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AUG 29 2012

THE SUPREME COURT OF SOUTH CAROLINA

PEGGY MOSELEY, APPELLANT,

S.C. Supreme Court

V.

CHARLESTON COUNTY REPUBLICAN PARTY (LIN BENNETT, AS CHAIRMAN); SOUTH CAROLINA REPUBLICAN PARTY (MATT MOORE AS EXECUTIVE DIRECTOR & CHAD CONNOLLY AS CHAIRMAN); CHARLESTON COUNTY BOARD OF ELECTIONS AND VOTER REGISTRATION (JOSEPH L. DEBNEY AS DIRECTOR AND DAN MARTIN AS CHAIRMAN); SOUTH CAROLINA STATE ELECTION COMMISSION (MARCI ANDINO AS EXECUTIVE DIRECTOR & CHRIS WHITMIRE AS DIRECTOR OF PUBLIC INFORMATION AND TRAINING); PAUL GAWRYCH; AND DAVID ENGELMAN, RESPONDENTS.

APPELLATE CASE NO. 2012-212759

MOTION TO DISMISS APPEAL

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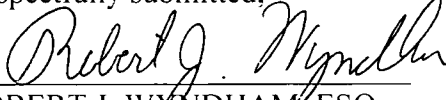
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REGISTRATION, JOSEPH L. DEBNEY,
AND DAN MARTIN

Respondent, Paul Gawyrch, by and through his undersigned attorneys, reserving all rights to assert all defenses below, hereby moves this court for an Order dismissing the appeal filed herein. The reasons and basis are set forth in the attached memorandum.

Date: Aug 28, 12

Respectfully submitted,


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THE SUPREME COURT OF SOUTH CAROLINA

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PEGGY MOSELEY, APPELLANT,

AUG 29 2012

V.

S.C. Supreme Court

CHARLESTON COUNTY REPUBLICAN PARTY (LIN BENNETT, AS CHAIRMAN); SOUTH CAROLINA REPUBLICAN PARTY (MATT MOORE AS EXECUTIVE DIRECTOR & CHAD CONNOLLY AS CHAIRMAN); CHARLESTON COUNTY BOARD OF ELECTIONS AND VOTER REGISTRATION (JOSEPH L. DEBNEY AS DIRECTOR AND DAN MARTIN AS CHAIRMAN); SOUTH CAROLINA STATE ELECTION COMMISSION (MARCI ANDINO AS EXECUTIVE DIRECTOR & CHRIS WHITMIRE AS DIRECTOR OF PUBLIC INFORMATION AND TRAINING); PAUL GAWRYCH; AND DAVID ENGELMAN, RESPONDENTS.

APPELLATE CASE NO. 2012-212759

MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL

BACKGROUND

The notice of appeal herein is from an Order of the Circuit Court finding Paul Gawyrch was properly certified as a Republican candidate for Charleston County Auditor. The Order appealed specifically provided that the Court bifurcated the case and only heard the issue relating to whether Paul Gawyrch complied with the statutory requirements of Section 8-13-1356. The Order further provided that it was agreed by all parties and their counsels there would be no prejudice to Paul Gawyrch in proceeding on the issue presented and he would be allowed to assert all defenses, including any affirmative defenses later if necessary. It was agreed a hearing would be held where the parties would be allowed to present evidence relating to the allegations of the complaint and any other defenses before appellant could prevail before the Circuit Court. This would be done at a

separate subsequent hearing to be held if Appellant did prevail initially on the Section 8-13-1356 issue. However, Appellant did not prevail and no second subsequent hearing was deemed necessary by the court and/or held. In the meantime, Appellant has filed a Notice of Appeal on the one issue in which Paul Gawyrch was the prevailing party.

As the Order below further reflects, Appellant first filed a protest pursuant to S.C. Code 7-17-520 on June 18, 2012 protesting the results of the election conducted on June 12, 2012. The protest was denied at a hearing held June 21, 2012 by a vote of 14 to 7 and the denial of her protest was not appealed thereafter. Thereafter on August 8, 2012, Appellant filed a Verified Complaint for declaratory judgment, writ of mandamus, and Motion for Injunctive Relief seeking the same relief in the Lower Court.

The court issued an oral order on August 15, 2012 at approximately 11:00 a.m. denying Appellant relief and finding Paul Gawyrch was the qualified candidate for the Republican nominee for the office of Charleston County Auditor. A written order was issued and filed August 16, 2012. Notice of Appeal was filed August 20, 2012.

GROUND FOR DISMISSAL

The primary reason and basis why the appeal should be dismissed is because the action below is not an appropriate method to protest and to contest election results. “It is written the province of the legislature for that purpose. Except as to matters which are merely directory, the primary must be conducted in accordance with the statutes. 29 C.J.S. Elections, Section 2-15. Primary elections are unknown at common law, 29 C.J.S. Elections, Section 200, and therefore, “the power of a governmental unit to hold primary elections depends on constitutional or statutory provisions, 29 C.J.S. Elections, Section 201.” “Unless the primary action contravenes the [state] constitution, it is

supreme to the extent of its provisions...”, Id.

