

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

S.C. Supreme Court

Howard P. King, Circuit Court Judge

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

Dorchester County Democratic Party and Richard Hayes,Plaintiffs,

vs.

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

Of Whom Mike Rose is the.....Appellant,

And

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

MOTION TO DISMISS EXPEDITED ELECTION APPEAL

ROSE LACKS STANDING TO PURSUE THIS APPEAL BECAUSE THE TRIAL COURT FOUND HE FAILED TO EXHAUST HIS ADMINISTRATIVE REMEDIES AND ROSE HAS NOT APPEALED FROM THIS FINDING.

On June 14, 2012, voters in the Dorchester County Republican Primary overwhelmingly cast their votes in favor of Respondent Sean Bennett for Senate District 38. The incumbent senator, Appellant Mike Rose, lost the election by a margin of 60.09% to 39.91%.

The Dorchester County Democratic Party filed this lawsuit, seeking a declaratory judgment to determine whether Bennett had simultaneously filed a copy of his economic disclosure statement at the same time he filed his Statement of Intention of Candidacy (SIC). The Democratic Party alleged that Bennett had not filed correctly and sought his removal from the ballot. Bennett and Rose were both named as defendants to this suit. (*See* First Amended Complaint (**attached as Exhibit A**)).

On August 6, 2012, The Honorable Howard P. King presided over the trial of this matter. Prior to trial, Rose filed a motion to amend his answer to assert a cross-claim against Bennett, arguing that Bennett should not be on the general election ballot because Bennett allegedly failed to simultaneously file his Statement of Economic Interests (SEI) at the same time he filed his SIC and because the SEI Bennett filed was allegedly not from the preceding calendar year. Bennett opposed this motion.

Judge King issued a final, written order on August 9, 2010. In the order, Judge King: (1) denied Rose's motion to file a cross-claim because, among other things, Judge King found that "Rose, as a candidate, was required by law (S.C. Code Section 7-17-560) to exhaust administrative remedies before filing a lawsuit challenging the validity of an election;" and (2)

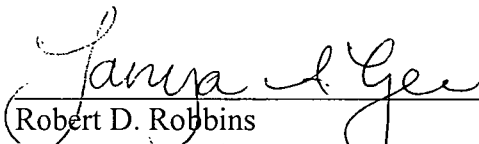
found as a fact that Bennett had simultaneously filed a current SEI at the same time he filed his SIC. (Final Order of The Honorable Howard P. King, filed August 9, 2012 (**attached as Exhibit B**)). The Plaintiff did not appeal from this order, but Rose has.

In his appeal, Rose argues two issues. First, he argues the trial court erred in finding that Bennett had filed an SEI for the preceding calendar year. Second, he argues the trial court erred in finding that Bennett had filed his SEI simultaneously with his SIC. Rose has not appealed from the trial court's finding that he could not utilize the court system to challenge the validity of the election because Rose failed to exhaust his administrative remedies. (See Initial Brief of Appellant (**attached as Exhibit C**)). Accordingly, that finding is the law of the case. *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 489 S.E.2d 470 (1997) (stating that an unappealed ruling is law of the case); *Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 161, 177 S.E.2d 544, 544 (1970) (stating that an unappealed ruling, "right or wrong, is the law of this case and requires affirmance.").

Just as Rose's failure to exhaust his administrative remedies prevented him from challenging the validity of the election in the circuit court, so too does it prevent him from challenging the validity of the election in the appellate court. See *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994) ("Where an adequate administrative remedy is available to determine a question of fact, one must pursue the administrative remedy or be precluded from seeking relief in the courts."). In other words, Rose's failure to appeal from the threshold issue of whether he was allowed to pursue an election challenge in the court system precludes him from appealing the remaining findings in the trial court's order. Cf. *Jones v. Lott*, 387 S.C. 339, 346, 692 S.E.2d 900, 903 (2010) ("[W]here a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because

the unappealed ground will become law of the case.”). Accordingly, Bennett moves to dismiss Rose’s appeal.

Respectfully submitted,


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Attorneys for Respondent Sean Bennett

August 24, 2012
Columbia, South Carolina

EXHIBIT A

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

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

Plaintiff,)
)

vs.)
)

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

DORCHESTER COUNTY REPUBLICAN)
PARTY (*Carroll Duncan, as Chairman*),)
COLLETON COUNTY REPUBLICAN)
PARTY; BERKELEY COUNTY)
REPUBLICAN PARTY, CHARLESTON)
COUNTY REPUBLICAN PARTY,)
SOUTH CAROLINA REPUBLICAN)
PARTY (*Matt Moore as Executive*)
Director & Chad Connolly, as Chairman),)
DORCHESTER COUNTY ELECTION)
COMMISSION (*Joshua Dickard as*)
Executive Director), COLLETON)
COUNTY ELECTION COMMISSION;)
BERKELEY COUNTY ELECTION)
COMMISSION; CHARLESTON)
COUNTY ELECTION COMMISSION;)
SOUTH CAROLINA STATE ELECTION)
COMMISSION (*Marci Andino, as*)
Executive Director & Chris Whitmire as)
Director of Public Information and)
Training); SEAN BENNETT; MIKE)
ROSE; TONY PISCATELLA)
)

Defendants.)
_____)

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

PRELIMINARY STATEMENT

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

PARTIES, JURISDICTION AND VENUE

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

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

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

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

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

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

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

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

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

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

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

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

12. Defendant, South Carolina State Election Commission (SEC), is a commission organized under the laws of South Carolina with a primary mission to ensure every eligible citizen has the opportunity to register to vote, participate in fair and impartial elections, and have the assurance that their votes will count. SEC is a necessary party to the action to ensure complete relief.

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

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

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

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

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

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

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

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

18. Incorporated in this action is a Petition for a Writ of Mandamus⁵ to compel officers charged with ministerial duties, which have refused to perform those duties, to immediately comply with the laws of South Carolina and carry out their respective duties.

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

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

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

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

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

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

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

24. Jurisdiction and venue are proper before this Court.

GENERAL ALLEGATIONS

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

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

⁷ Id.

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

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

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

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

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

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

32. On May 2, 2012, the South Carolina Supreme Court issued a Declaratory Judgment holding that any individual who did not comply with the plain language requirements as set forth under 8-13-1356 (B) and (E) was “improperly placed on the party primary ballots and must be removed” and directed the “appropriate official of the political parties to file with the State Election Commission . . . by noon on May 4, 2012, a list of only those non-exempt candidates who simultaneously filed and SEI and an SIC as required by Section 8-13-1356(B).” *Anderson* at 27.

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

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

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

36. Section 8-13-1356(E) further provides that, “[i]f the candidate's name inadvertently appears on the ballot, the officer authorized to receive declarations of candidacy or petitions for nomination must not certify the candidate subsequent to the election.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

⁹ Id. at 27.

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

RESPECTFULLY SUBMITTED

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

By: 

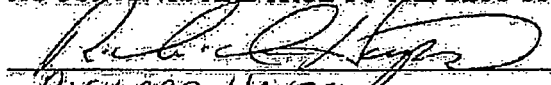
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Attorneys for Plaintiff

Columbia, South Carolina
July 20, 2012

VERIFICATION

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


RICHARD HAYES

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

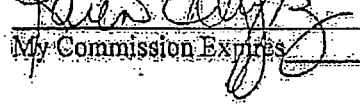

My Commission Expires 10/30/2016

EXHIBIT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

IN THE FIRST JUDICIAL CIRCUIT

DORCHESTER COUNTY)
DEMOCRATIC PARTY, and)
RICHARD HAYES)

Civil Action No. 2012-CP-18-1632

Plaintiffs,)

vs.)

ORDER

DCRP (*Carroll Duncan, as Chairman*);)
COLLETON COUNTY REPUBLICAN)
PARTY; BERKELEY COUNTY)
REPUBLICAN PARTY;)
CHARLESTON COUNTY)
REPUBLICAN PARTY; SOUTH)
CAROLINA REPUBLICAN PARTY)
(*Matt Moore as Executive Director &*)
(*Chad Connolly, as Chairman*);)
DORCHESTER COUNTY ELECTION)
COMMISSION (*Joshua Dickard as*)
(*Executive Director*); COLLETON)
COUNTY ELECTION COMMISSION;)
BERKELEY COUNTY ELECTION)
COMMISSION; CHARLESTON)
COUNTY ELECTION COMMISSION;)
SOUTH CAROLINA STATE)
ELECTION COMMISSION (*Marci*)
(*Andino, as Executive Director & Chris*)
(*Whitmire as Director of Public*)
(*Information and Training*); SEAN)
BENNETT; MIKE ROSE; TONY)
PISCATELLA; EDWARD B. CARTER,)

Defendants.

