- Runoff (if necessary) October 2, 2012, two weeks after primary;
- County Election Commission (Board of Canvassers) certifies October 4, 2012, the Thursday after the runoff election; and
- State Election Commission certifies runoff election September 21, 2012.

12. If a special primary is held, the State will not be able to meet either the requirements of UOCAVA or S.C. Code Ann. § 7-15-406 (Supp. 2011), which could trigger a preclearance requirement of Section 5 of the Voting Rights Act of 1965, 42 U.S.C. §§ 1973–1973aa-6, a time consuming process that could further disrupt the election.

13. Special primaries are expensive to run for both the SEC and the Charleston County Board of Elections and Voter Registration. The special election for Senate District 41 would cost approximately \$25,000. See Ex. 1, Andino Aff., ¶ 10. Any special election runoff would cost the SEC an additional \$20,000

14. If a special election is not proper in the instant case where a putative candidate was found not to have been eligible to be on the primary ballot *ab initio*, the State does not want to have the taxpayers bear an unnecessary expense or risk that other special elections be held when not authorized by statute and to have yet additional expense.

15. On August 14, 2012, the SEC requested an expedited copy of the transcript yesterday of the hearing. See letter to Sharon Vizer-Hanks, attached hereto as Exhibit 6.

For the above reasons, the Appellant-Defendant SEC respectfully requests that the Court issue an Order expediting the preparation of the Record on Appeal, that parties be allowed to serve and file Memoranda of Law, with no response permitted inasmuch as time does not permit the filing of formal briefs, and that oral argument be scheduled as soon as is practicable.

Respectfully submitted,

M. Elizabeth Crum, S.C. Bar No. 1486

lcrum@mcnair.net

Ariail B. Kirk, S.C. Bar No. 71101

akirk@mcnair.net

Amber B. Martella, S.C. Bar No. 78706

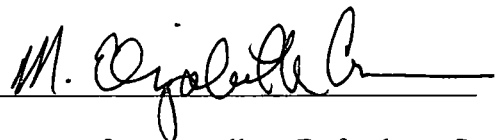
amartella@mcnair.net

McNAIR LAW FIRM, P.A.

Post Office Box 11390

Columbia, South Carolina 29211

(803) 799-9800

By: 

Attorneys for Appellant-Defendant South
Carolina State Election Commission (Marci
Andino, as Executive Director, and Chris
Whitmire, as Director of Public Information
and Training)

August 16, 2012

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

George TempelPlaintiff,

v.

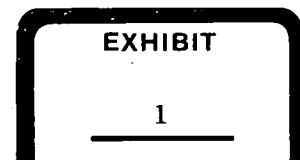
South Carolina State Election Commission (Marci Andino, as Executive Director and Chris Whitmire as Director of Public Information and Training); South Carolina Republican Party (Matt Moore as Executive Director and Chad Connolly as Chairman); Charleston County Republican Party (Lin Bennett as Chairman); Charleston County Board Of Elections And Voter Registration (Joseph L. Debney as Director and Dan Martin as Chairman); and Paul Thurmond, Defendants,

Of Whom South Carolina State Election Commission (Marci Andino, as Executive Director and Chris Whitmire as Director of Public Information and Training) is the..... Secondary Appellant.

AFFIDAVIT OF MARCI ANDINO

Personally appeared before me, Marci Andino, who, first being duly sworn, deposes and says that:

1. She is the duly appointed Executive Director of the South Carolina State Election Commission (SEC) and is a resident of Richland County, South Carolina.
2. Pursuant to S.C. Code Ann. § 7-3-20(C)(12) (Supp. 2011), as Executive Director, she serves as the State’s chief election official responsible for implementing and enforcing South Carolina’s responsibilities under the Uniform and Overseas Citizens Absentee Voting Act (UOCAVA), as set forth in the United States Code, Title 42, Section 1973ff, et seq.
3. Pursuant to S.C. Code Ann. § 7-15-406 (Supp. 2011), absentee ballots must be sent to all UOCAVA qualified electors at least forty-five (45) days prior to the General Election.



The UOCAVA absentee ballots include the offices for all federal offices, State and county offices that are up for election in the General Election. See: S.C. Code Ann. § 7-15-460 (Supp. 2011).¹

4. The General Election will be held November 6, 2012. Therefore, the UOCAVA ballots have to be sent out not later than September 22, 2012.

5. Before noon on August 15, 2012, the political parties' State Executive Committees are required to certify their respective candidates for the South Carolina House of Representatives, State Senate, congressional and solicitor offices to the SEC.

6. Before noon on August 15, 2012, the political parties' County Executive Committees are required to certify the nomination candidates for county wide and less than county wide offices that are up for election in the General Election to their respective County Election Commissions.

7. In order for the SEC to meet the State and Federal statutory deadlines regarding UOCAVA requirements, the SEC began on or about August 1, 2012 preparing the templates for election definitions and ballot forms. On August 13, 2012, the SEC began the process of working twelve hour (12) days seven (7) days a week preparing the templates for election definitions and ballot forms. Further, on or about August 7, 2012, the SEC contracted with the voting system vendor to provide personnel in order to augment SEC staff available to produce election definitions and ballot forms.

8. Based upon the candidate certifications by the respective State political party executive committees, the SEC will immediately begin defining candidate names by party, office, precinct and county for the respective County Election Commissions that rely upon the SEC to use for the General Election. The SEC is responsible for reviewing and approving the

¹ This section was precleared by the United States Department of Justice on August 22, 2011.

election definitions and ballot forms developed by the respective County Election Commissions, whether the county election commission develops its own database or not.

9. In order for the SEC and for the respective County Election Commissions to have sufficient time to complete the definitions and ballot forms, to perform the required testing to check the accuracy of the data bases to meet the UOCAVA requirements and prepare and open the absentee precincts, the SEC and County Election Commissions must have final party candidate names as soon as reasonably possible.

10. The SEC is responsible for the cost of all primary election and special primary elections. See: S. C. Code Ann. § 7-13-40. On May 29, 2012, the Charleston County Board of Elections and Voter Registration (CCBEVR) held the special primary election to fill the unexpired term of former Senator now Lt. Governor Glenn McConnell for Senate District 41, the senate district at issue here. There was no runoff in the special primary election for the Republican or Democratic special primary election. It cost approximately \$30,000 to conduct the Senate District 41 special primary. While the composition of District 41 has changed somewhat due to reapportionment, based upon the recent special primary costs and the cost (\$18,000) of the special primary for Senate District 16 in York and Lancaster Counties, we estimate that a special election now for District 41 would cost approximately \$25,000 and a runoff, if any, would cost an additional \$20,000.

11. On or about July 9, 2012, the SEC received a request for the South Carolina Democratic Party (SCDP) requesting that the SEC tell the SCDP how to handle the letter from the Georgetown County Democratic Party attempting to certify candidates previously removed from the primary ballot because they had failed to file their Statements of Economic Interest (SEI) and Statement of Intention of Candidacy (SIC) at the same time and with the same person. Attached as Exhibit A is a true and accurate copy of the July 9, 2012 e-mail from Amanda Loveday to Marci Andino and Chris Whitmire.

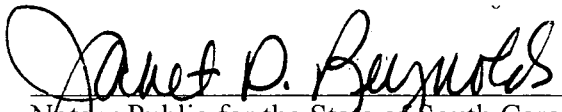
12. On or about July 10, 2012, after affiant responded to the SCDP, affiant received a copy of a South Carolina Attorney General's Opinion regarding S.C. Code Ann. § 7-11-55. Attached hereto as Exhibit B is a true and accurate copy of the e-mail and attachment (Attorney General's opinion) from Conway Belanger to Marci Andino dated July 10, 2012.

13. Further Affiant saith not.



Marci B. Andino

Sworn to and subscribed before me
this 15th day of August, 2012.



Notary Public for the State of South Carolina.
My Commission expires: 10-4-2020

Andino, Marci

From: Amanda Loveday [aloveday@SCDP.ORG]
Sent: Monday, July 09, 2012 9:56 AM
To: Andino, Marci
Cc: Whitmire, Chris; nkolman@sc.rr.com
Subject: Georgetown County
Attachments: 20120709094445645.pdf

Marci and Chris,

Please see the letter I received from the Georgetown Democratic County Chair over the weekend.

How would you like to handle this situation since they've already requested for those candidates to receive their filing fees returned?

Nancy is meeting with people in the County starting around noon so any information by that time would be helpful.

Thank you.