Title 7, Article 5 of the South Carolina Code contains provisions applicable to primary elections.

S.C. Ann Section 7-17-510 requires that the County Commission convene not later than one (1) p.m. on June 14 (the Thursday after the primary election) and organize as the county board of canvassers and certify the results of the primary elections.

S.C. Code Ann Section 7-17-520 requires that any protests and contests in case of county officers, in plain and unambiguous language, be filed with the County Party by noon on June 18, 2012 (the Monday following the declaration of the primary results).

S.C. Code Ann Section 7-17-530 requires the county political party executive committee (county executive committee) to hear the protest.

S.C. Code Ann Section 7-540 provides for the right of appeal from the county executive committee to the state political party executive committee (state executive committee); and S.C. Code Ann. Section 7-17-550 provides for the state executive committee to hear appeals from the county executive committee.

As Appellant Moseley admits in paragraphs 21-31 of her Verified Complaint, and as found by the Lower Court, Appellant Moseley filed a protest with the Charleston County Republican Party Executive Committee (CCPREC) and the CCPREC held a hearing on her protest on June 21, 2012 and voted 14 to 7 to deny the protest. As found in the Order, Appellant Moseley was represented by counsel at the protest, was aware of her right to appeal in accordance with S.C. Code Ann. Section 7-17-550 but did not take an appeal to the South Carolina Republican Party Executive Committee. Any protest of a party primary election has to follow statutory procedure prescribed by the South

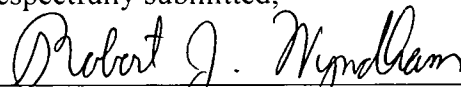
Carolina General Assembly in Title 7, Article 5. This statutory process does not include a protest to this Court. Even if an appeal were proper to this Court, no timely appeal was filed from her protest and therefore, the appeal should be dismissed.

Further, it is undisputed that Appellant Moseley failed to exhaust her administrative remedies as set forth above. Appellant availed herself of the election protest remedy contained in Chapter 17, Article 5 of Title 17 and having done so, it was incumbent upon her to exhaust her administrative remedies under Article 5 and thus, this appeal should be dismissed.

Finally, the requested relief sought by Appellant, Peggy Moseley, cannot be granted by this Court at this time because the Lower Court Order reserved the right of Respondent Paul Gawrych to assert other and further defenses before a final ruling in favor of Appellant can be granted. The Order provides, "It was agreed by all parties and their counsel of record that there would be no prejudice to the Defendant Gawrych who would be allowed to assert all defenses including any affirmative defenses and that if necessary, a hearing would be held where the parties would be allowed to present evidence relating to the allegations of the Complaint and any defenses that may be asserted by the Defendant Gawrych."

Accordingly, even if the Court were to hear the appeal, the relief sought by Appellant should not be granted until a full hearing and Lower Court determination of other issues. (See attached Answer of the Defendant South Carolina State Election Commission and Answer of Paul Gawrych, attached hereto.)

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT
PAUL GAWRYCH

Date: Aug 28, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Peggy Moseley,)
)
Plaintiff,)

Civil Action No. 2012-CP-10-5204

v.)

**ANSWER OF SOUTH CAROLINA
STATE ELECTION COMMISSION (Marci
Andino, as Executive Director & Chris Whitmire
as Director of Public Information and Training)**

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

Defendants.

FILED
2012 AUG 14 AM 11:15
JULIE J. ARMSTRONG
CLERK OF COURT
RY _____

The Defendant South Carolina State Election Commission (Marci Andino, as Executive Director and Chris Whitmire as Director of Public Information and Training) (collectively, SEC) hereby files this Answer to the Verified Complaint for Declaratory Judgment, Writ of Mandamus, and Motion for Injunctive Relief, filed August 8, 2012, by the Plaintiff herein and received by the SEC via email on August 10, 2012, as follows:

1. Any allegation not specifically admitted shall be deemed denied.
2. Paragraph 1 contains statement of the case and/or legal conclusions to which no response is required. To the extent a response is required, the SEC denies it violated any laws.
3. The SEC admits upon information and belief the allegations in Paragraphs 2-3 and 5-6, except as to Paragraph 2 to the extent the SEC lacks sufficient information to form a belief as to whether Plaintiff complied with section 8-13-1356 of the South Carolina Code and whether she was lawfully included on the June 12, 2012 Republican Primary Election ballot.

4. As to Paragraph 4, the SEC avers that it is an agency of the State of South Carolina and has the duties and responsibilities enumerated in the S.C. Code Ann. Title 7, as amended. Any other inferences or allegations contained in Paragraph 10 are denied.