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CLERK OF COURT
DORCHESTER COUNTY

This matter came before the Court on August 6, 2012, with regard to the Dorchester County Democratic Party's (Plaintiff or DCDP) First Amended Summons and First Amended Verified Complaint for Declaratory Judgment, Writ of Mandamus, and Injunctive Relief. Present at the hearing were Dylan Goff, Esquire, Attorney for Plaintiff; Butch Bowers, Esquire,

1 of 12 *g/hk*

Attorney for Defendants DCRP (DCRP), Colleton County Republican Party (Colleton CRP), Berkeley County Republican Party (BCRP), Charleston County Republican Party (Charleston CRP), and South Carolina Republican Party (Matt Moore as Executive Director and Chad Connolly, as Chairman) (collectively, SCRCP); Todd Kincannon, Esquire, Attorney for Defendant Carroll Duncan as Chairman of the DCRP (Duncan); Andrew T. Sheppard, Esquire, Attorney for Defendants Dorchester County Election Commission (Joshua Dickard as Executive Director) (collectively, DCEC); Samuel W. Howell Esquire, Attorney for Defendant Colleton County Election Commission (Colleton CEC) and Defendant Berkeley County Election Commission (BCEC) and Charleston County Election Commission (Charleston CEC); M. Elizabeth Crum, Esquire, Attorney for Defendants South Carolina State Election Commission (Marci Andino as Executive Director and Chris Whitmire as Director of Public Information and Training) (collectively, SEC); Robert D. Robbins, Esquire, and Tanya Gee, Esquire, Attorneys for Defendant Sean Bennett (Bennett); Michael Rose, Esquire, and Joel Collins Jr., Esquire, Attorneys for Defendant Michael Rose (Rose); Chris Murphy, Esquire, Attorney for Defendant Tony Piscatella (Piscatella); and Lionel Lofton, Esquire and William H. Waring, III, Esquire, Attorney for Defendant Edward B. Carter (Carter).

FACTUAL BACKGROUND

This matter involves the allegations by Plaintiff that all non-incumbent Republican candidates—Sean Bennett, Ed Carter, Roger Goodman, John Hull, Michael Turner, Carol Duncan and Jordan Bryngelson—did not meet the eligibility requirements to be on the Republican Primary Election ballot because they did not file their respective statements of economic interest (SEI) and statements of intention of candidacy (SIC) at the same time and with the same official as required by S.C. Code Ann. § 8-13-1356 and Anderson v. S.C. Election

Comm'n, 397 S.C. 551, 725 S.E.2d 704 (2012) (petition for rehearing by way of clarification denied) and the candidates were erroneously certified to the SEC to appear on the Republican Primary Election ballot in disregard of the statute and opinion. Plaintiff also alleges that Tony Piscatella wrongfully concealed the DCRP's candidate filing records, which are alleged to be evidence in this case.

This matter was filed with the Clerk of Court of Dorchester County on June 29, 2012. On July 9, 2012, Bennett filed a Motion to Intervene as a defendant in this case and on July 12, 2012, Rose filed a Motion to Intervene as a plaintiff in this case. On July 12, 2012, the SEC filed its Motion to Expedite and Affidavit of Marci Andino to the Clerk of Court of Dorchester County (Clerk).

This matter was before the Hon. Dianne S. Goodstein, Chief Judge First Judicial Circuit. On July 19, 2012, Judge Goodstein recused herself and on July 20, 2012, the Supreme Court appointed me as the Circuit Judge to hear this matter. On July 20, 2012, Plaintiff filed its first Amended Summons and First Amended Verified Complaint for Declaratory Judgment, Writ of Mandamus and Injunctive Relief. The First Amended Summons and Verified Complaint, *inter alia*, added several defendants, namely the Colleton CRP, BCRP, Charleston CRP, Colleton CEC, BCEC, Charleston CEC, Bennett, Rose, and Piscatella.

On July 23, 2012, I held a conference call to determine the status of the case, the parties, and to resolve the Motion to Expedite. Given the impending S.C. Code Ann. § 7-13-350 deadline of noon August 15, 2012, for the political party defendants to certify, as appropriate, the candidates for inclusion on the general election ballot and the September 22, 2012 deadline for sending out absentee ballots¹ for the November 6, 2012 General Election, I granted the Motion to

¹ The Uniform and Overseas Citizens Absentee Voting Act (UOCAVA), as set forth in the United States Code, Title 42, Section 1973ff, *et seq.*, and S.C. Code Ann. § 7-15-460 (Supp. 2011) require that absentee ballots to all

Expedite, and issued an Order on July 23, 2012, granting the Motion to Expedite, adding the Colleton CRP, BCRP, Charleston CRP, Colleton CEC, BCEC, Charleston CEC, Bennett, Rose, and Piscatella as parties Defendant, and setting a scheduling order. Additionally all parties agreed that the relief sought was a declaratory judgment and that the request for injunction and mandamus should be withdrawn.

On July 27, 2012, the following parties filed an Answer to the First Amended Verified Complaint: the SEC; Bennett; Carroll S. Duncan as Chairman of the DCRP; Rose; Joshua Dickard as Executive Director of the DCEC; the Charleston CEC; the BCEC; the SCRIP and the DCRP. On July 30, Edward B. Carter was added as a party Defendant and filed his answer.

The Defendant Bennett filed a Motion to Dismiss for Lack of Standing. At the hearing, the Plaintiff, Dorchester County Democratic Party, move to add Richard Hayes, a Dorchester County resident and a resident of Senate District 38, as a party plaintiff. This motion was granted and the lack of standing issue became moot and the motion was denied.

On August 2, 2012, the Defendant Rose filed a motion for leave to Cross-Claim. This motion is denied on three grounds: (1) it was not timely filed in accordance with the expedited scheduling order to which Rose participated and did not object; (2) Rose, as a candidate, was required by law (S.C. Code Section 7-17-560) to exhaust administrative remedies before filing a lawsuit challenging the validity of an election; (3) Rose is not prejudiced by the denial of the motion. He previously filed and was granted the right to intervene as a party defendant and his position is before the Court by his timely filed answer raising the issues asserted in his cross complaint.

UOCAVA qualified electors be transmitted by September 22, 2012 (at least forty-five (45) days prior to the November 6, 2012 General Election). The UOCAVA absentee ballots must include the offices for all federal offices, State, and county wide or less than county wide offices that are up for election in General Election.



All other motions filed in this matter, including the motions for summary judgment, to dismiss under the doctrine of laches, to dismiss for failure to state a cause of action, and for directed verdict, are denied.

Testimony was presented by way of affidavits and all defendants were given the opportunity to cross examine the affiant.

Having observed the witnesses, reviewed the evidence and considered the arguments of the parties, the Court makes the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over the parties to this case and the subject matter of this case.
2. Mike Rose is a resident of Dorchester County, is the current Senator for District 38, and is seeking re-election to that office.
3. Sean Bennett is a resident of Dorchester County and is seeking election to the Senate District 38 seat.
4. Ed Carter is a resident of Dorchester County and is seeking election to the House District 97 seat.
5. Roger Goodman is a resident of Dorchester County and is seeking election to the Dorchester County Council District 6 seat.
6. John Hull is a resident of Dorchester County and is seeking election to the Dorchester County Council District 4 seat.
7. Michael Turner is a resident of Dorchester County and is seeking election to the Dorchester County Sheriff office.

8. Jordan Bryngelson is a resident of Dorchester County and is seeking election to the House District 97 seat.

9. Carroll Duncan (Duncan) is a resident of Dorchester County, the Chairman of the DCRP and is a candidate for the Dorchester County Council District 5 seat.

10. Tony Piscatella is a Dorchester County resident, was at all relevant times the DCRP treasurer, and the person designated by the Chairman of the DCRP to receive candidate filings during the 2012 primary election.

11. On July 7, 2012, Duncan sent a letter to Marci Andino (Andino) and Joshua Dickard (Dickard) purporting to decertify all non-incumbent Republican candidates for districts and offices within Dorchester County, including statewide and countywide or less than countywide offices, stating that the decertification was made in an effort at compliance with the June 29, 2012 Order in Dorchester County Democratic Party v. Dorchester County Republican Party, et al., 2012-CP-18-1632 granting a temporary restraining order. The TRO expired.

12. On July 18, 2012, Duncan sent another letter to Andino and Dickard, again purporting to decertify all non-incumbent Republican candidates, asserting that as the Chairman for the DCRP it is her responsibility to certify and decertify all candidates.

13. Andino responded on July 18, 2012, informing Duncan that, although the candidates for statewide offices file with their county party, the state party is given the authority and responsibility to certify and decertify under S.C. Code Ann. §7-15-11(2). The DCRP does not have the authority to decertify candidates for the South Carolina House of Representatives (House) or the Senate and only has the authority to certify and decertify candidates for countywide and less than countywide offices. The SCRCP has the authority to certify and decertify for statewide offices.

14. On May 2, 2012, the South Carolina Supreme Court ordered "the appropriate official of the political parties to file with the State Election Commission or the appropriate county election commission, by noon on May 4th, 2012, a list of only those non-exempt candidates who simultaneously filed an SEI and an SIC as required by § 8-13-1356(B)." Anderson v. South Carolina Election Commission, 397 S.C. 551, 725 S.E.2d 704 (2012).

15. In Florence County Democratic Party v. Florence County Republican Party, 727 S.E.2d 418, 420 (S.C. 2012), the South Carolina Supreme Court reaffirmed that a candidate must file an SEI and an SIC at the same time and with the same official to be eligible to be certified as the political party's candidate in the general election.

16. In Anderson and Florence County Democratic Party the Supreme Court held that the South Carolina election statutory scheme requires the political parties certified by the SEC, which parties nominate candidates by party primary, to certify that the candidates complied with the requirements of S.C. Code Ann. § 7-11-15 (Supp. 2012) and § 8-13-1356 (Supp. 2011).