Amanda

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GEORGETOWN COUNTY DEMOCRATIC PARTY
P.O. BOX 2497
GEORGETOWN, SC 29442

Nancy L. Kolman
Chairperson

843 240-3396

July 7, 2012

Georgetown County Election Commission
303 N. Hazard Street
Georgetown, SC 29440
Attention: Ms Donna H. Mahn, Executive Director

RE: Georgetown County Democratic Party Replacement Candidates for
November 6, 2012 General Election

Dear Ms Mahn,

In my letter to you dated June 7, 2012, sent to comply with the Order of the South Carolina Supreme Court in its Opinion No. 27128 issued on June 5, 2012 in the case *Florence County Democratic Party et al. v. Florence County Republican Party et al.*, I notified you that none of the four non-exempt candidates (within the meaning of SC Code 8-13-1356) previously certified by the Georgetown County Democratic Party (the GCDP) for the 2012 election cycle filed a Statement of Economic Interest with the GCDP simultaneously with their notices of candidacy. This had the effect of disqualifying all four of these non-exempt candidates from running as candidates of the GCDP in the June 2012 primary or the November 2012 general election.

The purpose of this letter is to certify to you that yesterday, in accordance with the requirements of SC Code 7-11-50, the GCDP has selected the candidates listed below to be on the ballot for the general election on November 6, 2012 to replace the GCDP candidates who had no GCDP primary opposition and who were disqualified pursuant to my June 7, 2012 letter:

Georgetown County Sheriff	Darryel C. Carr
SC House of Representatives District 108	Jarrod Ownbey
Georgetown County Council District 5	Ben Dunn

These candidates have met or will meet the requirements for their respective offices by the time of the general election or as otherwise provided by law the qualifications for office for which they have filed and their names are listed as they should appear on the ballot.

The replacement candidates listed above are identical to the candidates for the offices set forth above previously disqualified as set forth in my June 7, 2012 letter. All of these candidates have now furnished the GCDP with a Statement of Economic Interest.

SC Code 7-11-50 provides in pertinent part, "If a party nominee who was nominated by a method other than party primary election...becomes disqualified after his nomination... and sufficient time does not remain to hold a convention to fill the vacancy or to nominate a nominee to enter a special election, the respective state or county party executive committee may nominate a nominee for the office, who must be duly certified by the respective county or state chairman."

SC Code 7-11-50 does not prohibit a party from appointing a previously disqualified candidate as his or her own replacement if the candidate has subsequently become qualified.

SC Code 7-11-90 indicates that if a candidate had no primary opponent (which is the case with the three candidates listed above), he or she was "nominated by a method other than party primary election" within the meaning of SC Code 7-11-50.

The County level is the correct level to appoint replacement candidates for State Senate and House. SC Code 7-11-30 provides that "nomination of the party's candidates for the office of state Senator and a member of the House of Representatives must be made in the manner determined by the state committee." This refers to whether such candidates will be elected by convention or by primary. If the state committee selects convention, then the code requires Senators and Representatives to be nominated at the State convention. The South Carolina Democratic Party, however, decided to select candidates by the primary method. Since primary candidates for State House and State Senate are selected at the county level, the county party level would be the appropriate level at which to appoint replacements.

If you require any additional information, please contact me.

Best regards,

Nancy L. Kolman, Chairperson
Georgetown County Democratic Party

Receipt Acknowledged:

Georgetown County Election Commission

By: _____ Title: _____

Name: _____ Date & Time: _____

Andino, Marci

From: Andino, Marci
Sent: Monday, July 09, 2012 10:24 AM
To: Amanda Loveday
Cc: Whitmire, Chris; nkolman@sc.rr.com
Subject: RE: Georgetown County

Amanda,

Regardless of the method used (primary or convention) by a political party to nominate candidates, filing opened on March 16th and closed on March 30th. Unless an individual filed a Statement of Intention of Candidacy and simultaneously filed a Statement of Economic Interest form during the filing period, they cannot be a party nominee and not eligible to appear on the General Election ballot.

While SC Code of Laws sections 7-11-50 and 7-11-55 allow for the replacement of disqualified candidates, individuals who did not file properly during the filing period did not meet the requirements to become a candidate for office. Therefore, individuals who were decertified following the Anderson and/or Florence Orders cannot be replaced.

The State Election Commission is not trying to create a barrier to prevent access to the ballot. Our interest is purely in protecting the integrity of the election process. Furthermore, this could be viewed as an attempt to skirt the Anderson and Florence Orders and invite other complaints to be filed.

Please let me know if you have additional questions concerning this matter.

Marci

-----Original Message-----

From: Amanda Loveday [<mailto:aloveday@SCDP.ORG>]
Sent: Monday, July 09, 2012 9:56 AM
To: Andino, Marci
Cc: Whitmire, Chris; nkolman@sc.rr.com
Subject: Georgetown County

Marci and Chris,

Please see the letter I received from the Georgetown Democratic County Chair over the weekend.

How would you like to handle this situation since they've already requested for those candidates to receive their filing fees returned?

Nancy is meeting with people in the County starting around noon so any information by that time would be helpful.

Thank you.

Amanda

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Andino, Marci

From: Belangia, Conway [CBelangia@greenvillecounty.org]
Sent: Tuesday, July 10, 2012 1:01 PM
To: indigo_elephant@hotmail.com; bphillips@mvcresearch.com; Markylena.tolbert-wydman@usoncology.com; schaffnerb@bellsouth.net; webagwell@bellsouth.net
Cc: Whitmire, Chris; Andino, Marci; dmahn@gtcounty.org
Subject: AG's opinion of Eric Graybon's request
Attachments: 2012 AG's request for opinion - Demo request.pdf; 2012 AG's opinion - Demo request.pdf

Good day,

Today the County Attorney received the request AG's opinion concerning the request by the Greenville County Democratic Party to replace certain candidates on the November ballot that were declared by the Supreme Court to be ineligible.

We will be meeting soon (maybe Monday) to officially take action on the request of Eric Graybon. Day and time to be determined soon and I will let you know.

I have attached the letters of request and the AG's opinion for your information.

Thanks

Conway

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County Attorney's Office

Mark W. Tollison
County Attorney
(864) 467-7110
www.greenvillecounty.org

June 18, 2012

The Honorable Alan Wilson
South Carolina Attorney General
P.O. Box 11549
Columbia, S.C. 29211

Re: Request for Opinion on Replacement Candidates

Dear General Wilson:

On behalf of Conway Belangia, the Director of Greenville County Election Commission, I am requesting an Attorney General's Opinion concerning the appointment of replacement candidates for the November 2012 general election.

Enclosed you will find a copy of a letter dated May 31, 2012 from the Greenville County Democratic Party ("GCDP") addressed to the Greenville County Election Commission. In this letter, the GCDP indicates it has selected replacement candidates to be on the ballot for the general election to replace GCDP candidates who had no primary opposition and who were disqualified as a result of the Supreme Court decision in *Anderson v. South Carolina Election Commission*, Op. No. 27120 (May 2, 2012).

The GCDP has indicated that it is acting in accordance with the authority set out in S.C. Code Ann. §7-11-50 (2011). The replacement candidates are the same candidates who were disqualified as a result of the aforementioned South Carolina Supreme Court decision.

I am requesting an Attorney General's Opinion as to whether those persons who were disqualified as candidates as noted above may be selected as substitution candidates under the method outlined in the letter from the Greenville County Democratic Party. This will assist the Greenville County Election Commission in its preparations for this November's general election.

Thank you for your attention to this matter.

Sincerely,

Mark W. Tollison

cc: Conway Belangia, GCEC Director

Enclosure



THE GREENVILLE COUNTY DEMOCRATIC PARTY

1300-J East Washington Street, Greenville SC 29607

Phone: (864) 232-5531 FAX: (864)236-5059 www.greenvilledemocrats.com

May 31, 2012

By Hand Delivery:

Greenville County Election Commission
301 University Ridge
Greenville, SC 29601
Attention: Mr. Conway Belangia
Executive Director

RE: Greenville County Democratic Party Replacement Candidates for November 2012
General Election.

Dear Mr. Belangia:

In my letter to you dated May 4, 2012, which I delivered to comply with the Order of the South Carolina Supreme Court in its Opinion No. 27120 issued on May 2, 2012 in the case of *Anderson v. S.C. Election Comm'n* (the "Opinion"), I notified you that none of the ten non-exempt candidates (within the meaning of SC Code § 8-13-1356) previously certified by the Greenville County Democratic Party (the "GCDP") for the 2012 election cycle filed a Statement of Economic Interest ("SEI") with the GCDP simultaneously with their notices of candidacy. This had the effect of disqualifying all ten of these non-exempt candidates from running as candidates of the GCDP in the June 2012 primary or the November 2012 general election.