5. Paragraphs 7–9, and 15 are statements of the case and/or law to which no response is required, except that as to Paragraph 8 the SEC avers the Charleston County Board of Elections and Voter Registration (County Board) and the SEC, not the Charleston County Republican Party (CCRP) and the South Carolina Republican Party (SCRIP), are charged with ministerial duties regarding the political party primaries. The SEC avers that it has performed any ministerial duties regarding the political party primaries it is charged with performing.

6. The SEC admits the allegations contained in Paragraphs 10–12 on information and belief.

7. As to Paragraph 13, the SEC avers the CCRP is charged with the duty of certifying candidates for county wide or less than county wide candidates for inclusion on the Republican Party Primary Election ballot. The SEC avers that it has performed any ministerial duties regarding the political party primaries it is charged with performing. Any inferences to the contrary in paragraph 13 are denied.

8. SEC denies the allegations of Paragraph 14 as it applies to the SEC and does not have information sufficient to form a belief as to the remaining Defendants and therefore denies the same and demands strict proof thereof.

9. Paragraphs 16–17 contain a statements of the case and legal conclusions to which no response is required. To the extent a response is required as to Paragraph 16, the SEC admits insofar as they allege the South Carolina Supreme Court issued opinions 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, 727 S.E.2d 418, 420 (S.C. 2012) *reh'g denied* June 6, 2012, and craves reference to those opinions as they speak for themselves. The SEC denies any remaining allegations and any inferences or statements contrary to or inconsistent with the Anderson and Florence County decisions and demands strict proof thereof.

10. As to Paragraph 18, the SEC craves reference to section 8-13-1356(B) of the South Carolina Code as it speaks for itself. The SEC denies any remaining allegations and any inferences or statements contrary to or inconsistent with the statute and demands strict proof thereof.

11. As to Paragraph 19, the SEC craves reference to section 8-13-1356(E) of the South Carolina Code as it speaks for itself. The SEC denies any remaining allegations and any inferences or statements contrary to or inconsistent with the statute and demands strict proof thereof.

12. The SEC admits the allegation in Paragraph 20.

13. As to the allegations in Paragraphs 21–33, the SEC craves reference to the Transcript of the Election Protest as it speaks for itself. The SEC denies any allegations and any inferences or statements contrary to or inconsistent with the Transcript and demands strict proof thereof.

14. Paragraph 34 contains legal conclusions to which no response is required. To the extent a response is required, the SEC craves reference to section 8-13-1356(B) of the South Carolina Code as it speaks for itself. The SEC denies any remaining allegations and any inferences or statements contrary to or inconsistent with the statute and demands strict proof thereof.

15. As to Paragraph 35, the SEC craves reference to section 8-13-1356(E) of the

South Carolina Code as it speaks for itself. The SEC denies any remaining allegations and any inferences or statements contrary to or inconsistent with the statute and demands strict proof thereof.

16. The SEC admits the allegation in Paragraph 36 that the CCRP certified Paul Gawrych and David Engelman as Republican candidates for Charleston County Auditor to be on the ballot for the June 12, 2012 Republican Primary, and lacks sufficient information to form a belief as to the remaining allegations.

17. The SEC admits the allegations in Paragraph 37 insofar as they allege the South Carolina Supreme Court issued an opinion in Anderson, and craves reference to that opinion as it speaks for itself. The SEC denies any remaining allegations and any inferences or statements contrary to or inconsistent with the Anderson decision and demands strict proof thereof.

18. The SEC admits the allegations in Paragraph 38.

19. The SEC denies the allegations in Paragraph 39 as to the SEC and the CCBEVR and lacks sufficient information to form a belief as to the remaining Defendants and therefore denies the same and demands strict proof thereof.

20. The SEC lacks sufficient information to form a belief as to the allegations in Paragraph 40 and therefore denies the same and demands strict proof thereof.

21. As to Paragraph 41, the SEC craves reference to section 8-13-1356(E) of the South Carolina Code, Anderson and Florence County, as they speak for themselves. The SEC denies any remaining allegations and any inferences or statements contrary to or inconsistent with the statute and case law and demands strict proof thereof.

22. The SEC lack sufficient information to form a belief as to the allegations in Paragraphs 42–44 and therefore denies the same and demands strict proof thereof.

23. The SEC admits the allegations in Paragraph 45 insofar as they allege the South Carolina Supreme Court issued an opinion in Florence County Democratic Party v. Florence County Republican Party, 727 S.E.2d 418, 420 (S.C. 2012) *reh'g denied* June 6, 2012, and craves reference to that opinion as it speaks for itself. The SEC denies any remaining allegations and any inferences or statements contrary to or inconsistent with the Florence County decision and demands strict proof thereof.