17. S.C. Code Ann. 7-11-15(2) that requires the state party executive committee to certify House and Senate and does not authorize a county party executive committee to certify. The party executive committee responsible for certifying a candidate for nomination is the party responsible for decertifying the candidate.

18. Section 7-11-15 of the South Carolina Code, states, in pertinent part:

(2) Candidates seeking nomination for the State Senate or House of Representatives must file their statements of intention of candidacy with the county executive committee of their respective party in the county of their residence. The county committees must, within five days of the receipt of the statements, transmit the statements along with the applicable filing fees to the respective state executive committees. However, the county committees must report all filings to the state committees no later than five p.m. on March thirtieth. The state executive committees must certify candidates pursuant to Section 7-13-40. ...

No candidate's name may appear on a primary election ballot, convention slate of candidates, general election ballot, or special election ballot, except as otherwise provided by law, if (1) the candidate's statement of intention of candidacy has not been filed with the County Election Commission or State Election Commission, as the case may be, by the deadline and (2) the candidate has not been certified by the appropriate political party as required by Sections 7-13-40 and 7-13-350, as applicable. ...

19. S.C. Code Sections 8-13-1356 (B) and (E) and 7-11-15 are mandatory and govern in this matter.

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

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

...

(E) An officer authorized to receive declarations of candidacy and petitions for nominations under the provisions of Chapter 11 of Title 7 may not accept a declaration of candidacy or petition for nomination unless the declaration or petition is accompanied by a statement of economic interests. If the candidate's name inadvertently appears on the ballot, the officer authorized to receive declarations of candidacy or petitions for nomination must not certify the candidate subsequent to the election.

21. S.C. Code Ann. § 7-13-350 requires the state and county political parties respectively to certify to the SEC and the county election commissions the names of the candidates for the November 6, 2012 general election on or before noon on August 15, 2012, and states, in pertinent part:

Except as otherwise provided in this section, the nominees in a party primary or party convention held under the provisions of this title by any political party certified by the commission for one or more of the offices, national, state, circuit, multi-county district, countywide, less than countywide, or municipal to be voted on in the general election, held on the first Tuesday following the first Monday in November, must be placed upon the appropriate ballot for the election as candidates nominated by the party by the authority charged by law with preparing the ballot if the names of the nominees are certified, in writing, by the political party chairman, vice-chairman, or secretary to the authority, for general elections held under Section 7-13-10, not later than twelve o'clock noon on August fifteenth or, if August fifteenth falls on Saturday or Sunday, not later than twelve o'clock noon on the following Monday; and for a special or municipal general election, by

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at least twelve o'clock noon on the sixtieth day prior to the date of holding the election, or if the sixtieth day falls on Sunday, by twelve o'clock noon on the following Monday. Political parties nominating candidates by primary or convention must verify the qualifications of those candidates prior to certification to the authority charged by law with preparing the ballot. The written certification required by this section must contain a statement that each candidate certified meets, or will meet by the time of the general election, or as otherwise required by law, the qualifications for the office for which he has filed. Any candidate who does not, or will not by the time of the general election, or as otherwise required by law, meet the qualifications for the office for which he has filed shall not be nominated and certified, and such candidate's name shall not be placed on a general, special, or municipal election ballot

22. Mike Rose and Sean Bennett were the only two candidates on the June 12, 2012 Republican Primary Election ballot seeking the Republican nomination for the Senate District 38 seat. The SCRП certified both Mr. Rose and Mr. Bennett as Republican candidates for Senate District 38. Sean Bennett won the primary election by a percentage of 60.09% to 39.91%.

23. Ed Carter and Jordan Bryngelson were the only two candidates on the June 12, 2012 Republican Primary Election ballot seeking the Republican nomination for the House District 97 seat. The SCRП certified both Mr. Carter and Mr. Bryngelson as Republican candidates for this seat.

24. While Mr. Roger Goodman and Mr. John Hull were each certified by the DCRP as candidates for county council, each filed affidavits with this Court averring that neither filed a paper copy of his SEI at the same time and with the person as he filed his SIC.

25 The parties agreed and stipulated at the hearing that the issues involving the certifying of candidates Carter, Bryngelson, Goodman, Hull, Turner and Duncan had been resolved and that findings of fact and conclusions regarding these candidate was unnecessary.

26. The Court finds that Bennett did file his Statement of Economic Interest (SEI) at the time of filing his Statement of Intended Candidacy (SIC). This Court is a strong believer in the democratic process, and that members of the General Assembly (Senate and House of

Representatives) are representatives of the people who elected them. The Court declines to disenfranchise the voters of Dorchester County and invalidate the results of the Republican Primary on the basis of confusing and unconvincing testimony and evidence that Bennett did not file his SEI in accordance with Code Section 8-13-1356. Anderson, supra and Florence County, supra, require only that proof of filing a paper copy is necessary. There is evidence in the record that Bennett filed a paper copy of his SEI by the affidavit of Bennett himself and two others and none of this testimony was challenged by any of the defendants even though each was given an opportunity to do so by cross examination. Additionally, the DCRP officer in charge of filing, the Defendant Piscatella, also testified that a paper copy was filed. The paper copy cannot be located, but the fact that this copy is lost is not fatal to Bennett's claim of filing. The Court therefor finds, even though there is conflicting testimony in the record, that Bennett filed his copy of his SEI at the time he filed his SIC.

The Court is also unconvinced that the filing of the SEI with the DCRP did not meet the requirements of the statute that the filing be for the preceding year. The evidence is less than clear with regard to the period covered by Bennett's SEI filing, and the regulations of the State Ethics Commission (SEC) regarding filing requirements and time are murky and unclear. After weighing the evidence I find that the filing complies with S.C Code Section 8-13-1356 (B). The voters of Dorchester County have spoken, and it is appropriate that their voices be heard if it can be done within the law. The Court finds that Bennett has complied with both the statutory and case law.

26. The Court disapproves of the removal of the relevant records by Piscatella from the office of the DCRP. Even understanding the concerns of Piscatella to potential tampering of the records in view of potential access by twelve to thirty persons, there were ways of securing the



records other than removal. Nonetheless this removal in no way affects the validity or admissibility of the records and no convincing attack has been made on their authenticity.

NOW THEREFORE IT IS ORDERED THAT

The correctness or incorrectness of the filing of the non-incumbent candidates except Sean Bennett was concluded at the hearing on August 6, 2012 with the agreement of all the parties and that consent and order on the record is the Order of the Court with regard to those candidates;

AND IT IS FURTHER ORDERED THAT

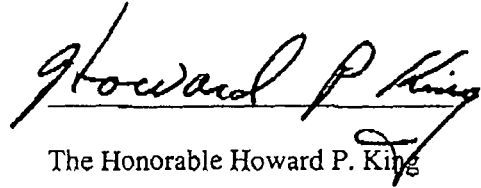
The complaint of the plaintiff, Dorchester County Democratic Party that Shawn Bennett be de-certified as the Republican candidate for Senate Seat 38 is denied and that by way of declaratory relief, as agreed by the parties, the Court does hereby declare that Sean Bennett has met the requirements of S.C. Code section 8-13-1356 and the case law interpreting that statute. The letter of July 18, 2012 of Ms. Duncan purporting to decertify him is of no force and effect as it exceeded the statutory authority of the DCRP. Bennett is eligible to be and was properly on the Republican Party Primary ballot and is eligible for certification on the general election ballot.

AND IT IS FURTHER ORDERD THAT

No sanctions are imposed and each party shall bear their own costs and attorney's fees.

11 7 12 9/12/12

AND IT IS SO ORDERED!



The Honorable Howard P. King

Presiding Judge

Sumter, South Carolina

August 9, 2012

EXHIBIT C

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas
Howard P. King, Circuit Court Judge

RECEIVED

AUG 20 2012

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

S.C. Supreme Court

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

v.

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

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

Mike Rose
is.....Appellant.

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STATEMENT OF ISSUES ON APPEAL

- I. Did the Circuit Court err in finding Mr. Bennett filed a SEI “for the preceding calendar year” as required by S.C. Code Ann. § 8-13-1356(B) where his purported SEI was made on a 2011 SEI report form rather than the requisite 2012 report form, resulting in the reporting of information for calendar year 2010?

- II. Did the Circuit Court err in finding Mr. Bennett filed his SEI at the same time as his SIC, as required by S.C. Code Ann. § 8-13-1356(B), Anderson, and Florence County where a preponderance of the evidence demonstrates otherwise?

STATEMENT OF THE CASE

Appellant Mike Rose, the incumbent candidate for the South Carolina Senate District 38, has appealed the Order of the Circuit Court ruling his opponent in the Dorchester County Republican Primary, Sean Bennett, filed his Statement of Economic Interests ("SEI") in accordance with S.C. Code Ann. § 8-13-1356, as interpreted by this Court in Anderson v. South Carolina Election Commission, 397 S.C. 551, 725 S.E.2d 704 (2012), and Florence County Democratic Party v. Florence County Republican Party, 398 S.C. 124, 727 S.E.2d 418 (2012).