The purpose of this letter is to certify to you that yesterday, in accordance with the requirements of SC Code § 7-11-50, the GCDP has selected the candidates listed below to be on the ballot for the general election on November 6, 2012 to replace the GCDP candidates who had no GCDP primary opposition and who were disqualified pursuant to my May 4, 2012 letter:

Greenville County Sheriff:	Dexter L. Reaves
SC Senate District 8:	Jeff Dishner
SC House of Representatives District 20:	Israel Romero
SC House of Representatives District 22:	David R. Gahan
SC House of Representatives District 27:	Renita Barksdale

These candidates have met or will meet the requirements for their respective offices by the time of the general election or as otherwise provided by law the qualifications for office for which they have filed and their names are listed as they should appear on the ballot.

The replacement candidates listed above are identical to the candidates for the offices set forth above previously disqualified as set forth in my May 4, 2012 letter. All of these candidates have now furnished the GCDP with an SEI.



ALAN WILSON
ATTORNEY GENERAL

July 10, 2012

Mark W. Tollison, Esquire
Greenville County Attorney
County Square
301 University Ridge, Suite 2400
Greenville, South Carolina 29601

Dear Mr. Tollison:

You have requested an opinion "concerning the appointment of replacement candidates for the November 12 general election." In this regard, you have enclosed a copy of a letter dated May 31, 2012 from the Greenville County Democratic Party addressed to the Greenville County Election Commission. You note that in the letter, the Greenville County Democratic Party ("GCDP") "indicates it has selected replacement candidates who had no primary opposition and who were disqualified as a result of the Supreme Court decision in *Anderson v. South Carolina Election Commission*, Op. No. 27120 (May 2, 2012)." Further, you note that "the GCDP has indicated that it is acting in accordance with the authority set out in S.C. Code Ann. § 7-11-50 (2011)." You observe that "[t]he replacement candidates are the same candidates who were disqualified as a result of the aforementioned Supreme Court decision." Thus, you seek an opinion "as to whether these persons who were disqualified as candidates as noted above, may be selected as substitution candidates under the method outlined in the letter from the Greenville County Democratic Party." It is our opinion that the Supreme Court decisions in this matter are determinative and that a court would likely conclude that § 7-11-50 is inapplicable.

Law/Analysis

S. C. Code Ann. Section 7-11-50 provides as follows:

§ 7-11-50. Substitution where party nominee dies, becomes disqualified or resigns for legitimate nonpolitical reason.

If a party nominee who was nominated by a method other than party primary election dies, becomes disqualified after his nomination, or resigns his candidacy for a legitimate nonpolitical reason as defined in this section and sufficient time does not remain to hold a convention to fill the vacancy or to nominate a nominee to enter a special election, the respective state or county party executive committee may nominate a nominee for the office, who must be duly certified by the respective county or state chairman.

"Legitimate nonpolitical reason" as used in this section is limited to:

EXHIBIT

B

(a) reasons of health, which include any health condition which, in the written opinion of a medical doctor, would be harmful to the health of the candidate if he continued;

(b) family crises, which include circumstances which would substantially alter the duties and responsibilities of the candidate to the family or to a family business;

(c) substantial business conflict, which includes the policy of an employer prohibiting employees being candidates for public offices and an employment change which would result in the ineligibility of the candidate or which would impair his capability to carry out properly the functions of the office being sought.

A candidate who withdraws based upon a legitimate nonpolitical reason which is not covered by the inclusions in (a), (b) or (c) has the strict burden of proof for his reason. A candidate who wishes to withdraw for a legitimate nonpolitical reason shall submit his reason by sworn affidavit.

This affidavit must be filed with the state party chairman of the nominee's party and also with the election commission of the county if the office concerned is countywide or less and with the State Election Commission if the office is statewide, multi-county, or for a member of the General Assembly. A substitution of candidates is not authorized, except for death or disqualification, unless the election commission to which the affidavit is submitted approves the affidavit as constituting a legitimate nonpolitical reason for the candidate's resignation within ten days of the date the affidavit is submitted to the commission. However, where this party nominee is unopposed, each political party registered with the State Election Commission has the privilege of nominating a candidate for the office involved. If the nomination is certified two weeks or more before the date of the general election, that office is to be filled at the general election. If the nomination is certified less than two weeks before the date of the general election, that office must not be filled at the general election but must be filled in a special election to be held on the second Tuesday in the month following the election, provided that the date of the special election to be conducted after the general election may be combined with other necessary elections scheduled to occur within a twenty-eight day period in the manner authorized by Section 7-13-190(D).

A number of rules of statutory construction are applicable here in construing § 7-11-50. The primary consideration in interpreting any statute is ascertaining the intent of the Legislature. *Citizens and Southern Symptoms, Inc. v. South Carolina Tax Commission*, 280 S.C. 138, 311 S.E.2d 717 (1984). A statute's words must be given their plain and ordinary meaning without resort to a forced or subtle construction which would work to limit or expand the statute's operation. *State v. Blackmon*, 304 S.C. 270, 403 S.E.2d 660 (1991). The clear and unambiguous terms of a statute must be applied according to their literal meaning. *Id.* In essence, the statute as a whole must receive a reasonable, practical and fair interpretation consistent with the purpose, design and policy of the lawmakers. *Caughman v. Columbia Y.M.C.A.*, 212 S.C. 337, 47 S.E.2d 788 (1948). Clearly, the legislative language must be construed in light of the Legislature's intended purpose. *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964).

Section 7-11-50 applies when a party nominee "*becomes disqualified after his nomination ... for a legitimate nonpolitical reason ...*" (emphasis added). Obviously, the GCDP is reading this provision as being applicable here because, it argues, the disqualification of these candidates did not occur until the *Martin* case was decided on May 2, 2012. At that point it is contended, the Democratic candidates found to be disqualified, were the Party's nominees (because unopposed) and thus § 7-11-50 is triggered.

While such an interpretation may be a plausible reading of § 7-11-50, we do not believe that a court would likely adopt this construction. It is well recognized that "[a] candidate who is ineligible for [an] ... office he or she seeks may not be certified to have his or her name placed on the ballot" 29 C.J.S. *Elections* § 275. In this regard, "[w]hen an ineligible candidate is nominated by a primary election, the whole election is void." 29 C.J.S. *Elections* § 221. In other words, an ineligible candidate was never a proper "candidate."

Our Supreme Court in *Florence Co. Dem. Party v. Florence Co. Repub. Party*, Op. No. 27128 (June 5, 2012), referencing the Court's decision in *Anderson v. S.C. Election Comm.*, ___ S.C. ___, 725 S.E.2d 704 (2012), reiterated that "[i]n *Anderson*, this Court held § 8-13-1356 requires non-exempt candidates to file an SEI [State of Economic Interest] along with a Statement of Intention of Candidacy (SIC)." The *Florence County* Court emphasized that *Martin* had, on request for rehearing, clarified that "filing a paper copy of SEI simultaneously with the filing of an SIC is *the only method* by which a non-exempt individual can comply with § 8-13-1356." *Id.* With respect to candidates and political parties failing to comply with § 8-13-1356, the Court strong emphasized:

[w]e reject the interpretation of the statutes urged by the County Republicans and hold those candidates who failed to file a paper copy of an SEI along with an SIC were *improperly certified as candidates*. We direct the County Republicans to file with this Court, the Florence County Election Commission, and the South Carolina State Election Commission, by 10:00 a.m. on June 6, 2012, a list of only those non-exempt candidates who simultaneously filed an SEI and an SIC with the County Republicans and a sworn statement that all those candidates were properly certified as defined by the Court in *Anderson* and in this case. If the Florence County Election Commission is able to correct the ballots to remove all *improperly certified candidates* prior to the party primaries scheduled for June 12, 2012, it shall do so. If this task is not possible, signs shall be prepared and placed in all affected polling places setting forth the names of the *improperly certified candidates* who appear on the ballots and advising voters that a vote cast for any of the candidates will not be counted The Florence County Election Commission is directed not to count any votes cast for an improperly certified candidate. In the event an *improperly certified candidate* is inadvertently left on the ballot after the required revisions, the political parties shall comply with § 8-13-1356(E) and *shall not certify the candidates for the general election*.

Id. (emphasis added).