24. The SEC admits that Peggy Moseley was the Charleston County Auditor at the time candidates had to file with a political party as a candidate for auditor in Charleston County. Any allegations or inferences to the contrary are denied.

25. The SEC lack sufficient information to form a belief as to the allegations in Paragraph 47, and craves reference to Anderson, and Florence County, as they speak for themselves. The SEC denies any remaining allegations and any inferences or statements contrary to or inconsistent with the Anderson and Florence County decisions and demands strict proof thereof.

26. The SEC lacks sufficient information to form a belief as to the allegations in Paragraph 48 and therefore denies the same and demands strict proof thereof.

27. As to Paragraphs 49–51, the SEC craves reference to Anderson and Florence County, as they speak for themselves. The SEC denies any remaining allegations and any inferences or statements contrary to or inconsistent with the Anderson and Florence County decisions and demands strict proof thereof.

28. Paragraph 52 is a legal conclusion to which no response is required. To the extent a response is required, the SEC lacks sufficient information to form a belief and therefore denies the same and demands strict proof thereof.

FOR A FIRST AFFIRMATIVE DEFENSE

1. The SEC incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

2. The SEC has carried out all of its ministerial duties according to law.

FOR A SECOND AFFIRMATIVE DEFENSE (Laches Requires Dismissal of the Action)

3. The SEC incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

4. Plaintiff has unreasonably delayed in bringing this action. The case was filed with the Clerk of Court of Colleton County August 8, 2012.

5. Plaintiff relies on Anderson v. South Carolina Election Commission, et al., 397 S.C. 551, 725 S.E.2d 704 (2012) *reh'g denied* May 4, 2012, and S.C. Code Ann. § 8-13-1356(B) (Supp. 2011).

6. Plaintiff knew or should have know (was put on constructive notice) that Defendant Gawrych was the Republican Party nominee for Charleston County Auditor not later than June 6, 2012.

7. The doctrine of laches "applies where Plaintiffs' lack of diligence, defined as an inexcusable or unreasonable delay in filing suit, prejudices Defendants. See Castello v. United States, 365 U.S. 265, 282 (1961); White v. Daniel, 909 F.2d 99, 102 (4th. Cir. 1990); Smith v. State of South Carolina Election Commission, C.A. No. 3:12-CV-1543-CHH-CMC-JMC (D.S.C. June 18, 2012).

8. Defendant SEC would be prejudiced if this matter cannot be finally decided on or before August 15, 2012, the date for political parties to certify the candidates for the general election ballot and the date that the SEC and the Charleston County Board of Elections and Voter

Registration must start preparing ballots and absentee ballots that must be transmitted to overseas voters requesting the same on or before September 22, 2012. Plaintiff's Complaint should be dismissed.

**FOR A THIRD AFFIRMATIVE DEFENSE
(Court Lacks Jurisdiction)**

9. The SEC incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

10. "It is within the province of the legislature to prescribe the method of voting at primary elections and to adopt reasonable regulations for that purpose. Except as to matters which are merely directory, the primary must be conducted in accordance with the statutes." 29 C.J.S. *Elections*, § 215. Primary elections are unknown at common law, 29 C.J.S. *Elections*, § 200, and therefore the "power of a governmental unit to hold primary elections depends on constitutional or statutory provisions," 29 C.J.S. *Elections*, § 201. "Unless the primary act contravenes the [state] constitution, it is supreme to the extent of its provisions... . " *Id.*

11. Title 7, Article 5 of the South Carolina Code contains provisions applicable to primary elections.

- a. S.C. Ann. § 7-17-510 requires that the County Commission convene not later than one (1) p.m. on June 14 (the Thursday after the primary election) and organize as the county board of canvassers and certify the results of the primary elections;
- b. S.C. Code Ann. § 7-17-520 requires that any protests and contests in case of county officers, in plain and unambiguous language, be filed with the County Party by noon on June 18, 2012 (the Monday following the declaration of the primary results

- c. S. C. Code Ann. § 7-17-530 requires the county political party executive committee (county executive committee) to hear the protest
- d. S.C. Code Ann. § 7-540 provides for the right of appeal from the county executive committee to the state political party executive committee (state executive committee); and
- e. S.C. Code Ann. § 7-17-550 provides for the state executive committee to hear appeals from the county executive committee.

12. As Plaintiff admits in paragraphs 21 through 33, she filed a protest with the Charleston County Republican Party Executive Committee (CCPREC) and the CCPRE held a hearing on her protest on June 21, 2012 and voted 14 to 7 to deny the protest. On information and belief, Plaintiff did not take an appeal to the South Carolina Republican Party Executive Committee.

13. Any protest of a party primary election has to follow statutory procedure prescribed by the South Carolina General Assembly in Title 7, Article 5. This statutory process does not include a protest to this Court. Even if an appeal were proper to this court, the appeal is not timely. Plaintiff's Complaint should be dismissed.