The Dorchester County Democratic Party ("DCDP") filed this action for declaratory judgment, writ of mandamus, and injunction on June 29, 2012. (Verified Complaint). Neither Mr. Bennett, Mr. Rose, nor Mr. Piscatella was named as a defendant in this original action. Mr. Bennett filed a Motion to Intervene as a party-defendant on July 9. (Bennett's Motion to Intervene). Mr. Rose filed a Motion to Intervene as a party-plaintiff on July 12, along with a proposed Complaint alleging Mr. Bennett failed to comply with § 8-13-1356. (Rose's Motion to Intervene, with exhibits). The Honorable Diane Goodstein originally was assigned to this case, but recused herself. On July 20, this Court assigned this case to the Honorable Howard P. King. On July 23, Judge King issued an Order authorizing the addition of, *inter alia*, Mr. Rose, Mr. Bennett, and Mr. Piscatella as defendants, expediting the case, and setting a scheduling order. (Order dated July 23). Accordingly, on July 25, Plaintiff's First Amended Verified Complaint for Declaratory Judgment, Writ of Mandamus, and Injunctive Relief dated July 20 was filed, adding the additional defendants. (First Amended Verified Complaint).

On July 27, Mr. Rose filed his Answer to the First Amended Verified Complaint. In his Answer, Mr. Rose asserted Mr. Bennett violated § 8-13-1356 by failing to file his SEI at the same time as his SIC and, assuming Mr. Bennett did file a SEI, by failing to file it for the preceding calendar year. (Rose Answer). On August 2, Mr. Rose filed a Motion for Leave to File Cross-Claim, seeking leave to re-designate and have his Answer considered as an Answer and Cross-Claim against all other Defendants. In the alternative, Mr. Rose moved for leave to file an Amended Answer and Cross-Claim to the Plaintiff's first amended complaint. (Motion for Leave to File Cross-Claim). The following day, Mr. Rose filed an Amended Answer and Cross Claim. (Rose Amended Answer). The parties filed numerous motions in this case. On August 1, 2012 Mr. Rose filed a Motion for Partial Summary Judgment and a Motion for Sanctions for Spoliation of Evidence Against Bennett and Piscatella. (Rose Motion for Partial MSJ; Rose Motion for Sanctions).

A hearing was held on the merits of the action, as well as all outstanding motions, on August 6, 2012. The parties agreed the proper form of relief was a declaratory judgment and DCRP withdrew its requests for a writ of mandamus and injunction.¹ At the hearing, direct examination testimony was presented by affidavit and the parties were given the opportunity to cross-examine the affiant. (Hearing Tr. p. 5, lines 6-22).

By Order filed August 9, 2010, Judge King denied all parties' motions and declared Bennett's SEI met all the requirements of § 8-3-1356(B). Mr. Bennett was

¹ In response to Mr. Bennett's motion challenging the DCRP's standing to bring this action, Judge King ordered Dorchester County and District 38 resident Richard Hayes be added as a plaintiff, thereby mooting the standing issue. (Order dated August 9).

therefore found to be fully eligible to be on the Republican Party primary ballot and for certification on the general election ballot. (Order dated August 9).

On August 10, 2012, Mr. Rose appealed to this Court pursuant to Rule 203(d)(1)(A)(iv), SCACR, and S.C. Code Ann. § 14-8-200(b). Mr. Rose also moved for this appeal to be considered on an expedited basis.

Also on August 10, the South Carolina State Election Commission moved in the Circuit Court to lift the automatic stay imposed by the Notice of Appeal. (Motion to Lift Auto. Stay). No hearing was held on this motion and the parties were not given the opportunity to make a response. On August 13, Judge King ordered that the automatic stay be lifted. (Order Lifting Auto. Stay).

STATEMENT OF FACTS

Once again, it is necessary for this Court to interpret § 8-3-1356(B) so as to provide clarity and certainty in the election filing process. Section 8-3-1356(B) provides as follows:

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.

§ 8-3-1356(B) (emphasis added).

This case arises out of the certification of non-incumbent Republican candidates, including Mr. Sean Bennett, as the Dorchester County Republican Party (“DCRP”) nominees in the June 12, 2012 primary election.² Mr. Mike Rose is the current Senator for District 38, and was the incumbent candidate in the Dorchester County Republican Primary. (Stipulation of Facts at ¶ 1). Mr. Sean Bennett is seeking election to the South Carolina Senate District 38 seat, and was the non-incumbent candidate in the Dorchester County Republican Primary. (Stipulation of Facts at ¶ 2). Mr. Tony Piscatella acted as the Dorchester County Republican Party (“DCRP”) records custodian during the 2012 primary election. (Stipulation of Facts at ¶ 4). Mr. Bennett was certified as the winner by the DCRP chair, Carroll Duncan, based on Mr. Piscatella’s representations regarding Mr. Bennett’s filing of a paper SEI for the preceding calendar year at the same time and with the same official with whom he filed a Statement of Intention of Candidacy (“SIC”). (Duncan Aff.).

Filing for the primary election opened on March 16, 2012 and closed March 30, 2012. Mr. Piscatella was the individual in charge of the candidate filing process. (Duncan Aff. at ¶3). The South Carolina Republican Party (“SCRCP”) previously

² There is no Democratic Party candidate for Senate District 38.

provided candidate filing instructions and a checklist to the county Republican parties. This checklist and instructions were based on information provided to the SCRP by the South Carolina State Election Commission and the South Carolina State Ethics Commission. (Id. at ¶5; Ex. B to Piscatella Trial Aff., SCGOP Instructions). The SCRP's instructions explained the various documents the candidates needed to file. (Id. at ¶6). With respect to the SEI filing requirement, the SCRP instructed candidates to bring proof of online filing showing that the SEI form had been filed with the South Carolina State Ethics Commission. These instructions did not state that a paper copy of the SEI itself must be filed. (Id.; Ex. B. to Piscatella Trial Aff., SCGOP Instructions). The checklist provided by the SCRP also required a "proof of online filing" rather than a paper copy of the SEI itself. (Id. at ¶8; Ex. A to Piscatella Aff., Bennett's Checklist; Tr. p. 250, lines 9-25). Neither the instructions nor the checklist complied with this Court's later opinions in Anderson and Florence County. On March 12, 2012, the DCRP sent an email to all elected officials announcing the candidates who it was believed planned to file with the DCRP to run in the primary and setting forth the above-referenced instructions. (Duncan Aff. at ¶7).

According to Mr. Piscatella, rather than comply with the instructions of the South Carolina State Election Commission, the South Carolina State Ethics Commission, the SCRP, and the checklist provided, he instead required the candidates to file a paper SEI for the preceding calendar year at the same time and with the same official with whom the candidates filed a SIC. (Id. at ¶12). As will be discussed in greater detail in Section II, infra, several non-incumbent DCRP candidates testified they did not file paper SEIs, although their official files were later found to contain them. Still other candidates

testified Mr. Piscatella did not require them to file a paper SEI and one was only filed upon their insistence.

Despite the statements of the aforementioned candidates, Mr. Piscatella testified that, on March 20, 2012, Mr. Bennett, non-incumbent candidate for South Carolina Senate District 38, filed in front of a female witness: (1) his SIC and pledge; (2) his SEI together with proof of filing; (3) a Candidate Support Committee Declaration Statement; and (4) his CDF. (Supp. Aff. of Tony Piscatella).

After the filing period, the South Carolina Supreme Court issued its decision in Anderson, firmly ruling non-exempt candidates seeking nomination for office in a political party primary must have filed a paper copy of a SEI at the same time and with the same official with whom the individual filed a SIC. Anderson also held this statutory requirement could not be satisfied by filing an SEI electronically with the South Carolina State Ethics Commission. The Court ordered the political parties to remove any non-incumbent candidate who had not precisely complied with the statute.

Thereafter, the SCRP required county party chairmen to compile a certified list of candidates who had lawfully filed by meeting all the requirements of Anderson. (Duncan Aff., ¶11). Carol Duncan, Chairman of the DCRP, did not personally review the candidates' files for compliance with Anderson. (Tr. p. 78, line 12-p. 79, line 8; p. 81, lines 18-24). Instead, she asked Mr. Piscatella to review the DCRP files and determine who had filed paper SEIs and who had not. (Duncan Aff., ¶11). Mr. Piscatella conducted a ten-minute review of the candidates' filings and then reported that all but one candidate had filed a paper SEI with a paper SIC. (Id. at 11; Tr. p. 264, line 23-p. 265, line 4; p. 265, lines 15-18). Mr. Piscatella further indicated he had deviated from the

instructions and the checklist he had been given and had required all candidates to file a paper SEI. (Duncan Aff., ¶11). Based on Mr. Piscatella's representations, on May 4, 2012, Ms. Duncan prepared and hand-delivered a letter to the Dorchester County Election Commission certifying all Dorchester County Republican candidates but one, and sent the letter to the SCRCP via email. (Id. at ¶13).

On June 5, 2012, this Court issued its decision in Florence County, holding candidates who had filed a SIC were not exempt from filing a paper SEI. In light of this ruling, Ms. Duncan asked Mr. Piscatella to again verify whether any candidates should be decertified. (Id. at ¶14). Mr. Piscatella again responded that no candidates needed to be decertified. (Id.).