It is striking that the Court in *Florence County* repeatedly referred to those non-exempt candidates who did not meet the filing requirements of § 8-13-1356 as "improperly certified." The Court

Mr. Tollison
Page 4
July 10, 2012

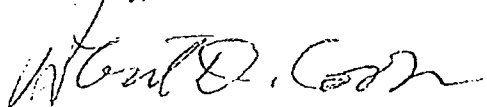
also made clear that such persons should not be certified "for the general election." Similarly, as we stated in *Op. S.C. Atty. Gen.*, May 26, 1980 (1980 WL 121244) "failure to timely file the ethics statement, thereby resulting in a prohibition of placing a candidate on the ballot, cannot be circumscribed by a procedure that would somehow authorize a political party to nominate the disqualified candidate."

Conclusion

Based upon the foregoing, we do not read § 7-11-50 as applicable to this situation. We believe the purpose of § 7-11-50 is to allow political parties to replace candidates who have died, withdrawn or *became ineligible following nomination*. *Anderson* and *Florence County* make clear that candidates who failed to follow § 8-13-1356 were "improperly certified" candidates, i.e. they were never eligible at all. Thus, these persons did not "become disqualified after ... nomination," but never qualified at all. The purpose of § 7-11-50, to allow a political party to replace a candidate who "becomes disqualified after his nomination" would be thwarted were it to be used to replace the candidate who was "improperly certified" with that same disqualified person.

Moreover, the Supreme Court has made clear that those disqualified by § 8-13-1356 may not be placed upon the general election ballot. We believe that, absent a ruling from the Supreme Court altering or modifying that instruction, we conclude that the Supreme Court meant what it said. Accordingly, we are unable to advise you that § 7-11-50 may be used in this circumstance to substitute the same candidates which *Martin* and *Florence County* held were disqualified.

Sincerely,



Robert D. Cook
Deputy Attorney General

RDC/an

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF GREENWOOD) EIGHTH JUDICIAL CIRCUIT
)
 Robert J. Tinsley, Sr.,)
)
 Plaintiff,) **ORDER**
)
 v.) C/A No. 2012-CP-24-732

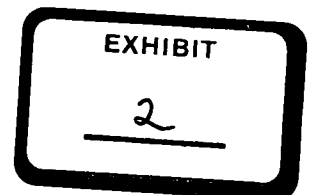
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 0009 AND 188
 GREENWOOD COUNTY
 S.C.

2012 AUG 13 PM 2 34
 5TH JUDGE
 GREENWOOD, SC

1. S.C. State Election Commission (Marci Andino as Executive Director);
 2. South Carolina Democratic Party (Richard A. Harpootlian as Chair);
 2. South Carolina Democratic Party (Amanda Loveday as Executive Director);
 3. Greenwood County Democratic Party (Elaine Gentry as Chair);
 4. Greenwood County Election Commission (Connie Moody as Director);
 5. Marcia Kelley-Clark;
 6. Felicia Moton;
 7. Abbeville County Election Commission (Kim London as Director);
 8. South Carolina Republican Party (Matt Moore as Executive Director);
 8. South Carolina Republican Party (Chad Connelly as Chair);
 9. Greenwood County Republican Party (Buck Griffin as Chair);
 10. McCormick County Republican Party (Ruth Obermeyer as Chair);
 11. Jennings G. McAbee;
 12. Robert Shannon Riley;
 13. Sonny Cox;
 14. Angela Woodhurst;
 15. Steven Brown;
 16. Bob Fisher;
 17. McCormick County Election Commission (Suffie Jennings as Director); and
 18. Saluda County Election Commission (Frances E. Jaynes as Director),
- Defendants.)
)
)

This matter came before the Court on August 8, 2012, with regard to the Robert J. Tinsley Sr.'s (Plaintiff) Summons and Verified Complaint. Present at the hearing were Billy J. Garrett, Jr., Esquire, and Carson M. Henderson, Esquire, Attorneys for Plaintiff; M. Elizabeth Crum, Esquire, Attorney for Defendants South Carolina State Election Commission (Marci Andino as Executive Director) (collectively, SEC); Chris P. Kenney, Esquire, Attorney for Defendants and Cross-Plaintiffs South Carolina Democratic Party (Richard A. Harpootlian as

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Chair and Amanda Loveday as Executive Director) (collectively, SCDP) and Greenwood County Democratic Party (Elaine Gentry as Chair) (collectively, GCDP); Stephen Baggett, Jr., Esquire, Attorney for Defendant Greenwood County Election Commission (Connie Moody as Director) (collectively, GCEC); Robert J. Bolchoz, Esquire, Attorney for Defendants South Carolina Republican Party (Matt Moore as Executive Director and Chad Connolly as Chair) (collectively, SCRCP) and Greenwood County Republican Party (Buck Griffin as Chair) (collectively, GCRP); Thomas E. Hite Jr., Esquire, Attorney for Defendant Robert Shannon Riley (Riley); Lance Sheek, Esquire, Attorney for Defendant Sonny Cox (Cox); Marvin R. Watson, Esquire, Attorney for Defendant Angela Woodhurst (Woodhurst); Defendant Steven Brown (Brown) appearing *pro se*; Defendant Bob Fisher (Fisher) appearing *pro se*; M. W. Cockrell, III, Esquire and Jason B. Turnblad, Esquire, Attorneys for Defendant and Counter-Claimant Marcia Kelley-Clark (Kelley-Clark); Tommy L. Stanford, Esquire, Attorney for Defendant and Cross-Claimant Felicia Moton (Moton).

FACTUAL BACKGROUND

This matter involves the allegations that the SCRCP, GCRP, SCDP, and GCDP improperly certified certain candidates to the June 12, 2012 primary election ballot. Plaintiff filed a Summons and Verified Complaint on July 3, 2012, alleging Benjamin L. Shealy (Shealy), Robert E. "Bob" Merritt (Merritt), Kelley-Clark, and Moton had not filed an statement of economic interest (SEI) and statement 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. South Carolina Election Commission, 397 S.C. 551, 725 S.E.2d 704 (2012) (petition for rehearing by way of clarification

denied May 4, 2012), and Florence County Democratic Party v. Florence County Republican Party, 727 S.E.2d 418 (S.C. 2012).¹

On July 18, 2012, the SCDP and GCDP filed a Cross-Complaint, asserting Jennings G. McAbee, Riley, Cox, Woodhurst, Brown, Fisher, and David Stumbo had not filed an statement of economic interest and statement of intention of candidacy at the same time and with the same official as required by S.C. Code Ann. § 8-13-1356 and Anderson.² On July 23, 2012, Moton filed a Cross-Claim against the SCDP and GCDP, alleging she had been decertified improperly, and amended it on July 31, 2012. On July 24, 2012, the Supreme Court appointed me to hear this matter. On July 26, 2012, I entered an Order Granting Motion to Expedite, Motion to Consolidate Cross-Complaint of SCDP and GCDP, and Scheduling Order. On July 30, 2012, Woodhurst filed an Answer and Cross-Claim, alleging she should be certified for the General Election ballot. On August 1, 2012, Kelly-Clark filed a Counter-Claim against Plaintiff, alleging Plaintiff was abusing process and had filed a frivolous lawsuit. The SCDP and GCDP entered into a consent order on August 8, 2012, dismissing without prejudice their claims against the SCRCP and GCRP because the SCRCP and GCRP decertified candidates on August 1, 2012.

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 On July 27, 2012, Plaintiff amended his Complaint to dismiss Shealy and Merritt as defendants.
² The SCDP and GCDP amended their Cross-Complaint on July 25, 2012, to remove Stumbo as a defendant based on a Consent Stipulation of Dismissal entered the same day, and amended again on August 1, 2012, to remove McAbee, the McCormick County Republican Party, the Abbeville County Election Commission, the McCormick County Election Commission, and the Saluda County Election Commission as defendants based on a Consent Stipulation of Dismissal entered the same day.