FOR A FOURTH THIRD AFFIRMATIVE DEFENSE
(Failure to Exhaust Administrative Remedies)

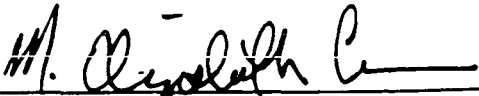
14. The SEC incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

15. Plaintiff availed herself of the election protest remedy contained in Chapter 17, Article 5 of Title 17. Having done so, it was incumbent upon her to exhaust her administrative remedies under Article 5. Plaintiff's Complaint should be dismissed.

WHEREFORE, having fully set forth the Answer to the Plaintiff's Verified Complaint, Defendant South Carolina State Election Commission prays that this Court dismiss the Plaintiff's claims with prejudice and award the SEC its costs and attorneys' fees incurred in the action and such other relief as this Court determines appropriate.

Respectfully submitted,

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By: 

Attorneys for Defendant South Carolina
State Election Commission

August 14, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
)
) FOR THE NINTH JUDICIAL CIRCUIT

Peggy Moseley,
Plaintiff,

Civil Action No. 2012-CP-10-5204

v.

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

CERTIFICATE OF SERVICE
BY JULIE J. ARMSTRONG
CLERK OF COURT
2012 AUG 14 AM 11:15

FILED

I, Jeslyn Harvey, do hereby certify that I have this date served one (1) copy of the Answer of South Carolina State Election Commission (Marci Andino, as Executive Director & Chris Whitmire as Director of Public Information and Training) (SEC) upon the following counsel by depositing a copy with the United States Postal Service, first class postage prepaid and properly affixed thereto and addressed as follows, and a copy has been hand-delivered to counsel by M. Elizabeth Crum, Esq.:

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August 14, 2012

Charleston, South Carolina

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

PEGGY MOSELEY,) CIVIL ACTION NUMBER: 2012-CP-10-5204
)
 Plaintiff,)

-versus-

ANSWER

CHARLESTON COUNTY)
 REPUBLICAN PARTY (LIN BENNETT,)
 AS CHAIRMAN), SOUTH CAROLINA)
 REPUBLICAN PARTY (MATT MOORE)
 AS EXECUTIVE DIRECTOR & CHAD)
 CONNOLLY AS CHAIRMAN),)
 CHARLESTON COUNTY BOARD OF)
 ELECTIONS AND VOTER)
 REGISTRATION (JOSEPH L. DEBNEY)
 AS DIRECTOR AND DAN MARTIN AS)
 CHAIRMAN), SOUTH CAROLINA)
 STATE ELECTION COMMISSION)
 (MARCI ANDINO, AS EXECUTIVE)
 DIRECTOR & CHRIS WHITMIRE AS)
 DIRECTOR OF PUBLIC INFORMATION)
 AND TRAINING), PAUL GAWRYCH,)
 AND DAVID ENGELMAN.)
)
 Defendants.)

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 JULIE L. ARMSTRONGS
 CLERK OF COURT
 BY _____

The Defendant, Paul Gawrych, by and through his undersigned counsel, answering the Complaint herein would allege and show as follows:

1. That each and every allegation of the Verified Complaint not hereinafter specifically admitted, is hereby denied and strict proof demanded thereof.
2. Defendant denies the allegations contained in paragraph 1 under the heading **“STATEMENT OF THE CASE”**.

3. As to paragraph 2, Defendant admits Plaintiff Peggy Moseley is the current Charleston County Auditor and is a citizen and resident of the County of Charleston and was a candidate on the Charleston County ballot for the June 12, 2012, Republican Primary Election for Charleston County Auditor which she lost, but denies the remaining allegations of the paragraph and demands strict proof thereof.
4. The Defendant admits the allegations contained in paragraph 3.
5. As to paragraph 4, the Defendant would admit the South Carolina State Election Commission is a commission organized under the laws of South Carolina and would crave reference to the statutory purpose and requirements and would deny any allegation inconsistent therein.
6. As to paragraph 5, upon information and belief, the Defendant would admit the allegations contained therein.
7. Upon information and belief, the Defendant would admit the allegations contained in paragraph 6.
8. As to paragraph 7, this allegation states a legal conclusion which does not require a response and therefore, Defendant would deny the allegations and demands strict proof thereof.
9. The Defendant denies the allegations contained in paragraph 8, 9, 10, 11, 12, 13, 14 and 15 of the Complaint.
10. As to paragraph 16, the Defendant would allege that the allegations contained legal conclusions which do not require a response and thus, would deny the allegations contained in paragraph 16 and demands strict proof thereof.
11. The Defendant denies the allegations contained in paragraph 17 of the Complaint.