The primary election was held on June 12, 2012. Mr. Bennett was declared the winner. Following the election, questions again arose regarding the proper certification of candidates. On June 13, after receiving an unexpected and unsolicited telephone call which raised doubts as to Mr. Bennett's filings, Mr. Rose asked Mr. Piscatella to allow him to review the paperwork filed with the SCRCP by all DCRP candidates, particularly that of Mr. Bennett. Mr. Piscatella agreed to do so. (Rose Aff., ¶¶6-7). Mr. Piscatella then notified Ms. Duncan of Mr. Rose's request and Ms. Duncan, in turn, told Mr. Piscatella to again check the candidates' filings. (Tr. p. 92, lines 11-19; p. 93, lines 1-15; Duncan Aff., ¶¶15-16; see also Piscatella Supp. Aff., ¶13). Mr. Piscatella then reported to Ms. Duncan that all paper SEIs except Mr. Bennett's were in the candidates' files. (Duncan Aff., ¶16).

Although Mr. Piscatella agreed to give Mr. Rose a copy of the requested paperwork that day, he did not do so. (Rose Aff., ¶7). Instead, Mr. Rose received emails

from Mr. Piscatella and Matt Moore, Executive Director of the SCRP, on June 15, 2012, indicating that, at the direction of the SCRP, the requested copies would not be provided. (Id. at ¶¶9-11). Unbeknownst to Mr. Rose, there was no SEI in Mr. Bennett's file at the time Mr. Rose requested a copy of the DCRP candidates' files and at the time Mr. Piscatella and Mr. Moore responded to that request. (Id. at ¶12); see also (Supp. Aff. of Tony Piscatella, at ¶¶13-14). Although Ms. Duncan, Mr. Piscatella, and Mr. Moore were aware since at least June 13 that Mr. Bennett's SEI was not in his candidate file, Mr. Rose did not learn this until July 5. (Rose Aff. at ¶¶12-13).

Mr. Piscatella continued to deny requests to provide copies of the candidates' files for verification. (Id. at ¶¶16-18; see also Duncan Aff, ¶22; Duncan Letters dated July 9 & 11). He offered no plausible explanation for the mysterious absence of Mr. Bennett's SEI. (Rose Aff., ¶¶ 17-23; see also Duncan Press Statement) (cf. Supp. Piscatella Aff.). Instead, Mr. Piscatella has twice acted to alter the contents of Mr. Bennett's official DCRP candidate file. On June 13, 2012, Mr. Piscatella simply printed and added to Mr. Bennett's official DCRP candidate file a copy of Mr. Bennett's SEI previously filed electronically with the South Carolina Ethics Commission on March 19, 2012. (Tr. p. 94, lines 11-25; p. 266, lines 4-13; see also Rose Aff., ¶¶ 16-17, 20-21, 23, 27-29). In addition, on or about June 21, Mr. Piscatella and Mr. Bennett acted to "supplement" Mr. Bennett's official DCRP candidate file with personal documents of Mr. Bennett. (Piscatella Supp. Aff., ¶14; Rose Aff, ¶¶ 13, 19-21, 27-34).

On June 29, the DCDP brought this lawsuit seeking a declaration that the candidacies of several Dorchester County Republicans, including Mr. Bennett, were unlawful because they failed to comply with § 8-3-1356 by filing a paper copy of their

SEIs at the same time and with the same official with whom they filed a SIC. (Verified Complaint). Mr. Bennett moved to intervene as a party-defendant and Mr. Rose moved to intervene as a party-plaintiff. (Bennett & Rose Motions to Intervene). On July 11, Mr. Piscatella was removed as the DCRP candidate filing officer/records custodian and directed to provide all DCRP documents to the newly-appointed records custodian. (Duncan Letter dated July 11). Mr. Piscatella still refused to produce the records. (Duncan Aff., ¶22). Instead, he took all the candidate files to his home. (Tr. p. 250, lines 5-8). Accordingly, Judge King ordered Mr. Piscatella to file the DCRP documents with the Dorchester County Clerk of Court by 5 p.m. on July 24, 2012, along with three (3) affidavits Mr. Piscatella prepared. (Order dated July 23).

Thereafter, Rose filed his Answer to the First Amended Verified Complaint. In his Answer, Mr. Rose asserted a second statutory requirement Mr. Bennett's SEI failed to meet. The copy of Mr. Bennett's SEI that Mr. Piscatella later added to Mr. Bennett's file is not "for the preceding calendar year" as explicitly required by statute §8-3-1356(B). (Answer, ¶5). Rather, this SEI is on a reporting form for the year 2011 (reporting period January 1, 2010, to December 31, 2010), not a reporting form for the year 2012 (reporting period January 1, 2011, to December 31, 2011, i.e., the year "preceding" the 2012 elections).³ (Sean Bennett's SEI; Ex. 19 to Rose Aff., Public Reporting Name Results 2011; Ex. 20 to Rose Aff., Public Reporting Name Results 2012; see also Rose Aff., ¶¶35-40). Therefore, Mr. Rose requested the Circuit Court declare Mr. Bennett an ineligible and unlawful candidate in accordance with the mandate

³ This SEI from Mr. Bennett's personal records was improperly added to his official DCRP file by Piscatella on or about June 21. (Piscatella Supp. Aff. ¶14).

of Anderson and Florence County. (Answer, Prayer for Relief). Mr. Bennett claims the economic interests information entered on his SEI was for calendar year 2011. However, he admits that his SEI should have been denominated “2012” and was instead labeled “2011” due to a “scrivener’s error.” In essence, Mr. Bennett contends this mistake is of no import. (Bennett Aff. in Response to Rose MSJ, ¶6; Bennett’s Memo. in Opp. to Rose’s Partial MSJ, p.3).

In its August 9 Order, the Circuit Court relied chiefly on the affidavits of Mr. Bennett and Mr. Piscatella to find that Bennett filed a paper copy of his SEC at the same time as his SIC, despite the fact that this paper copy could not be located. (Order, p. 10, ¶25). The Circuit Court offered no explanation about what happened to this document. In addition, Judge King found the evidence concerning whether Bennett’s SEI was filed for the preceding year, along with the filing requirements, to be unclear, but determined Bennett’s SEI complied with § 8-13-1356(B).⁴ (Id.). Therefore, the Circuit Court found Bennett met the requirements of § 8-13-1356(B) and the recent case law interpreting that statute, was properly included on the Republican Party Primary ballot, and is eligible for certification on the general election ballot. (Id., p. 11).

This appeal follows.

⁴ Judge King denied Mr. Rose’s Motion for Leave to File an Amended Answer and Cross-Claim, but ruled the issues Rose sought to raise by way of cross-claim—including that Mr. Bennett’s SEI did not comply with § 8-13-1356(B) because it was not for the “preceding year”—were sufficiently before the court for adjudication because they were asserted and explained in his timely filed Answer. (Order p. 4). Accordingly, Judge King ruled on the merits of the preceding year issue. (Id. at p. 10).

STANDARD OF REVIEW

A suit for declaratory judgment is neither legal nor equitable, but is determined by the nature of the underlying issue. Felts v. Richland County, 303 S.C. 354, 356, 400 S.E.2d 781, 782 (1991). Although the parties ultimately agreed only a declaratory judgment was necessary to resolve the action, the DCDP's Complaint and First Amended Complaint also sought injunctive relief, which is equitable in nature. Miller v. Borg-Warner Acceptance Corp., 279 S.C. 90, 302 S.E.2d 340 (1983). The sole purpose of the action and the focus of the parties' proof was on whether Mr. Bennett complied with S.C. Code § 8-13-1356(B) and this Court's decisions in Anderson and Florence County. Accordingly, Mr. Rose submits the instant case is equitable in nature. In an action in equity, tried by a judge alone, the appellate court may not only correct errors of law, but has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. Townes Assocs., Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976).

Alternatively, should the Court determine the instant case is an action at law, Mr. Rose submits the Circuit Court's factual findings also must be reversed under the standard of review applicable to actions at law. In an action at law tried without a jury, the appellate court may correct errors of law and overturn the trial court's factual findings if they are determined to be without evidence that reasonably supports those findings. Id. at 86, 221 S.E.2d at 775.

ARGUMENT

I. The Circuit Court Erred in Ruling Sean Bennett Filed an SEI for the Preceding Calendar Year in Accordance With § 8-13-1356(B).

In its Order, the Circuit Court found the requirement that the SEI filed be for the preceding year to be “murky and unclear” and resolved this perceived lack of clarity by ruling it was “unconvinced that the filing of [Bennett’s] SEI with the DCRP did not meet the requirements of the statute that the filing be for the preceding year.” (Order, p. 10, ¶ 25). In so finding, the Circuit Court misapplied the law as plainly set forth in § 8-13-1356(B) and interpreted by this Court in Anderson v. South Carolina Election Commission, 397 S.C. 551, 725 S.E.2d 704 (2012), and Florence County Democratic Party v. Florence County Republican Party, 398 S.C. 124, 727 S.E.2d 418 (2012). Accordingly, the Circuit Court’s ruling that Bennett’s SEI complies with S.C. Code § 8-13-1356(B) concerning the “preceding calendar year” requirement is an error of law and must be reversed by this Court.

Contrary to the ruling of the Circuit Court in this case, this Court has previously held in two separate decisions that the plain language of § 8-13-1356(B) is unambiguous. Anderson, 397 S.C. at 557, 725 S.E.2d at 707; Florence County, 727 S.E.2d at 420-21.