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1. This Court has jurisdiction over the parties to this case and the subject matter of this case.
2. Plaintiff is a resident and registered voter in Greenwood County.
3. The GCEC is created pursuant to S.C. Code Ann. § 7-5-10 (Supp. 2011) and is responsible for conducting state and federal elections in Greenwood County. Ms. Connie Moody, the executive director of the GCEC testified that she was instructed by the South Carolina State Ethics Commission (Ethics Commission) that it could not accept paper copies of SEIs. Therefore, she would not accept paper copies of candidate SEIs but instead used the Ethics Commission website to go online and confirm that a candidate had actually filed his or her SEI prior to accepting his or her SIC.
4. The GCDP and GCRP designated GCEC to execute their statutory duty of receiving candidate filings.
5. Robert Shannon Riley is a resident of Greenwood County and is seeking the Republican nomination for State House of Representatives for District 13. Mr. Riley was decertified by the GCRP because he did not file a paper copy of his SEI and SIC at the same time and with the same official. Uncontested testimony was presented during the hearing that Riley filed his SIC with the GCEC and attempted contemporaneously to file a paper copy of his SEI. The GCEC filing officials refused to accept the paper copy of his SEI thereby preventing Mr. Riley from leaving a filed copy of his SEI with the GCEC.
6. Sonny Cox is a resident of Greenwood County and is seeking the Republican nomination for Greenwood County Coroner. Mr. Cox was decertified by the GCRP and did not contest his decertification during the hearing.

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7. Angela Woodhurst is a resident of Greenwood County and is seeking the Republican nomination to the office of Greenwood County Clerk of Court. Ms. Woodhurst was decertified by the GCRP because she did not file a paper copy of her SEI and SIC at the same time and with the same official. Uncontested testimony was presented during the hearing that Woodhurst filed her SIC with the GCEC and attempted contemporaneously to file a paper copy of her SEI. The GCEC filing officials refused to accept the paper copy of her SEI, thereby preventing Ms. Woodhurst from leaving a filed copy of her SEI with the GCEC.

8. Marcia Kelley-Clark is a resident of Greenwood County, an appointed Deputy Coroner for Greenwood County, and was seeking the Democratic nomination to the office of Greenwood County Coroner. During the hearing she admitted that she did not present a paper copy of her SEI to the GCEC filing official when she filed her SIC, but asserts she meets the "public official" exemption in S.C. Code Ann. § 8-13-1356(A). Ms. Kelly-Clark testified that she had been a Deputy Coroner since 2005 and had not filed an SEI until 2012.

9. Felicia Moton is a resident of Greenwood County and prior to decertification was seeking the Democratic nomination to the office of Greenwood County Clerk of Court. Ms. Moton was decertified by the GCDP because she did not file a paper copy of her SEI and SIC at the same time and with the same official. Uncontested testimony was presented during the hearing that Moton filed her SIC with the GCEC and attempted contemporaneously to file a paper copy of her SEI. The GCEC filing officials refused to accept the paper copy of her SEI thereby preventing Ms. Moton from leaving a filed copy of her SEI with the GCEC.

10. On August 1, 2012, the SCRIP decertified the following candidates, making them ineligible to appear on the November 6, 2012 General Election Ballot: John R. McCravy, State

House of Representatives for District 13; Robert Shannon Riley, State House of Representatives for District 13; and Chet Royston, State Senate for District 10.

11. Of the above-named decertified candidates, only Riley contested his decertification.

12. On August 1, 2012, the GCRP decertified the following candidates, making them ineligible to appear on the November 6, 2012 General Election Ballot: Chastity Knight Sheek, Clerk of Court; Angie Woodhurst, Clerk of Court; Jane Harvey, Clerk of Court; Buddy Gunter, Office of Coroner; Sonny Cox, Office of Coroner; Steve Brown, County Council for District 5; and Bob Fisher, County Council for District 7.

13. Of the above-named decertified candidates, Woodhurst and Fisher contested their decertification.

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,

6 8/10 JHK

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. Sections 8-13-1356 (B) and (E) and 7-11-15 of the South Carolina Code are mandatory and govern in this matter.

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. Section 8-13-1356 states, in pertinent part:

(A) This section does not apply to a public official who has a current disclosure statement on file with the appropriate supervisory office pursuant to Sections 8-13-1110 or 8-13-1140.

(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.

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20. Section 8-13-1300 of Article Thirteen "Campaign Practices" provides, in pertinent part:

(27) "Public employee" means a person employed by the State, a county, a municipality, or a political subdivision thereof. ...

(28) "Public official" means an elected or appointed official of the State, a county, a municipality or a political subdivision thereof, including candidates for the office. ...

21. Section 7-13-350 of the South Carolina Code requires the state and county political parties respectively to certify to the SEC and the county election commissions the names of the candidates for the November 6, 2012 General Election on or before noon on August 15, 2012, and states, in pertinent part:

Except as otherwise provided in this section, the nominees in a party primary or party convention held under the provisions of this title by any political party certified by the commission for one or more of the offices, national, state, circuit, multi-county district, countywide, less than countywide, or municipal to be voted on in the general election, held on the first Tuesday following the first Monday in November, must be placed upon the appropriate ballot for the election as candidates nominated by the party by the authority charged by law with preparing the ballot if the names of the nominees are certified, in writing, by the political party chairman, vice-chairman, or secretary to the authority, for general elections held under Section 7-13-10, not later than twelve o'clock noon on August fifteenth or, if August fifteenth falls on Saturday or Sunday, not later than twelve o'clock noon on the following Monday; and for a special or municipal general election, by at least twelve o'clock noon on the sixtieth day prior to the date of holding the election, or if the sixtieth day falls on Sunday, by twelve o'clock noon on the following Monday. Political parties nominating candidates by primary or convention must verify the qualifications of those candidates prior to certification to the authority charged by law with preparing the ballot. The written certification required by this section must contain a statement that each candidate certified meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office for which he has filed. Any candidate who does not, or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office for which he has filed shall not be nominated and certified, and such candidate's name shall not be placed on a general, special, or municipal election ballot

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22. The uncontradicted evidence shows Moton, Woodhurst, Fisher, and Riley attempted to file paper copies of their SEIs at the same time and with the same official they filed their SICs, but the GCEC officials would not take their paper copies.

23. I interpret S.C. Code Ann. § 8-13-1356(B) to encompass constructive filing, meaning a candidate must file or attempt to file a paper copy of his SEI at the same time and with the same official as his SIC. The legislative purpose behind S.C. Code Ann. § 8-13-1356(B) was not to require a candidate to be decertified when he did everything asked of him under the statute but he was prohibited from completing the statutory requirement, i.e. leaving a copy of the SEI, through the act of a person charged by law with carrying out a duty, no matter how well intended the official's act was. Candidates should not be held ineligible to be certified to the ballot because they are unable to accomplish an impossibility when a filing official refuses to accept the proper documents. By attempting to file their respective SEIs with their respective SIC's, candidates Moton, Woodhurst, Fisher, and Riley complied with the requirements of S.C. Code Ann. § 8-13-1356(B) and (E).

24. The GCDP erroneously decertified Moton and the GDRP erroneously decertified Woodhurst, Fisher, and Riley.

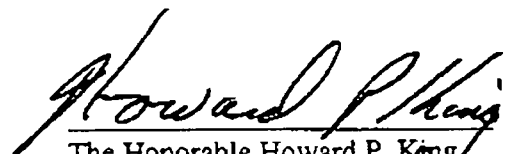
25. Ms. Kelly-Clark's position as Deputy Coroner is that of a public employee and not of a public official. The position of Deputy Coroner is not one for which an SEI is required to be filed. See S.C. Code Ann. § 8-13-1110 (Supp. 2011). This finding is buttressed by the fact that Ms. Kelly-Clark did not file an SEI from 2005 until 2012 when she sought the position of Coroner. Ms. Kelly-Clark does not meet the S.C. Code Ann. § 8-13-1356(A) SEI filing exemption.

NOW THEREFORE IT IS ORDERED THAT

1. Moton, Woodhurst, Fisher, and Riley accomplished constructive filing of their respective SEIs; therefore, they were eligible to be certified for the June 12, 2012 Primary Election ballots, and are eligible to be certified by their respective political parties for the November 6, 2012 General Election ballot.

2. Kelley-Clark did not file or attempt to file an SEI at the same and with the same official as her SIC. She is not a public official under S.C. Code Ann. § 8-13-1110 and does not meet the exemption provision of S.C. Code Ann. § 8-13-1356(A). Therefore, Kelley-Clark's candidacy was void *ab initio* and she was ineligible to be certified by the GCDP to the June 12, 2012 Primary Election ballot. Kelley-Clark may not be certified by the SCDP as the Democratic nominee for the November 6, 2012 General Election ballot and no votes cast for her may be counted.

AND IT IS SO ORDERED.