12. As to paragraph 18 and 19, both paragraphs state legal conclusions which do not require a response and therefore, the Defendant denies the same and demands strict proof thereof.
13. The Defendant denies the allegations contained in paragraph 20 as there is no evidence that the Plaintiff complied with the statutory requirements to be a candidate for the office of Charleston County Auditor.
14. As to paragraph 21, the Defendant admits that the Plaintiff filed an election protest which was conducted on June 21, 2012, and that she lost her protest. Further responding to paragraph 21, the Defendant would allege that the Plaintiff knowingly and voluntarily waived her right to appeal and failed to exhaust her administrative remedies as required by South Carolina law. Further answering, Defendant would crave reference to the transcript of record for the protest and would deny any allegation inconsistent therein.
15. As to paragraph 22, the Defendant would admit that Lin Bennett testified that David Engelman's SIC was filed on March 16, 2012, and that she received the confirmation that David Engelman had filed his SEI pursuant to the Electronic Filing Statute but would deny the remaining allegations. Further answering paragraph 22, the transcript of election protest will provide that Mr. Engelman was a public official with an SEI on file at the time he filed his SIC on March 16, 2012, and that his wife, Mrs. Engelman, brought the 10 page form to file with Lin Bennett personally and thus, the remaining allegations of paragraph 22 are denied.
16. As to paragraph 23. Defendant would admit that Lin Bennett testified that Peggy Moseley filed her SIC on March 28, 2012, and that she personally received this paperwork however, further answering the allegation, the Defendant would allege that Lin Bennett testified that

Peggy Moseley did not provide confirmation that she had filed her paperwork pursuant to the Electronic Filing Statute as required by law and that she was the only candidate that did not do so.

17. As to paragraph 24, Lin Bennett testified that Peggy Moseley was the current Incumbent Auditor for Charleston County when she filed however, there was not testimony that Peggy Moseley had a current SEI on file pursuant to the exemption and there is no testimony or evidence presented that Peggy Moseley had an SEI on file electronically as required by the Electronic Filing Statute.
18. As to paragraph 25, the Defendant, Paul Gawrych, would crave reference to the Transcript of Election Protest and would deny any allegations contained in paragraph 25 inconsistent therein.
19. As to paragraph 26, Paul Gawrych would crave reference to the Transcript of Election Protest and would deny any allegation contained therein inconsistent with the transcript.
20. As to paragraph 27, Paul Gawrych would crave reference to the Transcription of Election Protest and would deny any allegation inconsistent therein.
21. As to paragraph 28, the Defendant would crave reference to the Transcript of Election Protest and would deny any allegation inconsistent therein.
22. As to paragraph 29, Defendant would crave reference to the Transcription of Election Protest and would deny any allegation inconsistent therein.
23. As to paragraph 30, Defendant would crave reference to the Transcript of Election Protest and would deny any allegation inconsistent therein.

24. As to paragraph 31, the Defendant would crave reference to the Transcript of Election Protest and would deny any allegation inconsistent therein.
25. As to the allegations contained in paragraph 32 and 33, the Defendant would crave reference to the Transcript of Record and would deny any allegation inconsistent therein.
26. The Defendant denies the allegations contained in paragraph 34.
27. As to paragraph 35, the allegations contained a legal conclusion that does not require a response and therefore denies the same and demands strict proof thereof.
28. As to paragraph 36, Defendant admits that Paul Gawrych and David Engelman were properly certified as candidates for Charleston County Auditor and would deny the remaining allegations.
29. As to paragraph 37, the allegations contain a legal conclusion which do not require a response and therefore, they are denied.
30. As to paragraph 38, the Defendant would admit that he and David Engelman were properly qualified to be certified by the South Carolina Republican Party and would deny any allegation inconsistent therein.
31. The Defendant denies the allegations contained in paragraph 39 and 40.
32. Paragraph 41 states a legal conclusion which does not require a response and therefore, it is denied and strict proof thereof is demanded.
33. The Defendant denies the allegations contained in paragraph 42, 43, 44, 45, 46, 47, 48, 49 and 50.
34. As to paragraph 51, the allegations state a legal conclusion and therefore would deny the same and demand strict proof thereof.

35. The Defendant denies the allegations contained in paragraph 52 and the final paragraph of the Complaint beginning “Wherefore” including all of the requests for relief.

FOR A FIRST AFFIRMATIVE DEFENSE

36. The Defendant, Paul Gawrych, incorporates by reference all of the foregoing paragraphs as if set forth fully herein.
37. That the Defendant, Paul Gawrych, and the Defendant, David Engelman, were properly certified as candidates for the June 12, 2012, Republican Primary Election, and that Paul Gawrych won the primary election by over 50% of the votes casted.
38. That the Defendant, Paul Gawrych, has been lawfully and properly certified as the candidate in the general election for the office of the Charleston County Auditor for the General Election.