The Court is no doubt familiar with the requirements of § 8-13-1356(B):

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

(emphasis added); see also S.C. Code of Regulations R. 52-502(B)(2) (“A person who has not filed a Statement of Economic Interests in the same calendar year as his declaration of candidacy or petition for nomination shall complete the Statement of Economic Interest Form for the *preceding calendar year* and file the entire Statement

with the official with whom the candidate files his declaration of candidacy or petition for nomination.”) (emphasis added).

In Anderson and Florence County, the Court addressed the portion of the statute mandating a candidate’s SEI be filed “at the same time and with the same official with whom the candidate filed a declaration of candidacy or petition for nomination.” The Court held the plain language of the statute unambiguously requires a non-exempt candidate file a paper copy of his SEI at the same time and with the same official with whom the candidate files his or her SIC. Anderson, 397 S.C at 557, 725 S.E.2d at 707; Florence County, 727 S.E.2d at 420-21.

The issue presented here concerns the portion of § 8-13-1356(B) requiring the SEI be “for the preceding calendar year.”⁵ Based on the Court’s ruling in Anderson, the requirement that the SEI filed must be for the preceding calendar year is no less mandatory and no less clear than the other portions of the statute.

The South Carolina Code of Regulations specifies the “[t]he Statement of Economic Interests reporting period is the previous calendar year from January 1 through December 31.” (S.C. Code of Regulations R. 52-601(C)). Thus, the reporting period for a 2012 form is January 1, 2011, through December 31, 2011. Likewise, the reporting period for a 2011 form is January 10, 2010, through December 31, 2010.

It is undisputed that Bennett filed in 2012 for the 2012 primary. Accordingly, to comply with the requirement that the SEI filed be for the preceding calendar year, it was necessary for Mr. Bennett to file a 2012 SEI report form. This form would cover the

⁵ Upon information and belief, two (2) other cases dealing with the “preceding year” issue are currently pending in the circuit court. DiSabato v. Ryhal, 2012-CP-26-6208, is pending in Horry County and Sellers v. Colleton County Republican Party, 2012-CP-15-599, is pending in Colleton County.

reporting period of the preceding calendar year of January 1, 2011 through December 31, 2011. Bennett's SEI reflects it is for "Year: 2011." However, this reference to 2011 does not mean the SEI is for the preceding calendar year as the statute mandates. To generate an SEI, a candidate must visit the South Carolina State Ethics Commission website.⁶ To prevent candidates from filing for the wrong year, the South Carolina Ethics Commission SEI forms contain explicit instructions regarding how to select the appropriate SEI filing year and, in turn, generate the correct year SEI form. The instructions state: "Please select the filing year for this report. The information in this report is for the previous calendar year." The instructions continue to explain the "2011 report [is] for information from 1/1/10 to 12/31/2010" and the "2012 report [is] for information from 1/1/11 to 12/31/2011."⁷ (Rose Aff., ¶37) (emphasis added). Accordingly, it is up to the candidate to choose the correct filing year from the drop-down menu. Choosing to complete a report for filing year 2011 results in a SEI form reporting economic interests for calendar year 2010, while choosing to complete a report for filing year 2012 results in a SEI reporting economic interests for calendar year 2011. Importantly, Mr. Bennett is the only one of nineteen Dorchester County candidates to file his SEI for report year 2011. Every other candidate filed for report year 2012, as required by the statute. (Tr. p. 297, lines 2-5; p. 307, lines 21-25; Rose Aff. ¶¶25 & 39).

⁶ The Ethics Commission is the body statutorily charged with creating SEI forms and has done so. S.C. Code Ann. § 8-13-1120(A) (empowering Ethics Commission to create SEI forms); S.C. Code Regs. § 52-204(E)(13) (approving SEI forms).

⁷ See also <http://ethics.sc.gov/PDFs/Statement%20of%20Economic%20Interest%20User%20Guide%20V1%200.pdf>.

Despite these clear instructions, Mr. Bennett selected the form for filing year 2011 rather than 2012. The SEI Mr. Bennett claims to have filed with Mr. Piscatella is on a 2011 SEI form, the reporting period for which is January 10, 2010 through December 31, 2010. (Bennett's SEI; Ex. 19 to Rose Aff., Public Reporting Name Results 2011; Rose Aff., ¶¶35-40). Therefore, Mr. Bennett's SEI is not for the preceding calendar year as required by statute. Moreover, there is no evidence that a 2012 SEI for Mr. Bennett exists because one has not been filed with the South Carolina State Ethics Commission. (Ex. 20 to Rose Aff., Public Reporting Name Results 2012; Rose Aff, at ¶¶ 35-40). Accordingly, assuming arguendo that Mr. Bennett filed his SEI with his SIC, the Circuit Court committed an error of law by ruling the SEI was for the preceding calendar year as required by § 8-13-1356(B).

It is also worth noting that the Legislature found the "for the preceding calendar year" requirement important enough to devote an entire subsection of § 1356 to the rare circumstance where a filing period is in one calendar year, but the election is in the following calendar year. Subsection (F) states "If the candidate files for office before January first of the year in which the election is held, he must file a supplementary statement [of economic interests] covering the preceding calendar year no later than April first of year in which the election is held." § 8-13-1356(F). Although any argument that the preceding calendar year requirement is inconsequential is clearly in contravention with Anderson, such an argument also is misguided in light of subsection (F). If the Legislature did not find it important whether the SEI filed actually be for the preceding calendar year, then it certainly would not have included a separate subsection

that operates only in the unusual situation where a filing period is in one year and the election is in the next year.

In fact, Mr. Bennett admits his SEI should have been denominated “2012,” but was instead erroneously labeled “2011.”⁸ (Bennett’s Memo. in Opp. to Rose’s Partial MSJ, p. 3). He characterizes this admitted mistake as nothing more than a “scrivener’s error” and essentially advances a “no harm, no foul” argument by contending the information entered on his 2011 SEI was for calendar year 2011. (Bennett Aff. in Response to Rose MSJ, ¶6). The reason for Mr. Bennett’s error is irrelevant. The importance of using the correct year SEI form is further demonstrated by the fact that, as a result of Mr. Bennett’s use of the incorrect form, his SEI is not accessible by the public via the South Carolina State Ethics Commission website if a search is performed for the filing year 2012. Instead, the public must perform a search for the filing year 2011 to locate Mr. Bennett’s form.⁹ Furthermore, the paper copy of the SEI Mr. Bennett allegedly filed with the DCRP is a 2011 SEI form, which on its face means the information reported on the form is for 2010. Using the wrong-year SEI form completely changes the meaning of the information reported on the form.

⁸ Interestingly, Mr. Bennett managed to correctly date his Campaign Disclosure Form (“CDF”). The CDF filing scheme is like the SEI filing scheme—the filing date is the date the form is filed, but the information reported is for activity from the preceding time period. The CDF dated January 10, 2012 that Bennett filed electronically with the South Carolina State Ethics Commission covers the previous quarter, from October 1, 2011 through December 31, 2011. (Rose Aff. ¶ 40).

⁹ A search is performed by selecting “Public Reporting,” then “Individual Financial Reports,” then “Statement of Economic Interest Reports.” See <http://ethics.sc.gov>. When filing year 2012 is selected and Mr. Bennett’s last name entered, his SEI is not returned in the search results. It is, however, returned in the search results for filing year 2011. (Ex. 19 to Rose Aff., Public Reporting Name Results 2011; Ex. 20 to Rose Aff., Public Reporting Name Results 2012).

Furthermore, the South Carolina Supreme Court's recent decisions make it clear there can be no innocent mistakes in candidate filings which contravene § 8-13-1356(B):

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

Anderson, 397 S.C. at 558-59, 725 S.E.2d at 708; see also Florence County, 727 S.E.2d 418. The Court's decisions leave no room for exceptions to the plain and unambiguous terms of the statute—there is no good faith exception, no inadvertent mistake exception, no ignorance exception, no substantial compliance exception, no first-time filer exception, and no scrivener's error exception to § 8-13-1356(B). Should such exceptions be recognized, there would be a never-ending series of cases seeking to fit candidates' filings within an exception and the risk of multiple inconsistent decisions. Instead, this Court has attempted to avoid such a scenario by its choice of language in Anderson and Florence County. Hundreds of non-incumbent candidates were ruled ineligible as a result of a similar innocent, good faith mistake of failing to file their correct year, paper SEIs with their candidacy documents despite the fact that they submitted their SEIs online. In some instances these disqualified candidates even accompanied their SICs with proof of online filing of their SEIs. These candidates and the party officials assisting them followed the state party's erroneous instructions and the checklist. Mr. Bennett's alleged innocent mistake in filing a 2011 SEI instead of a 2012 SEI should be treated no differently than the mistakes of hundreds of other candidates who failed to strictly comply with the statute.

In addition, the Circuit Court's decision appears to have been based, in part, on the fact the primary election already had occurred and Mr. Bennett had prevailed in that

election. The Order is peppered with references to the Circuit Court's hesitancy to "disenfranchise the voters or Dorchester County and invalidate the results of the Republican Primary." (Order, pp. 9-10, ¶ 25; see also p. 10 ("The voters of Dorchester County have spoken, and it is appropriate that their voices be heard if it can be done within the law."); Tr. p. 310, line 6-p. 312, line 9). Although Mr. Rose understands the significant impact of the Court's decision, whether Mr. Bennett complied with § 8-13-1356(B) and was therefore a valid candidate in the primary must not be influenced by the fact the primary election already has occurred. If Mr. Bennett did not comply with the statute, he was not a lawful candidate and his name should not have appeared on the primary ballot. This remains true regardless of the fact the problems surrounding his filing were not discovered until after the primary election. See Ravenel v. Dekle, 265 S.C. 364, 218 S.E.2d 521 (1975) (holding candidate ineligible to serve as governor based on failure to meet statutory residency requirement even after he prevailed in the Democratic primary election).

In short, the Circuit Court's ruling that the requirements for filing an SEI in accordance with § 8-13-1356(B) are "unclear" stands in direct contravention with this Court's decisions in Anderson and Florence County. The statute very clearly requires the SEI filed be for the "preceding calendar year." To comply with this provision, Mr. Bennett was required to file a 2012 SEI. He did not do so. Accordingly, Judge King committed an error of law in ruling Mr. Bennett's 2011 SEI complies with § 8-13-1356(B). This ruling must be reversed.

II. The Circuit Court Erred in Ruling Bennett Filed His SEI Simultaneously With His SIC.

Despite the tremendous amount of credible evidence demonstrating Mr. Bennett did not file a paper copy of his SEI together with his SIC, the Circuit Court relied solely on the bald assertions of Mr. Bennett, Mr. Piscatella, and Mr. Bennett's long-time friend and business partner, Rebecca Hyer Woods, to support its finding of compliance with § 8-13-1356(B). However, the preponderance of the evidence demonstrates Mr. Bennett did not file a paper SEI along with his SIC, as required by law.¹⁰

Mr. Bennett, as to be expected, states in his affidavit that he filed a paper SEI at the same time as his SIC. (Bennett Aff., ¶¶3 & 8-9; Bennett Supp. Aff., ¶7). Similarly, even though he was provided instructions and a checklist by the SCRP requiring only proof of online filing of a SEI, Mr. Piscatella testified he filed Mr. Bennett's SEI at the same time as his SIC. (Duncan Aff. at ¶12; Piscatella Aff. at ¶ 5 & Ex. A thereto). However, Mr. Piscatella's actions subsequent to the Court's decisions in Anderson and Florence County cast serious doubt on the accuracy of the averments by Mr. Bennett and Mr. Piscatella concerning Mr. Bennett's simultaneous filing of a paper SEI.

When questions arose regarding the DCRP candidates' compliance with § 8-13-1356(B) after the Republican primary, Mr. Piscatella printed a copy of Mr. Bennett's SEI from the South Carolina Ethics Commission website and added it to his official candidate file. (Rose Aff., ¶¶ 16-17, 20-21, 23, 27-29 & Ex. 6 thereto; Tr. p. 94, lines 11-25, p. 266, lines 4-13). A few weeks later, Mr. Piscatella had his attorney obtain copies of Mr.

¹⁰ As stated previously, should the Court determine the instant case is an action at law, the Circuit Court's factual findings also must be reversed under the standard of review applicable to actions at law. The Circuit Court's factual findings regarding Mr. Bennett's timely filing of his SEI are not reasonably supported by the evidence. Townes Assocs., 266 S.C. at 86, 221 S.E.2d at 775.

Bennett's personal documents and Mr. Piscatella again improperly supplemented Mr. Bennett's official DCRP file with those personal documents. (Piscatella Supp. Aff. at ¶ 14).

Around the same time Mr. Piscatella was inappropriately adding SEIs to Mr. Bennett's official candidate file, Mr. Rose was attempting to obtain copies of the DCRP candidates' files in an effort to verify Mr. Bennett had complied with § 8-13-1356(B). (Rose Aff. at ¶¶6-7). Mr. Rose was essentially stone-walled in this endeavor. (*Id.* at ¶¶9-11). In fact, it was eventually revealed that Mr. Piscatella took the official DCRP candidate files from the party office to his home on June 21. (Tr. p. 250, lines 5-8). Although Ms. Duncan demanded Mr. Piscatella provide the records or a copy of the records for her to review, he repeatedly refused. Even when Ms. Duncan relieved him of his duties, Mr. Piscatella still refused to provide the files to the new custodian. (Duncan Aff. at ¶22; Duncan Letters dated July 9 & 11). After holding the official files at his home for over a month, Mr. Piscatella finally produced the documents on July 24 only upon being ordered to do so by Judge King.¹¹ (Order dated July 23).

The contents of the DRCPC files ultimately produced by Mr. Piscatella cast doubt on the accuracy of his representations as to the contents and completeness of the candidates' files. An analysis of the inconsistencies and discrepancies revealed by the

¹¹ Pursuant to § 8-13-1356(C), the filing official is required to file a copy of each candidate's SEI with the appropriate supervisory office within five business days after the candidacy books close. Thus, any SEI submitted by Mr. Bennett during the candidacy period should have been filed by Mr. Piscatella with the Senate Ethics Committee by no later than April 5. Mr. Piscatella testified he was not aware of this requirement. (Tr. p. 257, lines 6-12). Arguably, had Mr. Piscatella filed the candidates' SEIs as required by statute, the interested parties would have had access to the SEIs and been able to evaluate their compliance, including Mr. Bennett's compliance, with subsection (B) much earlier. Instead, as discussed above, Mr. Piscatella withheld the files until July 24.

aforementioned documents is set forth fully in the Affidavit of Mike Rose and encompasses the following categories: (1) the intermingling of Mr. Bennett's personal documents ("Bennett Version #2") with the documents in the official DCRP candidate file for Mr. Bennett ("Bennett Version #1"); (2) a comparison of the differences/inconsistencies between the Bennett Version #1 documents and the Bennett Version #2 documents; (3) a comparison of the differences/inconsistencies between the Bennett Version #1 documents and the Bennett Version #2 documents with the campaign documents of the other DCRP candidates; (4) inconsistencies in DCRP candidates' documents produced to the Court by Mr. Piscatella and the Candidate Packet Checklist; and (5) Mr. Piscatella's prior inconsistent representations as to the file of candidate Mondo. (Rose Aff., ¶¶27-31). No evidence has been presented to dispute or explain the many discrepancies in the candidates' files described above. In fact, Mr. Piscatella was unable to offer any explanation as to how SEIs came to be in the files of candidates who admittedly did not file them. (Tr. p. 253, line 6-p. 254, line 4). Overall, a close review of the candidates' files and surrounding circumstantial evidence supports an inference that Mr. Piscatella's record-keeping practices were not as industrious or reliable as he portrayed to the court.¹²

¹² The numerous discrepancies in the DCRCP candidates' files, coupled with Mr. Piscatella's refusal to produce the files, led Mr. Rose to move for sanctions against Mr. Piscatella based on spoliation of evidence. Although the Circuit Court denied this motion, it expressed disapproval over Mr. Piscatella's removal of the records from the DCRP office. (Rose Sanctions Motion & Memo; Order dated August 9, pp. 10-11). Even without the benefit of an adverse inference based on Mr. Piscatella's spoliation of the files, a preponderance of the evidence demonstrates Mr. Bennett did not file his SEI at the same time as is SIC. The evidence demonstrates a pattern of documents not filed by the candidates being subsequently added to the files. Accordingly, contrary to the ruling of the Circuit Court, the contents of the files, as well as Mr. Piscatella's alleged

Furthermore, a number of DCRP candidates attested to discrepancies in their official candidates' files, including some involving the unexplained addition of SEIs not filed by those candidates. In addition, Mr. Piscatella admitted it would not surprise him to learn there were errors in the candidates' files. (Tr. p. 248, line 16-p. 249, line 2). For instance, Roger W. Goodman, a non-incumbent candidate in the June 12, 2012 Republican Primary for Dorchester County District #6, swears he gave Mr. Piscatella his SIC on March 16, 2012, at the DCRP Headquarters, but did not give Mr. Piscatella (or any other official) a paper copy of his SEI. (Aff. of Roger Goodman, at ¶¶ 2-4). Instead, Mr. Goodman electronically filed his SEI before arriving at the DCRP Headquarters as instructed in the email he received from the DCRP. (Id. at ¶5; see also Duncan Aff. at ¶7). Mr. Goodman did not authorize, request, or see Mr. Piscatella or any other person print, file, or have a paper copy of his SEI. (Id. at ¶4). The checklist provided by the SCRP was used for Mr. Goodman's filing. (Id. at ¶6). As indicated previously, the checklist did not require a paper copy of the SEI. (Id.). Mr. Goodman also did not present a Candidate Campaign Disclosure form ("CDF") as a part of his filing. (Id. at ¶¶5-6, 8-9; see also Goodman Supp. Aff, ¶5). Indeed, Mr. Goodman has neither had nor seen a paper copy of his CDF, nor did he authorize, request, or see Mr. Piscatella or any other person to print, file, or have a paper copy of his CDF. (Goodman Supp Aff., ¶5). Nonetheless, the Goodman file, part of the documents Mr. Piscatella surrendered to the Dorchester County Clerk of Court on July 24 as ordered by Circuit Court, includes a paper copy of Mr. Goodman's CDF. (Id. at ¶6). In addition, it was Mr. Goodman's

industrious habit of requiring paper SEIs at the time of filing an SIC, are of questionable reliability.

understanding that his candidate file contains a paper SEI, although he did not file one. (Tr. p. 196, line 22-p. 197, line 5; Goodman file).