The Honorable Howard P. King
Third Judicial Circuit active/retired

Sumter, South Carolina

August 16, 2012

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2400732

2012 AUG 13 PM 2:34
GREENWOOD, SC

Robert J Tinsley Sr Greenwood County Democratic Party	South Carolina Democratic Party	SC State Election Commission SC Democratic Party Greenwood County Voter Registration and Elections Office Marcia Kelly Clark SC Republican Party	Andino, Marci as Executive Director Greenwood County Democratic Party Robert E Merritt Felicia Motion
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant
---------------	-------------------------------------------------------------------------------------------------------------------------------------------

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Howard P King
Circuit Court Judge

2107
Judge Code

8/13/12
Date

For Clerk of Court Office Use Only

Aug 13, 2012 - Enrolled

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on, to attorneys of record or to parties (when appearing pro se) as follows:

Billy J. Garrett Jr. 109 Oak Ave Greenwood, SC 29646

- Mary Elizabeth (Liz) Crum PO Box 11390 Columbia, SC 29211
- Christopher Phillip Kenney PO Box 1090 Columbia, SC 29202
- Karl Smith Bowers Jr. 1727 Hampton St. Columbia, SC 29201
- Tommy Lee Stanford PO Box 3321 Greenwood, SC 29648
- John D. Compton III 212 Grace St. Greenwood, SC 29649
- Stephen Dallas Baggett Jr. PO Box 49533 Greenwood, SC 29649
- Graham L. Newman PO Box 1090 Columbia, SC 29202
- Thomas E. Hite Jr. PO Box 805 Abbeville, SC 29620
- Marvin R. Watson PO Drawer 799 Greenwood, SC 29648

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Ingram B. Moon

Ingram B. Moon - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) IN THE THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE)

GREENVILLE COUNTY) Civil Action No. 2012-CP-23-4803
DEMOCRATIC PARTY, ERIC K.)
GRABEN)

Plaintiffs,)

vs.)

**ORDER AND JUDGMENT FOR
PLAINTIFF AS TO DEFENDANT
MIKE BARNES**

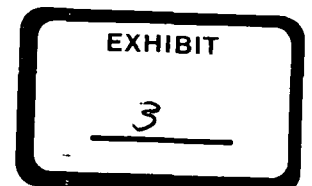
GREENVILLE COUNTY REPUBLICAN)
PARTY (*Betty Poe as Chairman*), SOUTH)
CAROLINA REPUBLICAN PARTY)
(*Chad Connolly as Chairman*),)
GREENVILLE COUNTY BOARD OF)
ELECTIONS, SOUTH CAROLINA)
STATE ELECTION COMMISSION,)
JANE KIZER, ROSS TURNER, MIKE)
BARNES;)
Defendants.)

Granting the request made by Defendant State Election Commission (SEC) for an expedited trial to meet the statutory deadline for certifying candidates for the general election, the Court held a full merits hearing on August 14, 2012. For the reasons set for below, Plaintiff's request for relief is GRANTED IN PART and DENIED IN PART.

STATEMENT OF THE CASE

Plaintiff initiated this action with the filing of his Summons and Complaint on July 25, 2012. Service was perfected upon all named Defendants. Defendant SEC filed their Answer on August 9, 2012. Defendant Greenville County Board of Elections (GEC) filed their Answer on August 13, 2012. Defendant Barnes filed a Petition for Emergency Temporary Restraining Order on August 10, 2012.

Handwritten initials/signature



Plaintiff Greenville County Democratic Party (GCDP) has the statutory authority to nominate candidates by party primary for offices to be voted on in a general or special election in Greenville County, South Carolina. GCDP brought this action alleging that the Greenville County Republican Party (GCRP) failed to follow the requirements of SC Code Sec. 8-13-1356(B) when completing the filing of candidates for office. More specifically, that candidate Defendants, Jane Kizer, Ross Turner and Mike Barnes were improperly certified because they did not file a paper copy of their Statement of Economic Interests (SEI) at the same time and with the same person as they filed their Statement of Intention of Candidacy (SIC) as required by S.C. Code Section 8-13-1356(B) and are therefore ineligible to be certified as a candidate, rendering each candidacy *void ab initio*.

At the outset of the trial, GCRP produced paper copies of candidate Defendants Jane Kizer and Ross Turner's SEIs date-stamped indicating they were produced at the time of the filing of their respective SICs. Plaintiff consented to the dismissal of the claims against candidate Defendants Kizer and Turner and requested to proceed against the remaining candidate Defendant Mike Barnes.

After reviewing the Affidavits and hearing argument from counsel on Defendant Barnes Request for a Temporary Restraining Order seeking to enjoin the actions of Defendant GCRP and Plaintiff, I find that Defendant Barnes has failed to show a likelihood of success on the merits and deny Defendant Barnes' Petition. The trial then proceeded on the merits as to Defendant Barnes.



FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter and parties. Venue is proper. Defendant SEC and Defendant Barnes objected to Plaintiff's standing to bring the remaining claim against Defendant Barnes. Plaintiff moved to add Eric K. Graben as a party-Plaintiff, a citizen and resident of Greenville County without the objection of Defendant SEC and GCRP. The Court granted Plaintiff's request to add Eric K. Graben as a party Plaintiff over the objection of Defendant Barnes. Plaintiff has standing to bring this action.

2. Defendant Mike Barnes could not state under oath that he had in fact filed paper copy his SEI at all and at any time with the GCRP. The only evidence of an SEI being filed was completed online at the South Carolina Ethics Commission website on May 3, 2012 long after the deadline for filing had past.

3. Testimony from GCRP officials Ms. Poe and Ms. Garner indicated that an SIC was signed received as of March 16, 2012. No representative of the GCRP could provide sworn testimony that Defendant Barnes filed his SEI with the GCRP party at any time. Plaintiff's Exhibit 1 is a copy of Defendant Barnes SIC with a copy of Defendant Barnes Campaign Finance Report attached. The evidence indicates that the certification of Defendant Barnes for the June 12, 2012 primary was inadvertent.

4. Based upon the evidence presented at the hearing in this matter, the Court makes the following findings and conclusions of law:

- a. Defendant GCRP acted in good faith in carrying out its duties, and the placement of Mr. Barnes on the June 12, 2012 primary ballot in violation of S.C. Code Section 8-13-1356 was inadvertent.

GR 13

b. Defendant Barnes failed to comply with S.C. Code Sec. 8-13-1356. S.C. Code Sections 8-13-1356(B), and (E) are mandatory and govern in this matter and provide 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.**

S.C. Code Ann. Section 8-13-1356(B),(E) (Supp. 2011) (emphasis added).

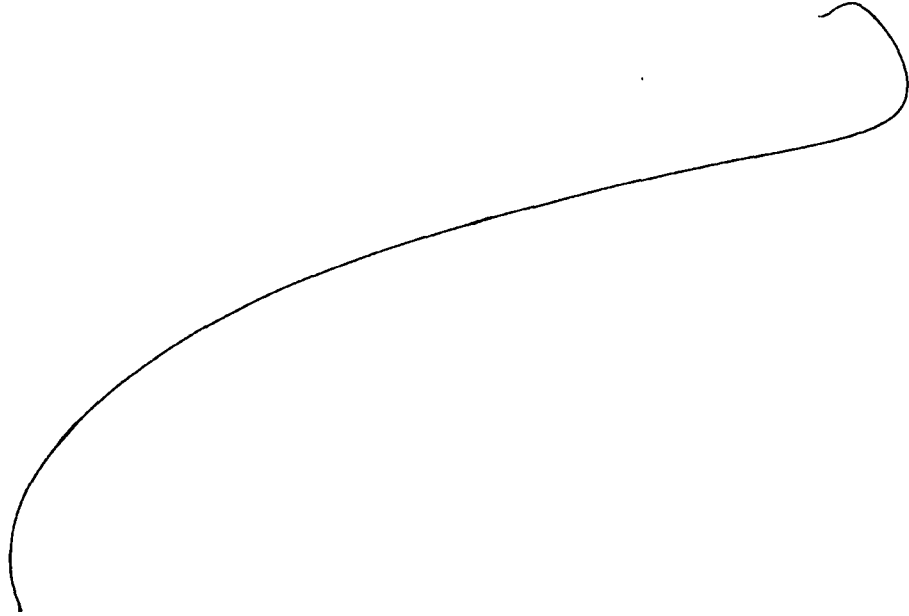
The South Carolina Supreme Court held in *Anderson v. South Carolina Election Com'n*, 397 S.C. 551, 725 S.E.2d 704 (S.C. 2012), that S.C. Code Section 8-13-1356 requires all non-exempt candidates to file a paper copy SEI simultaneously with a SIC as the **only** method by which a non-exempt individual can comply with Sec. 8-13-1356. *Id.* S.C. Code Section 8-13-1356(E) and the Supreme Court rulings in *Anderson* and in *Florence County Democratic Party v. Florence County Republican Party*, Op. No. 27128 (S.C. June 5, 2012) conferred an ongoing duty on the South Carolina political parties to ensure that all candidates to be certified were in compliance S.C. Code Section 8-13-1356(B). The *Florence* Court directed that “[i]n the event an improperly certified candidate is

inadvertently left on the ballot ..., the political parties shall comply with § 8-13-1356(E) and shall not certify the candidate for the general election.”