FOR A SECOND AFFIRMATIVE DEFENSE

(FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES)

39. The Defendant, Paul Gawrych, incorporates by reference all of the foregoing paragraphs as if set forth fully herein.
40. Plaintiff availed herself of the protest remedy contained in Chapter 17, Article 5 of Title 17, alleging the identical issues in her Complaint. Plaintiff was represented by counsel at the election protest which was held on June 12, 2012, and that protest was denied on the same day, June 21, 2012. Plaintiff was advised by her counsel of her right to appeal and she freely and voluntarily, with the advice of counsel, waived her right to appeal. Having done so, it is incumbent upon her to exhaust her administrative remedies under Article 5 which she did not do and thus, Plaintiff’s Complaint should be dismissed.

FOR A THIRD AFFIRMATIVE DEFENSE

(LACHES REQUIRES DISMISSAL OF THE ACTION)

41. The Defendant, Paul Gawrych, incorporates by reference all of the foregoing paragraphs as if set forth fully herein.
42. Anderson v. South Carolina Election Commission, 397 S.C. 551, 725 S.E.2d 704 (2012) was issued on May 3, 2012, and thus, Plaintiff knew the political parties had to certify the names of candidates for the primary election ballots pursuant to Anderson and that Defendant Gawrych would be on the Republican Primary Election Ballot. Plaintiff knew as early as June 12, 2012, the Defendant Gawrych had won the primary election and was the presumptive Republican Party Nominee to appear on the November 6, 2012, General Election.
43. Plaintiff filed an election protest which was conducted on June 21, 2012, setting forth in her written protest the identical allegations and issues set forth in her Complaint filed herein. Plaintiff was represented by counsel and was fully aware of her legal rights including her right to appeal the protest election which was not done. As a matter of law, the deadline for the Charleston County Republican Party to certify the names of the candidates to the Charleston County Election Commission (CCEC) for inclusion on the general election ballot was noon on August 15, 2012. This case was filed with the Clerk of Court for Charleston County on August 8, 2012, at 4:11 p.m. and was served on the Defendant Paul Gawrych on Monday, August 13, 2012, at approximately 11:00 p.m. Plaintiff has unreasonably delayed bringing this action.

44. Plaintiff knew or should have known (was put on constructive notice) that Defendant Paul Gawrych was a Republican Party Nominee for Charleston County Auditor nominated on June 6, 2012.
45. The Doctrine of Laches applies where Plaintiff's lack of diligence, defined as an inexcusable or unreasonable delay in filing suit, prejudiced Defendants. See Castello v. United States, 365 U.S. 265, 282 (1961); Wright v. Daniel, 909 F.2d 99, 102 (4th Cir. 1990); Smith v. State of South Carolina Election Commission, C.A. No. 3:12-CV-1543-CHH-CNC-JNC(D).S.C. June 18, 2012.
46. All Defendants would be prejudice if the matter cannot be finally decided on or before August 15, 2012, the date for political parties to certify the candidates for the General Election Ballot and that voters will be disenfranchised and Federal Laws not complied with as a result of the Plaintiff's unreasonable and inexcusable delay in filing suit. Plaintiff's Complaint should be dismissed.

FOR A FOURTH AFFIRMATIVE DEFENSE

(COURT LACKS SUBJECT MATTER JURISDICTION)

47. The Defendant, Paul Gawrych, incorporates by reference all of the foregoing paragraphs as if set forth fully herein.
48. "It is within the province of the legislature to prescribe the method of voting at primary elections and to adopt reasonable regulations for that purpose. Except as to matters which are merely directory, the primary must be conducted in accordance with the statutes." 29 S.J.S. *Elections*, Section 215. Primary elections are unknown at common law. 29 C.J.S. *Elections*. Section 200, and therefore the "power of a governmental unit to hold primary

elections depends on constitutional or statutory provisions,” 29 S.J.S. *Elections*, Section 201. “Unless the primary act contravenes the (state) constitution, it is supreme to the extent of its provisions...,” *Id.*

49. Title 7, Article 5 of the South Carolina Code contains provisions applicable to primary elections.
 - a. S.C. Ann. Section 7-17-510 requires that the County Commission convene not later than one (1) p.m. on June 14 (the Thursday after the primary election) and organize as the county board of canvassers and certify the results of the primary elections;
 - b. S.C. Code Ann. Section 7-17-520 requires that any protests and contests in case of county officers, in plain and unambiguous language, be filed with the County Party by noon on June 18, 2012 (the Monday following the declaration of the primary results).
 - c. S.C. Code Ann. Section 7-17-530 requires the county political party executive committee (county executive committee) to hear the protest.
 - d. S.C. Code Ann Section 7-540 provides for the right of appeal from the county executive committee to the state political party executive committee (state executive committee); and
 - e. S.C. Code Ann Section 7-17-550 provides for the state executive committee to hear appeals from the county executive committee.
50. As Plaintiff admits in paragraphs 21 through 33, she filed a protest with the Charleston County Republican Party Executive Committee (CCPREC) and the CCPRE held a hearing on her protest on June 21, 2012 and voted 14 to 7 to deny the protest. One information and belief, Plaintiff did not take an appeal to the South Carolina Republican Party Executive Committee.