Likewise, John Hull, a non-incumbent candidate for Dorchester County District #4, swears that on March 28, 2012, he gave Mr. Piscatella his SIC at the DCRP Headquarters; however, he did not give Mr. Piscatella a paper copy of his SEI. (Hull Aff., ¶¶3-4). Rather, Mr. Hull electronically filed his SEI while at the DCRP headquarters. (Id. at ¶5). Mr. Piscatella printed a copy of Mr. Hull's SEI and gave it to Mr. Hull. Mr. Hull swears he then took this SEI home with him. (Id. at ¶5). Mr. Hull did not authorize, request, or see Piscatella or any other person print, file, or have a paper copy of his SEI, except for the one SEI copy Mr. Hull took home with him. (Id. at ¶4). The checklist provided by the SCRCP was also used, and followed exactly, for Mr. Hull's filing. (Id. at ¶6). Because the checklist did not require filing of a paper copy of the SEI to be filed, Mr. Hull did not file a copy of his paper SEI. (Id.).

Similarly, Larry Hargett, incumbent candidate for Dorchester County Council District 4, attests he did not file a paper copy of his SEI along with his SIC, nor did he provide Mr. Piscatella or any other official with, or authorize the printing of, a paper copy of his SEI. Nonetheless, his official DCRP candidate file, as produced to the Clerk of Court by Mr. Piscatella, curiously contains two (2) copies of his SEI. (Hargett Aff. ¶¶ 6-8 and SEIs attached thereto).

Michael Turner, a non-incumbent candidate in the Republican Primary for Dorchester County Sherriff, and Jordan Bryngelson, a non-incumbent candidate for the Republican nomination for South Carolina State House District 97, both swear Mr. Piscatella told them they did not need to include a paper SEI as a part of their filings.

(Turner Aff., ¶¶6-7, 10; Bryngelson Aff., ¶¶5-7). Instead, Mr. Piscatella indicated that if he needed a paper SEI, he would simply print one off later. (Bryngelson Aff., ¶6). Mr. Turner and Mr. Bryngelson, however, out of an abundance of caution, requested that Mr. Piscatella include their paper SEIs as a part of their filings. (Turner Aff., ¶¶7, 10; Bryngelson Aff., ¶7).

Rebecca Hyer Woods, Mr. Bennett's long-time friend and business partner, claims to have reviewed all Mr. Bennett's filings, including his SEI, before accompanying him to the DCRP offices "specifically to witness his filing for office." (Woods Aff., ¶ 1-4; Supp. Woods Aff. ¶ 2). However, a review of Ms. Woods' affidavit and supplemental affidavit shows she did not witness Mr. Piscatella file Mr. Bennett's SEI, but merely saw him hand documents to Mr. Piscatella as she was in the adjoining room conversing with DCRP volunteer Ann Shields. (Woods Aff., ¶6; Woods Supp. Aff., ¶¶ 5-7; see also Shields Aff., ¶¶ 4-5, 8). As discussed above, other candidates have attested that Mr. Piscatella informed them it was not necessary to file a paper SEI simultaneously with their SICs and he would simply print a copy to include later if needed. (Turner Aff. ¶¶6-7, 10; Bryngelson Aff., ¶¶5-7). Furthermore, Ann Shields states that the woman who accompanied Mr. Bennett to the DCRP headquarters was not a witness to Mr. Piscatella's filing, as she did not enter the filing room, but had a conversation with Ms. Shields in the reception area. (Shields Aff.). Accordingly, Ms. Woods' testimony in no way proves the SEI Mr. Bennett allegedly brought to the DCRP offices actually was filed together with his SIC.

According to Ms. Duncan, Mr. Piscatella's refusal to provide the official DCRP records and the absence of Mr. Bennett's paper SEI in his file, together with the above-

described candidates' statements that they did not file paper SEIs although their files contained them, ultimately convinced her that Mr. Piscatella had not been truthful with her when he affirmed both after the Anderson decision and after the Florence County decision that all but one DCRP candidate had filed paper SEIs with their SICs. (Duncan Aff. ¶¶18-23).

In short, the evidence presented overwhelmingly demonstrates Mr. Bennett did not file a paper copy of his SEI at the same time and with the same official as his SIC, as required by § 8-13-1356(B). The best evidence of what Mr. Bennett filed is what is in his file. Admittedly, Mr. Bennett's file does not contain a paper SEI filed at the same time as his SIC, but only contains the SEIs Mr. Piscatella inappropriately added in June and July. Although Mr. Bennett and Mr. Piscatella advance the theory that an unknown individual accessed the DCRP files and removed Mr. Bennett's timely filed SEI, there is absolutely no evidence to support this speculative theory. The only reasonable explanation for the mysterious absence of Mr. Bennett's SEI is that it was never in his file to begin with.

Despite Mr. Piscatella's testimony that he required candidates to file an SEI, in contravention with the SCRCP checklist and instructions, an abundance of testimony from candidates themselves reveals this not to be the case.¹³ The preponderance of the evidence further demonstrates Mr. Piscatella routinely "supplemented" official DRCP candidate files with documents that the were not filed by the candidates. Importantly, in

¹³ The parties were under enormous time constraints during the preparation and investigation of this case and were not permitted to conduct discovery. Despite these limitations, the numerous discrepancies and errors in the DCRP candidate files described herein were identified in the brief 12-day period between when Mr. Piscatella turned over the files as ordered by Judge King and the date of trial. It stands to reason that formal discovery and additional time to analyze the candidates' filings would have resulted in even more discrepancies and errors.

the case of Mr. Bennett, Mr. Piscatella twice supplemented Mr. Bennett's official DCRP file—once with a paper SEI printed by Mr. Piscatella and again with documents from Mr. Bennett's own personal file not kept in the ordinary course of business, including an SEI. Under these circumstances, the Court must reverse the decision of the Circuit Court finding Mr. Bennett timely filed a paper copy of his SEI along with his SIC in compliance with § 8-13-1356(B).

CONCLUSION

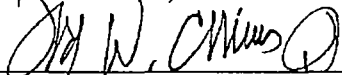
Shenanigans in elections for public office cannot be countenanced by the law. Clearly-worded statutes designed and passed by the legislature must be strictly enforced. The evidence overwhelmingly demonstrates Mr. Bennett did not file his SEI at the same time and with the same official as his SIC. This was a violation of the clear requirements of § 8-13-1356(B). Furthermore, even assuming Mr. Bennett did timely file his SEI, the purported SEI is not for the preceding calendar year as clearly required by S.C. Code Ann. § 8-13-1356(B). Accordingly, Mr. Bennett was improperly certified as a candidate in the DCRP primary. His name should not have appeared on the primary election ballot. Therefore, Mr. Rose, not Mr. Bennett, is the proper candidate for certification for the General Election. As such, Mr. Rose respectfully requests the Court reverse the decision of the Circuit Court and order that Mr. Rose be certified as the Republican candidate for Senate District 38 in the General Election on November 6, 2012.

[Signature Page to Follow]

Respectfully submitted,

COLLINS & LACY, PC

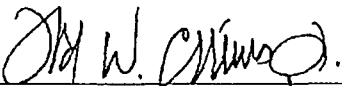
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INITIAL BRIEF OF APPELLANT

Columbia, South Carolina
August 20, 2012

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM DORCHESTER COUNTY
Court of Common Pleas

Howard P. King, Circuit Court Judge

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

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

vs.

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

Of Whom Mike Rose is the.....Appellant,

And

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

PROOF OF SERVICE

I, Tanya A. Gee, hereby certify that a copy of Sean Bennett's Motion to Dismiss has been served upon counsel of record via electronic mail and by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 24th day of August 2012 to the addresses shown below:

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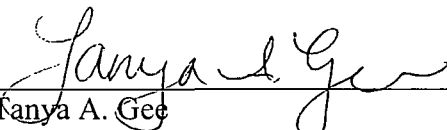
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August 24, 2012
Columbia, South Carolina

Tanya A. Gee
Special Counsel

August 24, 2012

RECEIVED

AUG 24 2012

VIA HAND DELIVERY

The Honorable Daniel E. Shearouse
Clerk of Court
South Carolina Supreme Court
1231 Gervais Street
Columbia, SC 29201

S.C. Supreme Court

Re: Dorchester County Democratic Party v. DRCP
Case No. 2012-CP-18-1632
Appellate Case No. 2012-212691

Dear Mr. Shearouse:

I represent Sean Bennett in the above-referenced expedited election matter. On Monday, August 20, 2012, the Appellant Mike Rose filed his Appellant's Initial Brief, and the Respondent's Briefs are due on Monday, August 27, 2012. In preparing Bennett's Respondent's Brief, we discovered that Rose did not appeal from the trial court's finding that Rose had not exhausted his administrative remedies. As a result, we believe Rose's appeal should be dismissed.

Enclosed for filing are an original and seven (7) copies of a Motion to Dismiss and attachments thereto. By copy of this letter and by Proof of Service, we are serving all counsel of record by both first class mail and electronic mail. We have included an extra copy of these filings and ask that you please clock in this extra copy and return it to our courier.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,


Tanya A. Gee

The Honorable Daniel E. Shearouse
August 24, 2012
Page 2

Enclosures

cc: (via email and U.S. Mail)
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