Id. “To the extent other county political parties have improperly certified candidates; those parties ignore the decisions of this Court at their own peril.” *Id.* As such, the GCRP shall not certify Defendant Barnes as its nominee for the general election ballot.

- c. I find that Defendant Barnes failed to file a paper copy of his SEI as contemplated by S.C. Code Sec. 8-13-1356(B). S.C. Code Section 8-13-1356(B) provides that “[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.”

Based upon the foregoing findings of fact and conclusions of law;




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IT IS HEREBY ORDERED THAT:

1. This matter is dismissed, with prejudice, as to Defendants Jane Kizer and Ross Turner.
2. Defendant Barnes' candidacy is declared to be *void ab initio* in violation of South Carolina Code Section 8-13-1356(B);
3. Pursuant to South Carolina Code Section 8-13-1356(E), the GCRP shall not certify Defendant Barnes as the Republican candidate for Greenville County Council.

IT IS SO ORDERED.



Honorable G. Thomas Cooper, Jr
Circuit Court Judge

August 15, 2012
12:00 AM

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)

B.R. SKELTON,) Civil Action No. 2012-CP-40-4464
)
Plaintiff,)

vs.)

PHILLIP BOWERS, ED J. HARRIS,)
PICKENS COUNTY REPUBLICAN)
PARTY (*Phillip Bowers, as Chairman*),)
SOUTH CAROLINA REPUBLICAN)
PARTY (*Matt Moore as Executive)
Director & Chad Connolly, as Chairman*),)
PICKENS COUNTY ELECTION)
COMMISSION, (*June Bowers, as)
Chairman & Rodney W. Allen*), SOUTH)
CAROLINA STATE ELECTION)
COMMISSION (*Marci Andino, as)
Executive Director & Chris Whitmire as)
Director of Public Information and)
Training*);)
Defendants.)

ORDER DENYING DEFENDANT
HARRIS' CROSSCLAIM AND
JUDGMENT FOR DEFENDANT
SOUTH CAROLINA REPUBLICAN
PARTY

FILED
C.C.P. & G.S.
12 AUG 15 AM 11:24

The Court, with the consent of the parties, bifurcated the above-captioned matter and held a full merits hearing on August 14, 2012, only on Defendant Ed J. Harris' Cross-Claims against Defendants South Carolina State Election Commission (SEC), Pickens County Election Commission (PEC), Pickens County Republican Party (PCRP) and South Carolina Republican Party (SCRP). All other causes of action in this matter are held in abeyance for trial at a later date. For the reasons set for below, Defendant Harris' Cross-Claim is Denied and Judgment is entered in favor of the Defendant SCRCP and Plaintiff B.R. Skelton.

STATEMENT OF THE CASE

Plaintiff initiated this action with the filing of his Summons and Complaint on June 27,

GR # 1



2012. On June 30, 2012, the Complaint was served by personal service upon Defendant Harris. On July 1, 2012, the Complaint was served by personal service upon Defendant Phillip Bowers. The remaining Defendants were served by Certified United States Mail, Return Receipt Requested on June 28, 2012. Defendant Harris filed and served his Answer, Counterclaim and Cross-claim and Notice of Motion and Motion for Temporary Injunction on July 20, 2012.

Plaintiff B. R. Skelton is a citizen, resident, registered voter in Pickens County and is the current Member of the South Carolina House of Representatives for District 3. He brought this action alleging that House District 3 candidate Ed J. Harris was ineligible as a candidate and that the Pickens County Republican Party had improperly certified Harris because he did not file a paper copy of his Statement of Economic Interests (SEI) at the same time and with the same person as he filed his Statement of Intention of Candidacy (SIC) as required by S.C. Code Section 8-13-1356(B) and is therefore ineligible to be certified as a candidate, rendering his candidacy *void ab initio*.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter and parties. Venue is proper and Plaintiff has standing to bring this action.
2. On June 18, 2012, Plaintiff timely filed a Primary Election Protest and Contest pursuant to S.C. Code Sec. 7-17-560 alleging Defendant Harris did not file a paper copy of his SEI simultaneously with his SIC, in violation of S.C. Code Section 8-13-1356.
3. A hearing on Plaintiff's Primary Election Protest was timely held before the SCRP Executive Committee on June 21, 2012, and a decision by the SCRP Executive Committee was made to deny Plaintiff's Protest.



4. The record from the Plaintiff's Protest hearing reflects the following: (1) PCRCP Chairman Bowers testified that Mr. Harris showed him his SEI at the time he filed his SIC; (2) There was no corroborating testimony that Mr. Bowers saw Mr. Harris' SEI at the time he filed his SIC; (3) Mr. Harris was not present at the hearing and thus did not provide any sworn testimony that he timely filed a paper copy of this SEI at the same time he filed his SIC; (4) No paper copy of Mr. Harris' SEI was produced; and (5) Mr. Harris' SIC indicated a filing date of March 20, 2012, while his SEI was filed online with the S.C. Ethics Commission on date of March 26, 2012.

5. Notwithstanding the decision of the SCRCP Executive Committee to deny the Skelton Protest, SCRCP Chairman Chad Connolly was concerned that evidence was insufficient to meet the requirements of S.C. Code Section 8-13-1356.

6. Mr. Skelton filed both this lawsuit in the Court of Common Pleas and a Petition for Certiorari before the South Carolina Supreme Court seeking a review of the action taken and a reversal of the decision of the State Executive Committee denying Mr. Skelton's protest.

7. On July 7, 2012, the SCRCP notified Defendant Harris that he was improperly certified as a candidate for S.C. House District 3 and was inadvertently left on the ballot.

8. Based upon the evidence presented at the hearing in this matter, and without prejudice to Plaintiff's remaining claims bifurcated from this matter, the Court makes the following findings and conclusions of law:

- a. Defendant Bowers acted in good faith in carrying out his duties as Chairman of the PCRCP, and the placement of Mr. Harris on the June 12, 2012 primary ballot in violation of S.C. Code Section 8-13-1356 was inadvertent.

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3

b. The South Carolina Republican Party has the authority and duty through its Chairman to decertify or not certify to the general election ballot those candidates it reasonably believes failed to comply with S.C. Code Sec. 8-13-1356. S.C. Code Sections 8-13-1356(B), and (E) are mandatory and govern in this matter and provide 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.**

S.C. Code Ann. Section 8-13-1356(B),(E) (Supp. 2011) (emphasis added).

The South Carolina Supreme Court held in *Anderson v. South Carolina Election Com'n*, 397 S.C. 551, 725 S.E.2d 704 (S.C. 2012), that S.C. Code Section 8-13-1356 requires all 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.* S.C. Code Section 8-13-1356(E) and the Supreme Court rulings in *Anderson* and in *Florence County Democratic Party v. Florence County Republican Party*, Op. No. 27128 (S.C. June 5, 2012) conferred an ongoing duty on the South Carolina political parties to ensure that all candidates to be certified were in compliance S.C. Code Section 8-13-1356(B).

The *Florence* Court directed that “[i]n the event an improperly certified candidate is inadvertently left on the ballot ..., the political parties shall comply with § 8-13-1356(E) and shall not certify the candidate for the general election.” *Id.* “To the extent other county political parties have improperly certified candidates; those parties ignore the decisions of this Court at their own peril.” *Id.* As such, the SCRCP not only had the authority to decertify a party nominee inadvertently left on the ballot, the SCRCP had a duty and must not certify to the general election ballot a party nominee it reasonably believes failed to comply with S.C. Code Section 8-13-1356.

- c. The South Carolina Republican Party also had a reasonable basis for its action decertifying the candidacy of Mr. Harris as *void ab initio* for failure to comply with S.C. Code Section 8-13-1356(B) and its decision to not certify Mr. Harris as the Republican nominee for S.C. House District 3 for the general election.

Based on the evidence in the record from both the Protest hearing, as set forth in paragraph 4 above, and from the merits hearing conducted by this Court, I find that the decision of the Republican Party to decertify Mr. Harris as a candidate was justified and consistent with the clear mandates of the Supreme Court. The evidence in the record of the Protest Hearing provides a reasonable basis for the SCRCP Chairman to decertify Mr. Harris pursuant to S.C. Code Section 8-13-1356(E). Indeed, SCRCP Chairman Connolly had a duty to decertify Mr. Harris if he reasonably believed he did not comply with S.C. Code Section. 8-13-1356(B).

GT 25

Further, at the hearing in this matter, SCRP Chairman Chad Connolly testified that he was well aware of the Supreme Court's rulings in *Anderson* and *Florence County* as to his concern that Mr. Harris' filing was not in compliance with those decisions. After the Protest hearing, Chairman Connolly testified that he had spoken with Mr. Harris and Mr. Harris stated that he in fact had the copy of the SEI he allegedly showed to Mr. Bowers at the time of his filing. When Mr. Harris went to look for this copy of this SEI, he stated he could not find it.

Mr. Harris' counsel presented evidence by way of testimony from Mr. Bowers and Mr. Harris in an effort to provide sufficient evidence to undermine the reasonable basis for the SCRP decision to decertify Defendant Harris. Mr. Bowers testified that in addition to seeing Mr. Harris' SEI at the time of filing, he held it in his hands before giving it back to Mr. Harris. Mr. Harris testified that he brought the SEI to Mr. Bowers on the date and time of the filing of his SIC so that Mr. Bowers could review it and offer suggestions on its sufficiency before Mr. Harris subsequently electronically filed his SEI online. The evidence at the hearing of this matter failed to undermine the reasonable basis of the SCRP party's action decertifying Mr. Harris.

- d. Evidence in the record failed to support Defendant Harris' contention that he filed his SEI as contemplated by S.C. Code Sec. 8-13-1356(B). S.C. Code Section 8-13-1356(B) provides that "[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

GT # 6

nomination.” *Anderson v. South Carolina Election Com’n*, Opinion No. 050312 (S.C. 2012) (*Anderson II*) states that S.C. Code Sec. 8-13-1356 is satisfied where a paper copy SEI is provided to the political party with the SIC regardless of whether or not it had been previously electronically.

At the hearing in this matter, Mr. Bowers, PCRP Chairman, testified that on the day Mr. Harris presented his SIC for filing, Mr. Harris showed him his SEI; that he held it in his hands; but that he did not retain it and Mr. Harris left with the SEI. Mr. Harris testified that he prepared a draft of his SEI online and printed this draft so that he could seek guidance from Chairman Bowers regarding the SEI on March 20, 2012, but he did not electronically file his SEI until March 26, 2012. While the Court finds that Mr. Bowers and Mr. Harris acted in good faith during the candidate filing process, these facts are insufficient to satisfy the requirements S.C. Code Section 8-13-1356(B). There was no testimony indicating that Mr. Harris asked Mr. Bowers to accept his SEI as a part of his candidate filing. Rather, the testimony indicated that Mr. Harris brought his SEI solely for Mr. Bowers to review for accuracy before he filed the SEI online. Further, there is no evidence that a paper copy of Mr. Harris’ SEI currently exists.

Based upon the foregoing findings of fact and conclusions of law;

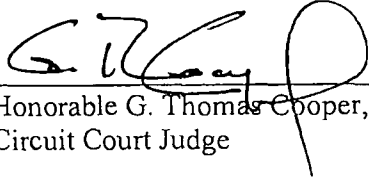
IT IS HEREBY ORDERED THAT:

1. Defendant Harris’ candidacy is declared to be *void ab initio* in violation of South Carolina Code Section 8-13-1356(B);

SIC # 7

2. Pursuant to South Carolina Code Section 8-13-1356(E), the SCRCP shall not certify Defendant Harris as the Republican candidate for District 3 of the South Carolina House of Representatives.
3. That the SCRCP shall certify B.R. Skelton as the Republican nominee for the general election to District 3 of the South Carolina House of Representatives.

IT IS SO ORDERED.


Honorable G. Thomas Cooper, Jr.
Circuit Court Judge

August 15, 2012
11:00 Am

From: Michael Timbes [mailto:MTimbess@tktylawfirm.com]
Sent: Tuesday, August 14, 2012 5:35 PM
To: Crum, Liz; 'ekinardlc@sccourts.org'; 'ekinardJ@sccourts.org'; 'James@jamesmithpa.com';
Matt Yelverton; 'Dylan@JamesSmithPA.com'
Cc: 'samhowell@bond-law.com'; 'djeffersoJ@sccourts.org'; 'djeffersonlc@sccourts.com';
'TGee@nexsenpruet.com'; 'butch.bowers@wcsr.com'; Martella, Amber
Subject: RE: 12-0048 DWG Tempel Order 13 AUG 2012 - (TKTY)(1).doc
Importance: High

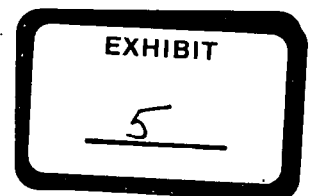
All:

Attached is a file stamped copy of the order entered this afternoon for your records. Hard copies will be placed in the mail tomorrow to the parties. If anyone has been left off this list, please let me know.

You will all note that the copy we received back from the Clerk's office is missing page 7, which was not noticed until my assistant returned to our office. As the Clerk's office is now closed, we will have to address this tomorrow morning.

Sincerely,
Michael

Michael A. Timbes
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15 Mid-Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
Phone: 843.937.8000
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MCNAIR
ATTORNEYS

August 14, 2012

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Hand Delivery

lcum@mcnair.net
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F (803) 933-1484

Ms. Sharon Vizer-Hanks
Post Office Box 1413
Johns Island, SC 29457

Re: *Temple v. South Carolina State Election Commission, etc. et al.*
Civil Action No. 2012-CP-10-3737

Dear Sharon:

I am writing to request an expedited transcript of the hearing in the above-captioned civil action on August 13, 2012, before The Honorable J. Ernest Kinard, Jr., in Charleston County, South Carolina. We respectfully request a 24 hour turn around, if possible. We anticipate filing a Notice of Appeal with the South Carolina Supreme Court and will be requesting an expedited hearing because of the sensitive time limits imposed upon the South Carolina State Election Commission in this matter.

Should you need any further information or require a retainer, please contact me or my paralegal, ElizaBeth Blich (803-753-3319). Thank you for your prompt attention to this matter.

Very truly yours,

McNAIR LAW FIRM, P.A.

M. Elizabeth Crum by
M. Elizabeth Crum *ElizaBeth A. Blich*
with permission

cc: James E. Smith, Jr., Esquire
Samuel W. Howell, Esquire
J. Robert Bolchoz, Esquire
Michael A. Timbes, Esquire
Matthew E. Yelverton, Esquire
Tanya A. Gee, Esquire
Butch Bowers, Esquire

McNair Law Firm, P. A.
1221 Main Street
Suite 1600
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

COLUMBIA 1087840v1

EXHIBIT

6

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

RECEIVED

AUG 16 2012

S.C. Supreme Court

George Tempel..... Plaintiff,

v.

South Carolina State Election Commission (Marci Andino, as Executive Director and Chris Whitmire as Director of Public Information and Training); South Carolina Republican Party (Matt Moore as Executive Director and Chad Connolly as Chairman); Charleston County Republican Party (Lin Bennett as Chairman); Charleston County Board Of Elections And Voter Registration (Joseph L. Debney as Director and Dan Martin as Chairman); and Paul Thurmond,..... Defendants,

Of Whom South Carolina State Election Commission (Marci Andino, as Executive Director and Chris Whitmire as Director of Public Information and Training) is theAppellant-Defendant.

CERTIFICATE OF SERVICE

I, ElizaBeth A. Blich, do hereby certify that I have this date served one (1) copy of the Motion to Expedite of Appellant-Defendant South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training) upon the following counsel by electronic mail and by causing said copy to be deposited with the United States Postal Service, first class postage prepaid and properly affixed thereto and addressed as follows:

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Attorneys for Charleston County Board of Elections and Voter Registration

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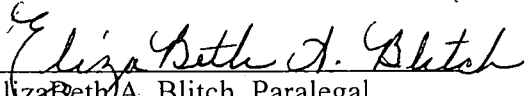
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Moore as Executive Director and
Chad Connolly, as Chairman) and
Defendant Charleston County
Republican Party (Lin Bennett, as
Chairman)

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August 16, 2012

Columbia, South Carolina