51. Any protest of a party primary election has to follow statutory procedure prescribed by the South Carolina General Assembly in Title 7, Article 5. This statutory process does not include a protest to this Court. Even if an appeal were proper to this Court, the appeal is not timely. Plaintiff's Complaint should be dismissed.

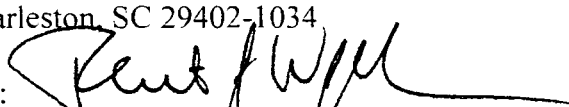
CONCLUSION

WHEREFORE, having fully set forth the Answer to the Plaintiff's Verified Complaint, Defendant Paul Gawrych prays that this Court dismiss the Plaintiff's claims with prejudice and award Paul Gawrych his costs and attorney's fees incurred in the action and such other relief as this Court determines appropriate.

Respectfully submitted,

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BY: 
ATTORNEYS FOR DEFENDANT
PAUL GAWRYCH

DATE: Aug. 24, 2012

RECEIVED

THE SUPREME COURT OF SOUTH CAROLINA

AUG 29 2012

PEGGY MOSELEY, APPELLANT,

S.C. Supreme Court

V.

CHARLESTON COUNTY REPUBLICAN PARTY (LIN BENNETT, AS CHAIRMAN); SOUTH CAROLINA REPUBLICAN PARTY (MATT MOORE AS EXECUTIVE DIRECTOR & CHAD CONNOLLY AS CHAIRMAN); CHARLESTON COUNTY BOARD OF ELECTIONS AND VOTER REGISTRATION (JOSEPH L. DEBNEY AS DIRECTOR AND DAN MARTIN AS CHAIRMAN); SOUTH CAROLINA STATE ELECTION COMMISSION (MARCI ANDINO AS EXECUTIVE DIRECTOR & CHRIS WHITMIRE AS DIRECTOR OF PUBLIC INFORMATION AND TRAINING); PAUL GAWRYCH; AND DAVID ENGELMAN, RESPONDENTS.

APPELLATE CASE NO. 2012-212759

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal and Memorandum and attachments in support thereof by depositing the same in the United States Mail on Tuesday, August 28, 2012, addressed to the following:

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August 28, 2012

EXPRESS MAIL-USPS
Mr. Daniel E. Shearouse
Clerk of Court
The Supreme Court of South Carolina
1231 Gervais Street
Columbia, SC 29201-3206

Re: Peggy Moseley, Appellant v. Charleston County Republican Party. (Lin Bennett, as Chairman); South Carolina Republican Party (Matt Moore as Executive Director & Chad Connolly as Chairman); Charleston County Board of Elections and Voter Registration (Joseph L. Debney as Director and Dan Martin as Chairman); South Carolina State Election Commission (Marci Andino as Executive Director & Chris Whitmire as Director of Public Information and Training); Paul Gawrych; and David Engelman, Respondents
Appellate Case No.: 2012-212759

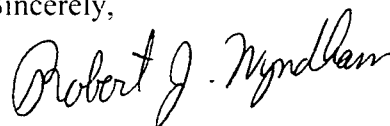
Dear Mr. Shearouse:

Enclosed for filing is an original and six (6) copies of Motion to Dismiss Appeal and an original and six (6) copies of Memorandum in Support of Motion to Dismiss Appeal. Also enclosed are the following:

1. Proof of Service of the Motion to Dismiss Appeal and Memorandum in Support.
2. Check # 20848 representing Motion to Dismiss Appeal filing fee in the amount of \$25.00.

With kindest personal regards, I am

Sincerely,



Robert J. Wyndham

RJW:kc

Enclosure-original and six (6) copies of Motion to Dismiss Appeal and original and six (6) copies of Memorandum in Support of Motion to Dismiss Appeal and Proof of Service of the Motion to Dismiss and Memorandum in Support, Check # 20848 in the amount of \$25.00 representing filing fee of Motion to Dismiss Appeal

cc:

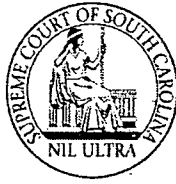
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REGISTRATION, JOSEPH L. DEBNEY,
AND DAN MARTIN



The Supreme Court of South Carolina

Howe & Wyndham

08/29/2012

RECEIPT #65374

Case No: 2012-212759
Case Short Title: Peggy Moseley v. Charleston County Republican Party
Event:
Fee Type: Motion Fee
Amount: \$25.00
Payment Type: Check
Reference No: 20848
Check/Money Order Date: 08/28/2012
Comments: