

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SEP 14 2012

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

S.C. Supreme Court

Case No. 2012-CP-10-3737

George Tempel,.....Appellant/Respondent,

v.

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

of whom South Carolina Republican Party (Matt Moore, as Executive Director, and Chad Connolly, as Chairman); Charleston County Republican Party (Lin Bennett, as Chairman); Charleston County Board of Elections and Voter Registration (Joseph L. Debney, as Director, and Dan Martin, as Chairman); and Dorchester County Republican Party (Carroll S. Duncan, Chairman) are..... Respondents,

and South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training) and Paul Thurmond are..... Respondents/Appellants.

RECORD ON APPEAL

James E. Smith, Jr., Esquire
James E. Smith, Jr., P.A.
1422 Laurel Street
Columbia, South Carolina 29201
James@JamesSmithPA.com

Attorney for Plaintiff George Tempel

M. Elizabeth Crum, S.C. Bar No. 1486
lcrum@mcnair.net
Ariail B. Kirk, S.C. Bar No. 71101
akirk@mcnair.net
Amber B. Martella, S.C. Bar No. 78706
amartella@mcnair.net
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

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

Samuel W. Howell, IV, Esquire
Howell Linkous & Nettles, LLC
106 Broad Street
Charleston, South Carolina 29401
samhowell@bond-law.com

Attorneys for Charleston County Board of
Elections and Voter Registration

Michael A. Timbes, Esquire
Matthew E. Yelverton, Esquire
Thurmond Kirchner
15 Middle Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
mtimbes@tktylawfirm.com
myelverton@tktylawfirm.com

Tanya A. Gee, Esquire
Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201
tgee@nexsenpruet.com

Attorneys for Defendant Paul Thurmond

Butch Bowers, Esquire
Womble Carlyle
1727 Hampton Street
Columbia, South Carolina 29201
Butch.Bowers@wcsr.com

Attorneys for Defendant South
Carolina Republican Party Matt
Moore as Executive Director and
Chad Connolly, as Chairman);
Defendant Charleston County
Republican Party (Lin Bennett, as
Chairman); and Dorchester County
Republican Party (Carroll S. Duncan,
Chairman)

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

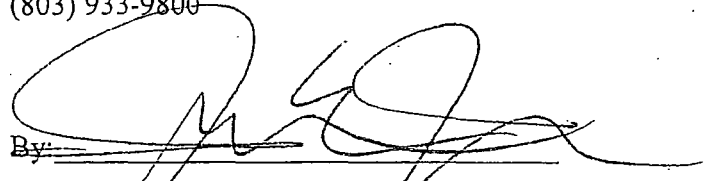
NOTICE OF APPEAL

Appellant-Plaintiff George Tempel (Tempel) appeals the portions of the Order of the Honorable J. Ernest Kinard, Jr., dated August 14, 2012 that concludes that Paul Thurmond's is "disqualified" as the Republican nominee and orders as follows: "Filing shall be reopened for a special Republican Party primary for South Carolina Senate District 41; " "Nothing herein shall limit or preclude Thurmond from filing to run as a candidate in that special primary election or from appearing on the November 6, 2012 ballot should he win the special primary election" and authorizes the South Carolina Republican Party through the South Carolina State Election Commission and the Charleston County Board of Elections and Voter Registration to hold a special primary applying S.C. Code Ann. §§ 7-11-90, 7-17-620 and 7-11-55 (Supp. 2011).

Appellant received written notice of entry of this Order on August 14, 2012.

Respectfully submitted,

James E. Smith, Jr., S.C. Bar No. 8733
James@JamesSmithPA.com
JAMES E. SMITH, JR., P.A.
1422 Laurel Street
Columbia, South Carolina 29201
(803) 933-9800


By: _____
Attorneys for Appellant George Tempel

August 15, 2012

Columbia, South Carolina

Other Counsel:

M. Elizabeth Crum, S.C. Bar No. 1486
lcrum@mcnair.net
Ariail B. Kirk, S.C. Bar No. 71101
akirk@mcnair.net
Amber B. Martella, S.C. Bar No. 78706
amartella@mcnair.net
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
Attorney for Plaintiff George Tempel

Samuel W. Howell, IV, Esquire
Howell Linkous & Nettles, LLC
106 Broad Street
Charleston, South Carolina 29401
samhowell@bond-law.com

Attorneys for Defendant Charleston County Board
of Elections and Voter Registration

J. Robert Bolzchoz, Esquire
204 Princeton Street
Columbia, SC 29205-1836
robert@bolchoz.com

Butch Bowers, Esquire
Womble Carlyle Sandridge & Rice, LLP

1727 Hampton Street
Columbia, South Carolina 29201
Butch.Bowers@wcsr.com

Attorney for Defendant South Carolina Republican Party
(Matt Moore as Executive Director and Chad Connolly
as Chairman) and Charleston County Republican Party
(Lin Bennett as Chairman)

Michael A. Timbes, Esquire
Matthew E. Yelverton, Esquire
Thurmond Kirchner Timbes & Yelverton
15 Middle Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
mtimbes@tktylawfirm.com
myelverton@tktylawfirm.com

Tanya A. Gee, Esquire
Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201
tgee@nexsenpruet.com

Attorneys for Defendant Paul Thurmond

THE STATE OF SOUTH CAROLINA
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Case No. 2012-CP-10-3737

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S.C. Supreme Court

George Tempel,..... Plaintiff,

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

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

NOTICE OF APPEAL

Appellant-Defendant South Carolina Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training) (SEC) appeals only that portion of the Order of the Honorable J. Ernest Kinard, Jr., dated August 14, 2012 that orders as follows: "Filing shall be reopened for a special Republican Party primary for South Carolina Senate District 41" and authorizes the South Carolina Republican Party through the SEC and the Charleston County Board of Elections and Voter Registration to hold a special primary applying S.C. Code Ann.

§§ 7-11-90, 7-17-620 and 7-11-55 (Supp. 2011). Appellant-Defendant received written notice of entry of this Order on August 14, 2012.

Respectfully submitted,

M. Elizabeth Crum, S.C. Bar No. 1486
lcrum@mcnair.net
Ariail B. Kirk, S.C. Bar No. 71101
akirk@mcnair.net
Amber B. Martella, S.C. Bar No. 78706
amartella@mcnair.net
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

By: 

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

August 15, 2012

Columbia, South Carolina

Other Counsel:

James E. Smith, Jr., Esquire
James E. Smith, Jr., P.A.
1422 Laurel Street
Columbia, South Carolina 29201
James@JamesSmithPA.com

Attorney for Plaintiff George Tempel

Samuel W. Howell, IV, Esquire
Howell Linkous & Nettles, LLC
106 Broad Street
Charleston, South Carolina 29401
samhowell@bond-law.com

Attorneys for Defendant Charleston County Board
of Elections and Voter Registration

(continued)

J. Robert Bolzchoz, Esquire
204 Princeton Street
Columbia, SC 29205-1836
robert@bolchoz.com

Butch Bowers, Esquire
Womble Carlyle Sandridge & Rice, LLP
1727 Hampton Street
Columbia, South Carolina 29201
Butch.Bowers@wcsr.com

Attorneys for Defendant South Carolina Republican Party
(Matt Moore as Executive Director and Chad Connolly
as Chairman) and Charleston County Republican Party
(Lin Bennett as Chairman)

Michael A. Timbes, Esquire
Matthew E. Yelverton, Esquire
Thurmond Kirchner Timbes & Yelverton
15 Middle Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
mtimbes@tktylawfirm.com
myelverton@tktylawfirm.com

Tanya A. Gee, Esquire
Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201
tgee@nexsenpruet.com

Attorneys for Defendant Paul Thurmond

THE STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

George Tempel, ...Appellant-Respondent,

v.

South Carolina State Election Commission
(Marci Andino, as Executive Director, and
Chris Whitmire, as Director of Public Infor-
mation and Training); South Carolina Rep-
ublican Party (Matt Moore, as Executive
Director, and Chad Connolly, as Chairman);
Charleston County Republican Party (Lin
Bennett, as Chairman); Charleston County
Board of Elections and Voter Registration
(Joseph L. Debney, as director, and Dan
Martin, as Chairman); Dorchester County
Republican Party (Carroll S. Duncan, Chairman);
Dorchester County Board of Elections (Joshua
Dickard as Executive Director); Paul Thurmond,.....Defendants,

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

And

Paul Thurmond is the.....Respondent-Appellant,

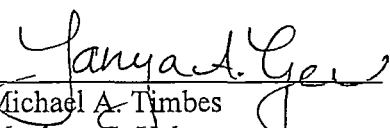
And

South Carolina Republican Party (Matt Moore, as Executive Director, and Chad Connolly, as Chairman); Charleston County Republican Party (Lin Bennett, as Chairman); Charleston County Board of Elections and Voter Registration (Joseph L. Debney, as director, and Dan Martin, as Chairman); Dorchester County Republican Party (Carroll S. Duncan, Chairman); Dorchester County Board of Elections (Joshua Dickard as Executive Director); are the.....Respondents.

NOTICE OF APPEAL

Respondent-Appellant Paul Thurmond appeals the order of the Honorable J. Ernest Kinard, Jr., dated August 14, 2012. Respondent-Appellant received written notice of entry of this order on August 14, 2012.

Respectfully submitted,


Michael A. Timbes
Matthew E. Yelverton
THURMOND KIRCHNER
TIMBES & YELVERTON, P.A.
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
Phone: (843) 937-8000
Fax: (843) 937-4200
mtimbess@tktylawfirm.com
myelverton@tktylawfirm.com

-AND-

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AUG 20 2012

McNAIR LAW FIRM

Tanya A. Gee
NEXSEN PRUET, LLC
1230 Main Street, Suite 700
Columbia, SC 29201
Phone: (803) 771-8900
Fax: (803) 253-8277
tgee@nexsenpruet.com

Attorneys for Paul R. Thurmond

August 16, 2012
Columbia, South Carolina

Other Counsel of Record:

M. Elizabeth Crum
lcum@mcnair.net
Ariail B. Kirk
akirk@mcnair.net
Amber B. Martella
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

Attorneys for the Appellant-Respondent State Election Commission

James E. Smith, Jr.
James E. Smith, Jr., P.A.
1422 Laurel Street
Columbia, South Carolina 29201
James@JamesSmithPA.com

Attorney for Appellant-Respondent George Tempel

Samuel W. Howell, IV
Howell Linkous & Nettles, LLC
106 Broad Street
Charleston, South Carolina 29401
samhowell@bond-law.com

Attorney for Respondents Charleston and Dorchester County Boards of Elections and Voter Registration

J. Robert Bolzchoz
204 Princeton Street
Columbia, SC 29205

Butch Bowers
Womble Carlyle Sandridge & Rice, LLP
1727 Hampton Street
Columbia, South Carolina 29201
Butch.Bowers@wcsr.com

Attorneys for Respondents South Carolina Republican Party, Charleston County Republican Party, and Dorchester County Republican Party

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

GEORGE TEMPEL,

Plaintiff,

vs.

SOUTH CAROLINA STATE ELECTION)
COMMISSION (*Marci Andino, as*))
Executive Director & Chris Whitmire as))
Director of Public Information and))
Training); SOUTH CAROLINA)
REPUBLICAN PARTY (*Matt Moore as*))
Executive Director & Chad Connolly, as))
Chairman) CHARLESTON COUNTY)
REPUBLICAN PARTY (*Lin Bennett as*))
Chairman) CHARLESTON COUNTY)
BOARD OF ELECTIONS AND VOTER)
REGISTRATION (*Joseph L. Debney*))
as Director & Dan Martin as Chairman);)
DORCHESTER COUNTY REPUBLICAN)
PARTY (*Carroll S. Duncan, Chairman*);)
DORCHESTER COUNTY BOARD OF)
ELECTIONS (*Joshua Dickard as*))
Executive Director); PAUL THURMOND)
Defendants.)

Civil Action No. 2012-CP-10-3737

ORDER AND JUDGMENT FOR THE
PLAINTIFF

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2012 AUG 14 PM 4:55

FILED

This matter was scheduled for trial on August 13, 2012, at 9:30 in the morning
before the Court upon Plaintiff George Tempel's (Plaintiff) Complaint for Declaratory

Judgment, Writ of Mandamus, Application for Temporary Restraining Order and Motion
for Injunctive Relief (collectively referred to as Complaint). Plaintiff requested, *inter*
alia, this Court remove the name of Paul Thurmond who was improperly placed on the
Republican Party primary ballot and further that he be decertified as a candidate for



election to South Carolina Senate District 41. In addition, Plaintiff requested at the commencement of the hearing for this Court to rule that Thurmond is precluded from participating in a special Republican party primary following Thurmond's disqualification. For the reasons set for below, Plaintiff's requests for relief are GRANTED IN PART AND DENIED IN PART.

STATEMENT OF THE CASE

Plaintiff filed his Complaint on June 8, 2012. On the same day, the Complaint was served by personal service upon Defendant Thurmond. The remaining Defendants accepted service of the Complaint through their respective Counsel, also on June 8. Defendant Thurmond filed and served his Answer on June 11, 2012. On the same day, Defendant Thurmond filed a Petition for an Extraordinary and Expedited Writ to have the South Carolina Supreme Court assume original jurisdiction of this matter. Plaintiff filed a Return to the Petition, and the Supreme Court by its Order dated June 11, 2012 denied Defendant Thurmond's Petition for an Extraordinary and Expedited Writ. . Plaintiff George Tempel is a citizen, resident and registered voter in Senate District 41. He filed suit alleging that Senate District 41 candidate Paul Thurmond was ineligible as a candidate and unlawfully certified as Thurmond did not file a paper copy of his Statement of Economic Interests (SEI) at the same time and with the same person as he filed his Statement of Intention of Candidacy (SIC) as required by S.C. Code Section 8-13-

1356(B) and is therefore ineligible to be certified as a candidate. Plaintiff further alleges that Thurmond's candidacy is void *ab initio*, precluding Thurmond from participating in a special Republican Party primary election following his disqualification pursuant to S.C. Code Ann. 7-11-55.

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RECORD p. 000011

Thurmond admits that he did not file a paper copy of his SEI at the same time and with the same person as his SIC, but Thurmond denies that he was required to do so. Specifically, Thurmond claims that he is exempt from the operable provisions relied upon as a basis for Plaintiff's Complaint pursuant to SC Code Sec 8-13-1356(A), which provides that the simultaneous filing of the SEI and SIC are not required for exempted public officials. In other words, Thurmond argues that Sections 1356(B) and (E) do not apply to the filing and processing of this SEI in connection with his candidacy. Responding further, Thurmond asserts that he is a public official within the meaning of Section 1356(A) by virtue of being a part-time prosecutor for the City of North Charleston. Thurmond further asserts that prior to filing his SIC he filed, and therefore had on file, his SEI, thereby satisfying the requirements of Section 1356(A). As such, Thurmond contends he is an exempt public official relieved of the remaining requirements set forth under Section 1356. Thurmond concedes that he did not comply with filing requirements of Section 8-13-1356(B) if the Court determines that he is not entitled to the exemption in Section 1356(A). However, Thurmond and the Charleston County Board of Elections and Voter Registration contend that if he is disqualified for this reason, that he is not precluded from participating in a special election to be held pursuant to S.C. Code Ann 7-11-55. Thurmond contends a contrary conclusion would disenfranchise the voters of this State.

FINDINGS OF FACT

1. In addition to the testimony and evidence received at trial, Plaintiff and Thurmond submitted joint a stipulation of facts prior to trial, without objection from any party. The Court accepts these stipulated facts as part of its findings below:

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2. Plaintiff George Tempel, is a citizen, resident and registered voter in Senate District 41 and has standing to bring this action.

3. Thurmond meets the age and citizenship requirements to hold the office of State Senator in the State of South Carolina, and he resides within District 41 for purposes of the November 2012 general election..

Thurmond is an attorney in good standing with the South Carolina Bar, and he is the part-time municipal prosecutor for the City of North Charleston. He has held the position for 19 months, and spends approximately 15 to 20 hours per week fulfilling his prosecutorial duties. He has never filed an SEI in connection with this position. he last time he filed an SEI was when he was a member of Charleston County Council.

On March 28, 2012, at 12:07 p.m., Thurmond electronically submitted a current SEI to the appropriate supervisory office for the position of Senate Seat 41.

Thereafter, Thurmond filed his SIC for the District 41 seat with the Chairperson of the Charleston Republican Party.

Mr. Thurmond did not simultaneously file a paper copy his SEI and along with his SIC with the filing official.

M . Thurmond was certified by the Republican Party as a candidate for the District 41 State Senate Seat on March 30, 2012.

On June 12, 2012, the Republican Primary took place. Thurmond's name remained on the ballot, although he was unopposed after all other Republican contenders were decertified. He received over 1,700 votes in the primary.

Testimony at trial revealed that Thurmond was appointed to his position with the City of North Charleston by J. Brady Hair, the City Attorney for the City of North Charleston. Thurmond's appointment was made by Hair pursuant to North Charleston City Ordinance Section 2-151. Thurmond was paid on an hourly basis by the City of North Charleston. Thurmond did not take an oath of office when he was appointed as the City's prosecutor. Thurmond has complete autonomy in the exercise of his duties, and he represents the City and the State's interest in the discharge of his prosecutorial duties.

Mr. Thurmond admits that his filing of an SEI on March 28, 2012 was not due to his position as a part-time prosecutor for the City of North Charleston. (Thurmond Affidavit #18).

At no time has Mr. Thurmond held the elected office of State Senator for District 41.

CONCLUSIONS OF LAW

1. This Court has jurisdiction to hear this matter.

2. S.C. Code Sections 8-13-1356 (A), (B), and (E) and 7-11-15 are mandatory and

3. Section 8-13-1356 of the South Carolina Code states, in pertinent part:

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



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

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

S.C. Code Ann. § 8-13-1356(A), (B), (E) (Supp. 2011).

4. Section 7-11-15(2) of the South Carolina Code states, in pertinent part:

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 state executive committees must certify candidates pursuant to Section 7-13-40. ...

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

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

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

S.C. Code Ann. § 8-13-1300(27), (28) (Supp. 2011).

6. S.C. Code Ann. 7-11-90 provides,

After the closing of entries if any candidates shall be unopposed, the State committee in the case of State offices and the county committees in the case of county offices shall declare such unopposed candidates as party nominees, and the

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names of unopposed candidates shall not be placed upon the primary election ballots but shall be certified for the general election ballots.

7. S.C. Code Ann. 7-17-620 provides, "All unopposed candidates in primary elections shall be declared the nominees of the party by the respective State or county committees.

8. S.C. Code Ann. 7-11-55 provides, in relevant part,

If a party nominee ... becomes disqualified after his nomination ... and was selected through a party primary election, the vacancy must be filled in a special primary election to be conducted as provided in this section. The filing period for this special primary election opens the second Tuesday after the ... disqualification ... for one week. The special primary election then must be conducted on the second Tuesday immediately following the close of the filing period. A runoff, if necessary, must be held two weeks after the first primary. The nomination must be certified not less than two weeks before the date of the general election. If the nomination is certified two weeks or more before the date of the general election, that office is to be filled at the general election.

If the nomination is certified less than two weeks before the date of the general election, that office must not be filled at the general election but must be filled in a special election to be held on the second Tuesday in the month following the election, provided that the date of the special election to be conducted after the general election may be combined with other necessary elections scheduled to occur within a twenty-eight day period in the manner authorized by § 7-13-190(D).

The procedures for resigning a candidacy under this section for legitimate nonpolitical reasons are the same as provided in § 7-11-50.

Where the party nominee was unopposed, each political party registered with the State Election Commission has the privilege of nominating a candidate for the office involved through a special primary election in the same manner and under the same procedures stipulated by this section.

9. The SCRP is responsible for certifying candidates for the party primary election for a South Carolina State Senate seat to the SEC. S.C. Code Ann. § 7-11-15(2) (Supp. 2011). The SEC or the county election commission, as applicable have the



ministerial duty of developing the databases, which include the names of the candidates for District 41, for the Primary Election, and for the General Election.

10. The South Carolina Supreme Court held in *Anderson v. South Carolina Election Com'n*, 397 S.C. 551, 725 S.E.2d 704 (S.C. 2012), that S.C. Code Section 8-13-1356 requires all **non-exempt** candidates to file a paper copy SEI simultaneously with a SIC as the **only** method by which a non-exempt individual can comply with Sec. 8-13-1356. *Id.*

11. This Court concludes that Mr. Thurmond is a public official under the common law definition, as he exercises the sovereign power of the state in the discharge of his duties as a prosecutor. *See State v. Bridgers*, 329 S.C. 11, 495 S.E.2d 196 (1997); 2000 S.C. A.G. LEXIS 3, S.C. Op. Atty. Gen. (January 27, 2000). However, this Court concludes that Thurmond is not a public official within the meaning of the exemption set forth in S.C. Code Ann. 8-13-1356(A). In the Court's view, Section 8-13-1356(A) was not intended to apply to the manner in which Thurmond filed his SEI and SIC. He had never before filed an SEI in connection with this position as a part-time municipal prosecutor, and Thurmond was candid that it was not his intent when filing his SEI on March 28, 2012, that he was doing so as a prosecutor. Accordingly, this court finds and concludes that Thurmond not entitled to the exemption created by Section 8-13-1356(A), and, therefore, is disqualified

as the Republican Party nominee for the District 41 seat. In this regard, the Plaintiff's request for relief is hereby GRANTED.

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12. Applying Sections 7-11-90, 7-17-620 and 7-11-55, this Court further finds that the Republican Party may reopen the primary following Thurmond's disqualification as the party's nominee, in the manner set forth in the foregoing statutes. I find and conclude that Thurmond is not precluded from participating in the special primary. Should Thurmond win the primary, nothing herein shall be construed to limit or preclude his appearance on the November 6, 2012 ballot in the general election. In addition to the foregoing statutes, this conclusion is based upon arguments of the parties at trial, the evidence presented, the entire record of the case, and the inherent power of this Court to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.

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

IT IS HEREBY ORDERED THAT:

- 1) Paul Thurmond is not entitled to the exemption set forth in Section 8-13-1356(A) and, therefore, is hereby disqualified as the Republican party's nominee for Senate District 41.
- 2) Subject to the further directives below, Thurmond shall not appear on the November 6, 2012 ballot for the general election.
- 3) Filing shall be reopened for a special Republican Party primary for South Carolina Senate District 41. Nothing herein shall limit or preclude Thurmond from filing to run as a candidate in that special primary election or from appearing on the November 6, 2012 ballot should he win the special primary election.

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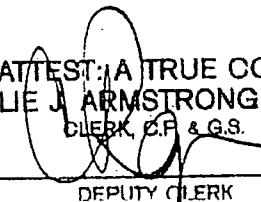


IT IS SO ORDERED.


Honorable J. Ernest Kihard, Jr.
Circuit Court Judge

August 14, 2012

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & G.S.

By 
DEPUTY CLERK

TEMPEL V. SC ELECTION COMMISSION ET AL.
CIVIL ACTION NO. 2012-CP-10-3737
ORDER
PAGE 10

THE STATE OF SOUTH CAROLINA
In The Supreme Court

Appeal From Charleston County
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

FILED
2012 AUG 22 PM 1:30
JULIE J. ARMSTRONG
CLERK OF COURT

George Tempel, ...Appellant/Respondent,

v.

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

.....Respondents,

Of whom South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training) and Paul Thurmond are

.....Respondents/Appellants.

ORDER

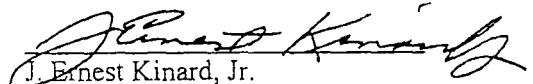
Respondent-Appellant Thurmond (Thurmond) filed a Verified Petition to Enforce the August 14, 2012 Order of this Court pursuant to Rule 62(C), SCRCF and requested that this Court issue an order requiring the South Carolina State Election Commission (SEC) and the South Carolina Republican Party to proceed with the Special Election for the Senate District 41 on the grounds that there was no automatic stay pursuant to Rule 241(a), SCACR. Additionally, the Verified Petition requested that if the Court found that an automatic stay were in place

pursuant to Rule 241, the Court lift the automatic stay or apply the stay equally, ("if it applies to any part of the Court's order, then it should apply to all of the Court's order")

Appellant/Respondent George Tempel, the SEC, and Thurmond have each appealed certain portions or all of this Court's Order of August 14, 2012. On August 17, 2012, the Supreme Court of South Carolina granted the SEC's Motion to Expedite pursuant to Rule 263(b).

This matter is now before the Supreme Court on an expedited briefing schedule. I decline to grant the relief requested in the Verified Petition.

AND IT IS SO ORDERED.


J. Ernest Kinard, Jr.
Active/Retired Circuit Court Judge

Camden
South Carolina

August 21, 2012

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-10-3737

George Tempel
PLAINTIFF(S)

South Carolina State Election Commission et al.
DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

This matter came before the Court on June 11, 2012 on Plaintiff's Petition for a Temporary Restraining Order at which time argument was heard. The matter was taken under advisement. At the conclusion of the hearing, the Court was advised the District has been redrawn and the District 41 Senate Seat now includes precincts in both Charleston and Dorchester counties; however, the Dorchester County Republican Party and Board of Elections were neither named as parties nor served with the lawsuit prior to the hearing. Pursuant to Rule 19, SCRPC, the parties conceded that the Dorchester County Republican Party and Board of Elections were indispensable parties that must be added prior to the Court's ruling. As a result of the defect, the Court was precluded from ruling until the Dorchester County Republican Party and Board of Elections were added as indispensable parties.

Subsequently, Plaintiff filed an Amended Complaint on June 15, 2012 adding Dorchester County Republican Party and Board of Elections as party Defendants. Based on the fact the Dorchester County Republican Party and Board of Elections were not added until after the primary election on June 12, 2012, the parties concede the petition for a Temporary Restraining Order is moot. Furthermore, S.C. Code Ann. § 7-11-90 provides that "[a]fter the closing of entries if any candidates shall be unopposed, the State committee in the case of State offices . . . shall declare such unopposed candidates as party nominees, and the names of unopposed candidates shall not be placed upon the primary election ballots but shall be certified for the general election ballots." The effect of this statute on Thurmond's candidacy is that as the result of being the sole remaining candidate for the Republican Party nomination to Senate District 41, his name would not appear on the primary election ballot. Because Thurmond's nomination as the Republican candidate for Senate District 41 was not dependent upon the results of the June 12th primary election, the Plaintiff suffered no irreparable harm as the result of the June 12th primary election proceeding as scheduled which also renders the petition for Temporary Restraining Order moot.

Subsequently, the Court scheduled and held a status conference with all parties on July 10, 2012 to set the remaining matters for trial, that being the Plaintiff's Petition for Writ of Mandamus and Declaratory Judgment seeking decertification of Thurmond as a candidate and removal from the November ballot. At that time the Plaintiff indicated he was ready for trial, but Defendant Thurmond

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JUL 13 ARMSTRONG
CLERK OF COURT

sought additional time to conduct discovery. The Court granted this request. In the interest of justice, the Court set this case on an expedited schedule. The parties agreed to conclude discovery by July 24, 2012. The parties advised the Court the most imperative date before which they would need a decision was August 15, 2012, which is the deadline a party nominee must be certified with the South Carolina State Election Commission. Counsel for all parties advised the Court of their scheduling conflicts and unavailability to appear between the discovery deadline date of July 24, 2012 and August 15, 2012, and they further advised the Court that the earliest date all counsel would be available to appear was August 13, 2012. As a result, the Court set the matter for trial at 9:30 a.m. August 13, 2012.

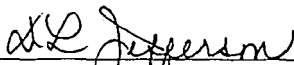
ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
n/a		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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


Circuit Court Judge

2128
Judge Code

7/10/12
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20__ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20__ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

RECEIVED

AUG 16 2012

S.C. Supreme Court

George Tempel,..... Plaintiff,

v.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. Pursuant to the Uniform and Overseas Citizens Absentee Voting Act (UOCAVA), as set forth in the United States Code, Title 42, Section 1973ff, et seq., and S.C. Code Ann. § 7-15-406 (Supp. 2011), absentee ballots must be sent to all military and overseas qualified electors (UOCAVA voters) at least forty-five (45) days prior to the November 6, 2012 General Election. Therefore, the UOCAVA ballots have to be sent out not later than September 22, 2012. The UOCAVA absentee ballots include the offices for all federal, state, and county wide or less than county wide offices on the General Election ballot. See S.C. Code Ann. § 7-15-460 (Supp. 2011).¹ Because of the tight time constraints inherent in the election process, the SEC believes a ruling in this case as soon as is reasonably possibly is essential to ensure the Appellant and the Defendants are able to fulfill their duties regarding preparations for the General Election.

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted,

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

lcrum@mcnair.net

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

akirk@mcnair.net

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

amartella@mcnair.net

McNAIR LAW FIRM, P.A.

Post Office Box 11390

Columbia, South Carolina 29211

(803) 799-9800

By: *M. Elizabeth Crum*

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

August 16, 2012

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

George Tempel Plaintiff,

v.

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

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

AFFIDAVIT OF MARCI ANDINO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13. Further Affiant saith not.

Marci B. Andino

Marci B. Andino

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

Janet P. Reynolds (L.S.)
Notary Public for the State of South Carolina.
My Commission expires: 10-4-2020

Andino, Marci

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

Marci and Chris,

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

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

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

Thank you,

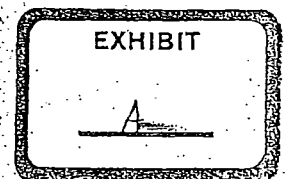
Amanda

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Version: 9.0.930 / Virus Database: 2437.1.1/5121 - Release Date: 07/09/12 02:34:00

1
RECORD p. 000035



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

Nancy L. Kolman
Chairperson

843 240-3396

July 7, 2012

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

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

Dear Ms Mahn,

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

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

Georgetown County Sheriff

Darryel C. Carr

SC House of Representatives District 108

Jarrod Ownbey

Georgetown County Council District 5

Ben Dunn

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

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

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

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

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

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

If you require any additional information, please contact me.

Best regards,

Nancy L. Kolman, Chairperson
Georgetown County Democratic Party

Receipt Acknowledged:

Georgetown County Election Commission

By: _____ Title: _____

Name: _____ Date & Time: _____

Andino, Marci

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

Amanda,

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

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

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

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

Marci

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

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

Marci and Chris,

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

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

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

Thank you.

Amanda

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Version: 9.0.930 / Virus Database: 2437.1.1/5121 - Release Date: 07/09/12 02:34:00

Andino, Marci

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

Good day,

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

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

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

Thanks

Conway

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Version: 9.0.930 / Virus Database: 2437.1.1/5122 - Release Date: 07/10/12 02:34:00



County Attorney's Office

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

June 18, 2012

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

Re: Request for Opinion on Replacement Candidates

Dear General Wilson:

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

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

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

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

Thank you for your attention to this matter.

Sincerely,

Mark W. Tollison

cc: Conway Belangia, GCEC Director

Enclosure

County Square • 301 University Ridge • Suite 2400 • Greenville, SC 29601-3681 • Fax (864) 467-5964

RECORD p. 000040



THE GREENVILLE COUNTY DEMOCRATIC PARTY

1300-J East Washington Street, Greenville SC 29607

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

May 31, 2012

By Hand Delivery:

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

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

Dear Mr. Belangia:

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

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

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

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

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

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

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

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

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

If you require any additional information, please let me know.

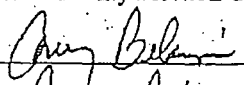
Best regards,



Eric Graben, Chairman
Greenville County Democratic Party

Receipt Acknowledged:

Greenville County Election Commission

By: 
Name: Conway Belanger
Title: Director of Elections
Date & Time: MAY 3/2012



ALAN WILSON
ATTORNEY GENERAL

July 10, 2012

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

Dear Mr. Tollison:

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

Law/Analysis

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

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

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

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

EXHIBIT

B

Mr. Tollison
Page 2
July 10, 2012

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

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

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

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

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

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

Mr. Tollison
Page 3
July 10, 2012

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

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

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

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

Id. (emphasis added).

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

Mr. Tollison
Page 4
July 10, 2012

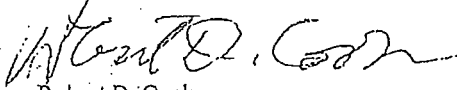
also made clear that such persons should not be certified "for the general election." Similarly, as we stated in *Op. S.C. Atty. Gen.*, May 26, 1980 (1980 WL 121244) "failure to timely file the ethics statement, thereby resulting in a prohibition of placing a candidate on the ballot, cannot be circumscribed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

Conclusion

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

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

Sincerely,



Robert D. Cook
Deputy Attorney General

RDC/an

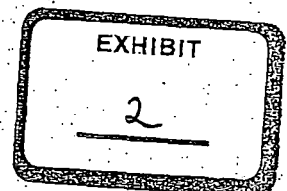
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF GREENWOOD) EIGHTH JUDICIAL CIRCUIT
)
 Robert J. Tinsley, Sr.,)
)
 Plaintiff,) ORDER
)
 v.) C/A No. 2012-CP-24-732

RECEIVED A TRUE COPY
 10/31/12
 JUDGE J. J. MOORE
 CLERK AND ES
 GREENWOOD COUNTY
 S.C.

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

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

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



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

FACTUAL BACKGROUND

This matter involves the allegations that the SCRP, GCRP, SCDP, and GCDP improperly certified certain candidates to the June 12, 2012 primary election ballot. Plaintiff filed a Summons and Verified Complaint on July 3, 2012, alleging Benjamin L. Shealy (Shealy), Robert E. "Bob" Merritt (Merritt), Kelley-Clark, and Moton had not filed an statement of economic interest (SEI) and statement of intention of candidacy (SIC) at the same time and with the same official as required by S.C. Code Ann. § 8-13-1356 and Anderson v. South Carolina Election Commission, 397 S.C. 551, 725 S.E.2d 704 (2012) (petition for rehearing by way of clarification

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

¹ On July 27, 2012, Plaintiff amended his Complaint to dismiss Shealy and Merritt as defendants.

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

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

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

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

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

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

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

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

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

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

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

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

16. In Anderson and Florence County Democratic Party the Supreme Court held that the South Carolina election statutory scheme requires the political parties certified by the SEC,

which parties nominate candidates by party primary, to certify that the candidates complied with the requirements of S.C. Code Ann. § 7-11-15 (Supp. 2012) and § 8-13-1356 (Supp. 2011).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

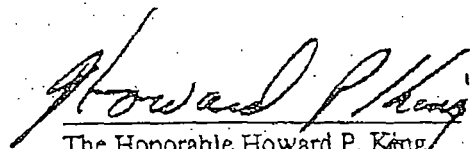
25. Ms. Kelly-Clark's position as Deputy Coroner is that of a public employee and not of a public official. The position of Deputy Coroner is not one for which an SEI is required to be filed. See S.C. Code Ann. § 8-13-1110 (Supp. 2011). This finding is buttressed by the fact that Ms. Kelly-Clark did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

NOW THEREFORE IT IS ORDERED THAT

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

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

AND IT IS SO ORDERED.


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

Sumter, South Carolina

August 13, 2012

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP2400732

Robert J Tinsley Sr

Greenwood County
Democratic Party

South Carolina Democratic
Party

SC State Election
Commission
SC Democratic Party

Greenwood County Voter
Registration and Elections
Office

Marcia Kelly Clark
SC Republican Party

Andino, Marcel as
Executive Director
Greenwood County
Democratic Party
Robert E Merritt

Felicia Motion

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED:

☒ See attached order; (formal order to follow)

☐ Statement of Judgment by the Court

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX		
Complete this section below which the judgment affects title to real or personal property or if any amounts should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

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

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

Howard P. King
Circuit Court Judge

2107

Judge Code

8/13/12

Date

For Clerk of Court Office Use Only

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

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

Mary Elizabeth (Liz) Cram PO Box 11390 Columbia, SC 29211
Christopher Phillip Kenney PO Box 1090 Columbia, SC 29202
Karl Smith Bowers Jr. 1721 Hampton St. Columbia, SC 29201
Tommy Lee Stanford PO Box 3321 Greenwood, SC 29648
John D. Compton III 212 Grace St. Greenwood, SC 29649
Stephen Dallas Baggett Jr. PO Box 49533 Greenwood, SC 29649
Graham L. Newman PO Box 1090 Columbia, SC 29202
Thomas E. Hite Jr. PO Box 805 Abbeville, SC 29620
Marvin R. Watson PO Drawer 799 Greenwood, SC 29648

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Ingram B. Moon

Ingram B. Moon - Clerk of Court

Court Reporter

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

GREENVILLE COUNTY
DEMOCRATIC PARTY, ERIC K.
GRABEN

Plaintiffs,

vs.

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

Defendants.

Civil Action No. 2012-CP-23-4803

ORDER AND JUDGMENT FOR
PLAINTIFF AS TO DEFENDANT
MIKE BARNES

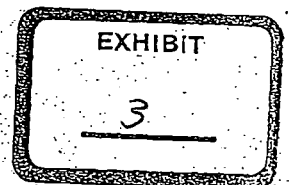
Granting the request made by Defendant State Election Commission (SEC) for an expedited trial to meet the statutory deadline for certifying candidates for the general election, the Court held a full merits hearing on August 14, 2012. For the reasons set for below, Plaintiff's request for relief is GRANTED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

STATEMENT OF THE CASE

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

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RECORD p. 000059



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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

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

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

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

- c. I find that Defendant Barnes failed to file a paper copy of his SEI as contemplated by S.C. Code Sec. 8-13-1356(B). S.C. Code Section 8-13-1356(B) provides that "[a] candidate must file a statement of economic interests for the preceding calendar year at the same time and with the same official with whom the candidate files a declaration of candidacy or petition for nomination."

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

IT IS HEREBY ORDERED THAT:

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

IT IS SO ORDERED.



Honorable G. Thomas Cooper, Jr.
Circuit Court Judge

August 15, 2012

12:00 AM

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

B.R. SKELTON,

Plaintiff,

vs.

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

Defendants.

Civil Action No. 2012-CP-40-4464

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

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

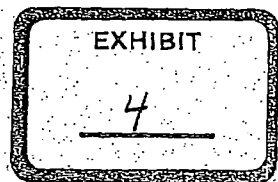
The Court, with the consent of the parties, bifurcated the above-captioned matter and held a full merits hearing on August 14, 2012, only on Defendant Ed J. Harris' Cross-Claims against Defendants South Carolina State Election Commission (SEC), Pickens County Election Commission (PEC), Pickens County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

STATEMENT OF THE CASE

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

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

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

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. This Court has jurisdiction over the subject matter and parties. Venue is proper and Plaintiff has standing to bring this action.

2. On June 18, 2012, Plaintiff timely filed a Primary Election Protest and Contest pursuant to S.C. Code Sec. 7-17-560 alleging Defendant Harris did not file a paper copy of his SEI simultaneously with his SIC, in violation of S.C. Code Section 8-13-1356.

3. A hearing on Plaintiff's Primary Election Protest was timely held before the SCRP Executive Committee on June 21, 2012, and a decision by the SCRP Executive Committee was made to deny Plaintiff's Protest.

SKELTON v. HARRIS, ET AL.
CIVIL ACTION NO. 2012-CP-40-4464
ORDER DENYING DEFENDANT HARRIS' CROSSCLAIM
PAGE 2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- d. Evidence in the record failed to support Defendant Harris' contention that he filed his SEI as contemplated by S.C. Code Sec. 8-13-1356(B). S.C. Code Section 8-13-1356(B) provides that "[a] candidate must file a statement of economic interests for the preceding calendar year at the same time and with the same official with whom the candidate files a declaration of candidacy or petition for

G. 1. 6

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

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

Further, there is no evidence that a paper copy of Mr. Harris' SEI currently exists.

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

IT IS HEREBY ORDERED THAT:

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

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

IT IS SO ORDERED.



Honorable G. Thomas Cooper, Jr.
Circuit Court Judge

August 15, 2012
11:00 Am

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

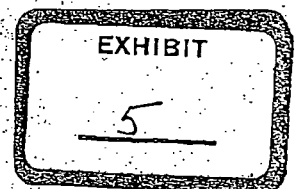
All:

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

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

Sincerely,
Michael

Michael A. Timbes
THURMOND KIRCHNER TIMBES & YELVERTON, P.A.
15 Mid-Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
Phone: 843.937.8000
Fax: 843.937.4200
Email: mtimbess@tktylawfirm.com
Web: www.tktylawfirm.com



MCNAIR
ATTORNEYS

August 14, 2012

M. Elizabeth Crum

Hand Delivery

lcrum@mcnair.net
T (803) 753-3240
F (803) 933-1484

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

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

Dear Sharon:

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

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

Very truly yours,

MCNAIR LAW FIRM, P.A.

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

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

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

Mailing Address
Post Office Box 11390
Columbia, SC 29211

mcnair.net

COLUMBIA 1087840v1

EXHIBIT

6

KENTUCKY LEXINGTON | NORTH CAROLINA CHARLOTTE | SOUTH CAROLINA ANDERSON | BLUFFTON | CHARLESTON | COLUMBIA | GREENVILLE | HILTON HEAD

RECORD p. 000074

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

GEORGE TEMPEL,) Civil Action No. 2012-CP-__-__

Plaintiff,)

vs.)

SOUTH CAROLINA STATE ELECTION)
COMMISSION (*Marci Andino, as*)
Executive Director & Chris Whitmire as)
Director of Public Information and)
Training); SOUTH CAROLINA)
REPUBLICAN PARTY (*Matt Moore as*)
Executive Director & Chad Connolly, as)
Chairman) CHARLESTON COUNTY)
REPUBLICAN PARTY (*Lin Bennett as*)
Chairman) CHARLESTON COUNTY)
BOARD OF ELECTIONS AND VOTER)
REGISTRATION (*Joseph L. Debney*)
as Director & Dan Martin as Chairman);)
WALTER HUNDLEY)

Defendants.)

VERIFIED COMPLAINT FOR
DECLARATORY JUDGMENT, WRIT
OF MANDAMUS, APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND MOTION FOR
INJUNCTIVE RELIEF

FILED
2012 JUN -8 PM 12:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO: THE DEFENDANTS ABOVE NAMED

COMES NOW the Plaintiff, by and through his undersigned counsel, before this Court seeking a Declaratory Judgment under Rule 57 and a Temporary Restraining Order 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) and further in *Florence County*

Democratic Party v. Florence County Republican Party, Op. No. 27128 (S.C. Sup. Ct. filed June 5, 2012) (*holding* Candidates who had previously filed a Statement of Intention of Candidacy (SIC) with political party did not constitute "public officials" who were exempt from statutory requirement that candidates file a paper copy of Statement of Economic Interest (SEI) with party: statute required a candidate to simultaneously file a copy of an SEI with an SIC unless the candidate already held the office and had an SEI on file with the appropriate supervisory office.)

STATEMENT OF THE CASE

Recognizing that Judgments and Decrees speak for themselves, Plaintiff does not come before this Court requesting elucidation or clarification of the Supreme Court's opinion in *Anderson or Florence County Democratic Party*. The past lawlessness of the named Defendants and the continuing violation of both the laws of this State and their direct disregard of the Highest Court's Orders regarding the rights of Plaintiff and his own corresponding obligations make it necessary to seek relief from this Court to avoid additional damage and wasted resources associated with the special election process in Charleston County. Time is of the essence because absentee ballots have been mailed out and returned by registered voters in Charleston County. Plaintiff, upon information and belief, submits that these absentee ballots include the name of Walter Hundley, an unqualified candidate for the special election of South Carolina Senate District 41 to be held July 17, 2012. This candidate must be removed from the lists of qualified candidates¹ in order for the election process to proceed in a lawful manner.

¹ All lists of qualified candidates for election in 2012 maintained by any and all of the

SUPPORT FOR GRANT OF TRO, INJUNCTIVE RELIEF
DECLARATORY JUDGMENT AND WRIT OF MANDAMUS

The above-named Plaintiff respectfully submits the following:

1. Plaintiff is a registered voter, resident and citizen of Charleston County, South Carolina.
2. Defendant, South Carolina State Election Commission (SCSEC), is a commission organized under the laws of South Carolina with a primary mission to ensure every eligible citizen has the opportunity to register to vote, participate in fair and impartial elections, and have the assurance that their votes will count. The Director of SCSEC is Marcy Andino.
3. Defendant, South Carolina Republican Party (SCRP), 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. The Chairman of the South Carolina Republican Party is Chad Connelly and Matt Moore is the Executive Director.
4. Defendant, Charleston County Republican Party (CCRP), is a county committee of the South Carolina Republican Party—certified by the South Carolina Election Commission and the Charleston County Board of Elections and Voter Registration 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. Lin Bennett is the Chairman of CCRP.

Defendants and the corresponding entities they represent.

TEMPEL V. SC ELECTION COMMISSION ET AL.
COMPLAINT DECLARATORY JUDGMENT, WRIT OF MANDAMUS
APPLICATION FOR A TEMPORARY RESTRAINING ORDER
AND MOTION FOR INJUNCTIVE RELIEF
PAGE 3

5. Defendant, Charleston County Voter Registration and Election Commission (CCVRC), has been codified by the South Carolina Legislature² as a government entity which conducts elections and registers electors in Charleston County. Dan Martin is the Chairman of CCVRC and Joseph L. Debney is the Director.

6. 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.

7. Incorporated in this action is a Petition for a Writ of Mandamus³ 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.

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

9. A real and substantial controversy exists in this matter, and there is a definite assertion of legal rights and a positive legal duty with respect thereto.

10. Plaintiff has substantial interest in the subject matter of this complaint and will be directly affected by the non-enforcement of the statute and Order⁴ questioned.

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

³ Writ of Mandamus is a form of relief. *Plum Creek Development Co. Inc. v. City of Conway*, 334 S.C. 30 (1999)

⁴ *Anderson v. S.C. Election Comm'n*, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012)

That is, Plaintiff is an individual who's civil and political rights are directly affected by the Order⁵ and statutes at issue here.

11. A Declaratory Judgment by this Court would terminate the uncertainty and controversy as complained of below.
12. 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.
13. If injunctive relief is granted against any or all of the Defendants, Plaintiff believes he 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 Order⁶ of the South Carolina Supreme Court.
14. Having affirmed the above, this Court has proper jurisdiction over this matter and venue is proper.

FACTS AND ALLEGATIONS

The gravamen of this Complaint as set forth hereunder is that Walter Hundley a citizen of Charleston County (1) did not comply with the provisions under Section 8-13-1356; (2) was unlawfully certified by the CCRP; (3) was held ineligible to appear on a ballot by the Supreme Court; (4) was to be removed from the certified list subsequently submitted by the SCRP to the SCSEC; (5) but remains on the Charleston County ballot for the July 17, 2012 Special Election. Plaintiff believes Walter Hundley as an

⁵ Id.

⁶ Id.

unqualified candidate remains on the Charleston County ballot because the SCSEC chose to honor the unlawful certification of the CCRP, SCRP and disregard the Supreme Court's Order. The below facts speak for themselves:

1. Under SC 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. (SIC) (Emphasis Added).
2. Under SC 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. (SEI) (Emphasis Added).
3. Charleston County Republican Chair, Lin Bennett, certified Walter Hundley as a Republican candidate for the special election to Senate District 41 on July 17, 2012, despite the fact that Walter Hundley had not complied with Sections 8-13-1356 (B) and 8-13-1356(E).
4. Walter Hundley did not file a paper copy of his SEI at the same time he filed his SIC and with the same official. It was unlawful for Chairman Bennett to accept this declaration of candidacy without it being accompanied by a Statement of Economic Interest in violation of SC Code 8-13-1356(E). Also, this is in violation of SC Code 8-13-1356(B) requiring in pertinent part that 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.

simultaneously file a copy of an SEI with an SIC unless the candidate already held the office and had an SEI on file with the appropriate supervisory office.⁸

10. Despite the clear and unambiguous ruling by the SC Supreme Court in *Anderson*, unlawful candidates remained on the primary ballot. The SC Supreme Court *Florence County Democratic Party* emphasized its decision in *Anderson*, stating, "...just as the Florence County political parties were bound by the decision in *Anderson*, this decision applies to the political party primaries throughout the State. To the extent other county political parties have improperly certified candidates, those parties ignore the decisions of this Court at their own peril." (Emphasis Added).

11. The Defendants, County Republicans, in *Florence County Democratic Party*, asserted the same argument asserting that candidates are public officials and thereby relieved of the obligation under 8-13-1356(B) to file an SEI in paper at the same time and before the same official.

12. This argument was rejected by the SC Supreme Court in *Florence County Democratic Party*, as in direct violation of the clear and unambiguous language in *Anderson* and SC Code Section 8-13-1356(A) which provides in pertinent part that "[t]his section does not apply to a public official who has a current disclosure statement on file with the appropriate office pursuant to Sections 8-13-1110 or 8-13-1140." (Emphasis Added). The SC Supreme Court stated in *Florence County Democratic Party*, "[i]ndeed, the provisions of § 8-13-1110

⁸ *Florence County Democratic Party v. Florence County Republican Party*, Op. No. 27128 (S.C. Sup. Ct. filed June 5, 2012)

5. The consequence is removal from the ballot.
6. 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.
7. In spite of the Supreme Court's Order⁷, The Defendants have unlawfully certified the candidacy of Walter Hundley for the July 17, 2012 Special Election for South Carolina Senate District 41.
8. The 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.
9. The South Carolina Supreme Court later held in *Florence County Democratic Party*, that candidates who had previously filed a Statement of Intention of Candidacy (SIC) with political party did not constitute "public officials" who were exempt from statutory requirement that candidates file a paper copy of Statement of Economic Interest (SEI) with party; statute required a candidate to

⁷ *Anderson v. S.C. Election Comm'n*, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012)

requiring public officials to file an SEI with the appropriate supervisory authority are limited by the phrase "unless otherwise provided." Section 8-13-1356 provides otherwise. As decided by this Court in *Anderson*, § 8-13-1356 requires that a candidate must simultaneously file a copy of an SEI with an SIC unless the candidate already holds the office and has an SEI on file with the appropriate supervisory office. This Court's decision in *Anderson* is clear."

It is difficult to conceive that the Defendants were not 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* and in *Florence County Democratic Party*. The insistence of the CCRP, SCRCP and Mr. Hundley to continue his unlawful candidacy in direct violation of the statutes and the SC Supreme Court's decisions shows their contempt for the rule of law and the institution of justice in South Carolina.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff has shown that this Court may grant relief on equitable and legal grounds based on this Verified Complaint, but believe that the only meaningful relief is that which is granted in a timely fashion. Plaintiff prays that this Court issues the Ex-Parte relief of a temporary restraining order then set this matter to be heard as soon as this Court deems appropriate under the circumstances and that Defendants be required to respond within forty-eight (48) hours after being served with this Summons and Complaint.

TEMPEL V. SC ELECTION COMMISSION ET AL.
COMPLAINT, DECLARATORY JUDGMENT, WRIT OF HABEAS CORPUS
APPLICATION FOR A TEMPORARY RESTRAINING ORDER
AND MOTION FOR INJUNCTIVE RELIEF
PAGE 9

Plaintiff prays, in the interest of Justice, that a Writ of Mandamus be issued against those several Defendants who have failed to carry out their duties under S.C. Code and *Anderson*. *Id.* Regardless of where the blame lays the Plaintiff comes before this Court praying for declaratory and injunctive relief to enforce the Supreme Court's clear command under *Anderson* and under in *Florence County Democratic Party*. The Plaintiff does not seek a secondary determination regarding the controversy surrounding the filing requirements and procedures for proper candidacy and ballot placement. Rather, the Plaintiff specifically requests that this Court ORDER the State Election Commission and all other Defendants to:

(1) Comply with the holding in *Anderson* and in *Florence County Democratic Party*;

(2) Remove the name of Walter Hundley who was improperly placed on the Special Election ballot. *Anderson* is clear: the names "must be removed."⁹

(3) Enjoin Defendants from mailing any ballot to Charleston County Voters which include Walter Hundley as a candidate pursuant the holding in *Anderson*;

(4) Require the appropriate Defendant(s) to issue letters to Charleston County voters who have already submitted votes via absentee ballot as to: the nature of the instant error and instructions to those voters concerning their ability to write-in a candidate who does not appear on the ballot, what will become of a vote cast for an unqualified candidate, and any other instructions which will minimize the disturbance to this election according to the laws of South Carolina;

⁹ *Id.* at 27.

(5) Order the costs of reprinting and resending proper ballots be immediately paid by the Defendant(s) this Court deems responsible;

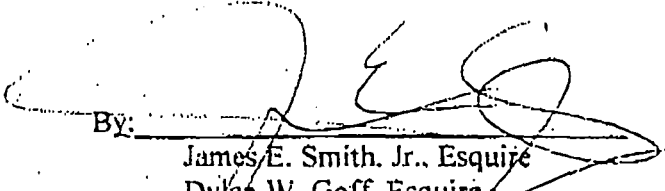
(6) Grant a Writ of Mandamus to the Defendants tasked with ministerial duties.

(7) Award court costs and attorney's fees to Plaintiff's pursuant to Rule 65 of S.C. Rules of Civil Procedure.

(8) The egregious nature of the Defendants' actions, if this Court so finds; should be addressed by any further or other relief that this Court deems appropriate.

RESPECTFULLY SUBMITTED

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

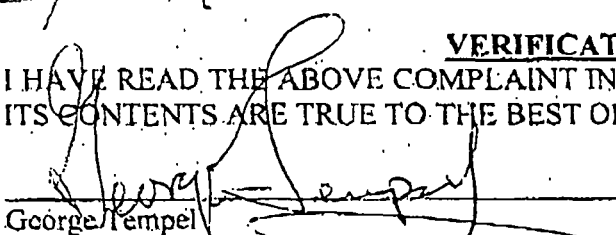
By: 

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

Columbia, South Carolina
June 7, 2012

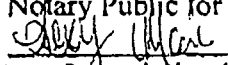
VERIFICATION

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


George Tempel

Sworn before me on June 8th, 2012.

Notary Public for South Carolina



My Commission Expires April 28, 2019

LEXY MACK
Notary Public - State of South Carolina
My Commission Expires April 28, 2019

TEMPEL V. SC ELECTION COMMISSION ET AL.
COMPLAINT DECLARATORY JUDGMENT, WRIT OF MANDAMUS
APPLICATION FOR A TEMPORARY RESTRAINING ORDER
AND MOTION FOR INJUNCTIVE RELIEF
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) IN THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON)

GEORGE TEMPEL,) Civil Action No. 2012-CP-10-3737
)

Plaintiff,)

vs.)

SOUTH CAROLINA STATE ELECTION)
COMMISSION (*Marci Andino, as*)
Executive Director & Chris Whitmire as)
Director of Public Information and)
Training); SOUTH CAROLINA)
REPUBLICAN PARTY (*Matt Moore as*)
Executive Director & Chad Connolly, as)
Chairman) CHARLESTON COUNTY)
REPUBLICAN PARTY (*Lin Bennett as*)
Chairman) CHARLESTON COUNTY)
BOARD OF ELECTIONS AND VOTER)
REGISTRATION (*Joseph L. Debney*)
as Director & Dan Martin as Chairman);)
DORCHESTER COUNTY REPUBLICAN)
PARTY (*Carroll S. Duncan, Chairman*);)
DORCHESTER COUNTY BOARD OF)
ELECTIONS (*Joshua Dickard as*)
Executive Director); PAUL THURMOND)
)
Defendants.)

FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT, WRIT
OF MANDAMUS, APPLICATION FOR
TEMPORARY RESTRAINING
ORDER AND MOTION FOR
INJUNCTIVE RELIEF

TO: THE DEFENDANTS ABOVE NAMED

COMES NOW the Plaintiff, by and through his undersigned counsel, before this Court seeking a Declaratory Judgment under Rule 57 and a Temporary Restraining Order 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) and further in *Florence County Democratic Party v. Florence County Republican Party*, Op. No. 27128 (S.C. Sup. Ct. filed June 5, 2012) (*holding* Candidates who had previously filed a Statement of Intention of Candidacy (SIC) with political party did not constitute “public officials” who were exempt from statutory requirement that candidates file a paper copy of Statement of Economic Interest (SEI) with party; statute required a candidate to simultaneously file a copy of an SEI with an SIC unless the candidate already held the office and had an SEI on file with the appropriate supervisory office.)

STATEMENT OF THE CASE

Recognizing that Judgments and Decrees speak for themselves, Plaintiff does not come before this Court requesting elucidation or clarification of the Supreme Court’s opinion in *Anderson* or *Florence County Democratic Party*. The past lawlessness of the named Defendants and the continuing violation of both the laws of this State and their direct disregard of the Highest Court’s Orders regarding the rights of Plaintiff and his own corresponding obligations make it necessary to seek relief from this Court to avoid additional damage and wasted resources associated with the primary election process in Charleston County. Time is of the essence because absentee ballots have been mailed out and returned by registered voters in Charleston County. Plaintiff, upon information and belief, submits that these absentee ballots include the name of Paul Thurmond, an unqualified candidate for South Carolina Senate District 41. This candidate must be

removed from the lists of qualified candidates¹ in order for the election process to proceed in a lawful manner.

SUPPORT FOR GRANT OF TRO, INJUNCTIVE RELIEF
DECLARATORY JUDGMENT AND WRIT OF MANDAMUS

The above-named Plaintiff respectfully submits the following:

1. Plaintiff is a registered voter, resident and citizen of Charleston County, South Carolina.
2. Defendant, South Carolina State Election Commission (SCSEC), is a commission organized under the laws of South Carolina with a primary mission to ensure every eligible citizen has the opportunity to register to vote, participate in fair and impartial elections, and have the assurance that their votes will count. The Director of SCSEC is Marcy Andino.
3. Defendant, South Carolina Republican Party (SCRП), 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. The Chairman of the South Carolina Republican Party is Chad Connelly and Matt Moore is the Executive Director.
4. Defendant, Charleston County Republican Party (CCRP), is a county committee of the South Carolina Republican Party—certified by the South Carolina Election Commission and the Charleston County Board of Elections and Voter Registration to nominate candidates for offices to be voted on in a general or

¹ All lists of qualified candidates for election in 2012 maintained by any and all of the Defendants and the corresponding entities they represent.

special election and nominates candidates of that party on a regular basis by party primary. Lin Bennett is the Chairman of CCRP.

5. Defendant, Charleston County Voter Registration and Election Commission (CCVRC), has been codified by the South Carolina Legislature² as a government entity which conducts elections and registers electors in Charleston County. Dan Martin is the Chairman of CCVRC and Joseph L. Debney is the Director.
6. 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 Board of Elections 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 S. Duncan is the Chairman of DCRP
7. Defendant, Dorchester County Board of Elections (DCBE), has been codified by the South Carolina Legislature³ as a government entity which conducts elections and registers electors in Dorchester County. Joshua Dickard is the Executive Director of DCBE.
8. Defendant Paul Thurmond is a citizen and resident of Charleston County, State of South Carolina.
9. 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.

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.

10. Incorporated in this action is a Petition for a Writ of Mandamus⁴ 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.
11. Plaintiff seeks a temporary restraining order and permanent injunction pursuant to Rule 65 of the South Carolina and respectfully requests this Court to exempt him from submitting a security as contemplated in Rule 65 (c).
12. A real and substantial controversy exists in this matter, and there is a definite assertion of legal rights and a positive legal duty with respect thereto.
13. Plaintiff has substantial interest in the subject matter of this complaint and will be directly affected by the non-enforcement of the statute and Order⁵ questioned. That is, Plaintiff is an individual who's civil and political rights are directly affected by the Order⁶ and statutes at issue here.
14. A Declaratory Judgment by this Court would terminate the uncertainty and controversy as complained of below.
15. 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.
16. If injunctive relief is granted against any or all of the Defendants, Plaintiff believes he is entitled to an award of attorney's fees for the cost associated with

⁴ Writ of Mandamus is a form of relief. *Plum Creek Development Co. Inc. v. City of Conway*, 334 S.C. 30 (1999)

⁵ *Anderson v. S.C. Election Comm'n*, Op. No. 27120 (S.C. Sup. Ct. filed May 2, 2012)

⁶ *Id.*

bringing this action as this Court deems appropriate, based on Defendants who have violated the Order⁷ of the South Carolina Supreme Court.

17. Having affirmed the above, this Court has proper jurisdiction over this matter and venue is proper.

FACTS AND ALLEGATIONS

The gravamen of this Complaint as set forth hereunder is that Paul Thurmond a citizen of Charleston County (1) did not comply with the provisions under Section 8-13-1356; (2) was unlawfully certified by the CCRP and DCRP; (3) was held ineligible to appear on a ballot by the Supreme Court; (4) was to be removed from the certified list subsequently submitted by the SCRCP to the SCSEC; (5) but remained on the Charleston County and Dorchester ballot for the June 12, 2012 Primary Election. Plaintiff believes Paul Thurmond as an unqualified candidate remained on the Charleston and Dorchester County ballots because the SCSEC chose to honor the unlawful certification of the CCRP, DCRP, SCRCP and disregard the Supreme Court's Order. The below facts speak for themselves:

1. Under SC 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. (SIC) (Emphasis Added).
2. Under SC Code Section 8-13-1356(E), an officer authorized to receive declarations of candidacy and petitions for nominations *may not* accept a

⁷ Id.

Statement of Intention of Candidacy unless it is accompanied by a Statement of Economic Interest. (SEI) (Emphasis Added).

3. Charleston County Republican Chair, Lin Bennett, and Dorchester County Republican Chair, Carroll S. Duncan certified Paul Thurmond as a Republican candidate for Senate District 41 to be on the ballot in the Republican Party's Primary on June 12, 2012, despite the fact that Paul Thurmond had not complied with Sections 8-13-1356 (B) and 8-13-1356(E).
4. Paul Thurmond did not file a paper copy of his SEI at the same time he filed his SIC and with the same official. It was unlawful for Chairman Bennett to accept this declaration of candidacy without it being accompanied by a Statement of Economic Interest in violation of SC Code 8-13-1356(E). Paul Thurmond has stated publically on numerous occasions that he did not file a paper copy of his SEI. He further stated that, "I am confident and comfortable with the fact that if I did something wrong there's a consequence." All this is in violation of SC Code 8-13-1356(B) requiring in pertinent part that 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.
5. The consequence is removal from the ballot.
6. 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.

7. On May 4, 2012, per the Supreme Court’s Order dated May 2, 2012, the South Carolina Republican Party submitted to the State Election Commission and Anderson County Election Commission a list of individuals who were qualified to be certified by the South Carolina Republican Party. The list included the name Paul Thurmond as a certified candidate for Senate District 41, Charleston County South Carolina.
8. In spite of the Supreme Court’s Order⁸, The Defendants have unlawfully certified the candidacy of Paul Thurmond for the June 12, 2012 Republican Primary election for South Carolina Senate District 41.
9. The 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.
10. The South Carolina Supreme Court later held in *Florence County Democratic Party*, that candidates who had previously filed a Statement of Intention of Candidacy (SIC) with political party did not constitute “public officials” who were exempt from statutory requirement that candidates file a paper copy of Statement of Economic Interest (SEI) with party; statute required a candidate to

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

simultaneously file a copy of an SEI with an SIC unless the candidate already held the office and had an SEI on file with the appropriate supervisory office.⁹

11. Despite the clear and unambiguous ruling by the SC Supreme Court in *Anderson*, unlawful candidates remained on the primary ballot. The SC Supreme Court *Florence County Democratic Party* emphasized its decision in *Anderson*, stating, "...just as the Florence County political parties were bound by the decision in *Anderson*, this decision applies to the political party primaries throughout the State. To the extent other county political parties have improperly certified candidates, **those parties ignore the decisions of this Court at their own peril.**" (Emphasis Added).
12. Despite Paul Thurmond's admission that he did not comply with law when filing for SC Senate District 41, he, the CCRP DCRP and SCRP insist that he should remain on the ballot because he is a "Public Official."
13. The Defendants, County Republicans, in *Florence County Democratic Party*, asserted the same argument asserting that candidates are public officials and thereby relieved of the obligation under 8-13-1356(B) to file an SEI in paper at the same time and before the same official.
14. This argument was rejected by the SC Supreme Court in *Florence County Democratic Party*, as in direct violation of the clear and unambiguous language in *Anderson* and SC Code Section 8-13-1356(A) which provides in pertinent part that "[t]his section does not apply to a public official **who has a current**

⁹ *Florence County Democratic Party v. Florence County Republican Party*, Op. No. 27128 (S.C. Sup. Ct. filed June 5, 2012)

disclosure statement on file with the appropriate office pursuant to Sections 8-13-1110 or 8-13-1140.” (Emphasis Added). The SC Supreme Court stated in *Florence County Democratic Party*, “[i]ndeed, the provisions of § 8-13-1110 requiring public officials to file an SEI with the appropriate supervisory authority are limited by the phrase “unless otherwise provided.” Section 8-13-1356 provides otherwise. As decided by this Court in *Anderson*, § 8-13-1356 requires that a candidate must simultaneously file a copy of an SEI with an SIC unless the candidate already holds the office and has an SEI on file with the appropriate supervisory office. This Court's decision in *Anderson* is clear.”

15. Paul Thurmond is a part-time municipal prosecutor and as such is a public employee and not a “public official” as contemplated by 8-13-1356(A) and therefore not entitled to exempt status.
16. Assuming, *arguendo*, that Paul Thurmond is a “public official,” he did not have a current disclosure statement on file with the appropriate office pursuant to Sections 8-13-1110 or 8-13-1140 as required by SC Code Section 8-13-1356(A). To construe the statutes in the manner suggested by Mr. Thurmond and the County Republicans in *Florence County Democratic Party*, would render Section 8-13-1356 absurd and meaningless.
17. Further and inasmuch as the matter was brought before the Primary Election date of June 12, 2012 and Mr. Thurmond remains on the ballot S.C. Code Sec. 8-13-1356(E) requires the CCRP, DCRP and SCRP to deny certification of Mr. Thurmond’s candidacy to the General Election.

It is difficult to conceive that the Defendants were not 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* and in *Florence County Democratic Party*. The insistence of the CCRP, SCRP and Mr. Thurmond to continue his unlawful candidacy in direct violation of the statutes and the SC Supreme Court's decisions shows their contempt for the rule of law and the institution of justice in South Carolina.

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff has shown that this Court may grant relief on equitable and legal grounds based on this Verified Complaint, but believe that the only meaningful relief is that which is granted in a timely fashion. Plaintiff prays that this Court issues the Ex-Parte relief of a temporary restraining order then set this matter to be heard as soon as this Court deems appropriate under the circumstances and that Defendants be required to respond within forty-eight (48) hours after being served with this Summons and Complaint.

Plaintiff prays, in the interest of Justice, that a Writ of Mandamus be issued against those several Defendants who have failed to carry out their duties under S.C. Code and *Anderson, Id.* Regardless of where the blame lays the Plaintiff comes before this Court praying for declaratory and injunctive relief to enforce the Supreme Court's clear command under *Anderson* and under *Florence County Democratic Party*. The Plaintiff does not seek a secondary determination regarding the controversy surrounding the filing requirements and procedures for proper candidacy and ballot placement.

Rather, the Plaintiff specifically requests that this Court ORDER the State Election Commission and all other Defendants to:

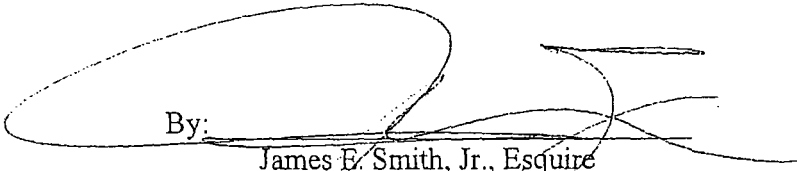
- (1) issue a Declaratory Judgment declaring Paul Thurmond to be an ineligible candidate by failing to comply with S.C. Code Sec 8-13-1356 and the holdings in *Anderson* and in *Florence County Democratic Party*;
- (2) Remove the name of Paul Thurmond who was improperly placed on the Republican Party primary ballots from the General Election ballot. *Anderson* is clear: the names "must be removed."¹⁰
- (3) Enjoin Defendants from mailing any ballot to Charleston County Voters which include Paul Thurmond as a candidate pursuant the holding in *Anderson*;
- (4) Require the appropriate Defendant(s) to issue letters to Charleston County voters who have already submitted votes via absentee ballot as to: the nature of the instant error and instructions to those voters concerning their ability to write-in a candidate who does not appear on the ballot, what will become of a vote cast for an unqualified candidate, and any other instructions which will minimize the disturbance to this election according to the laws of South Carolina;
- (5) Order the costs of reprinting and resending proper ballots be immediately paid by the Defendant(s) this Court deems responsible;
- (6) Grant a Writ of Mandamus to the Defendants tasked with ministerial duties.
- (7) Award court costs and attorney's fees to Plaintiffs pursuant to Rule 65 of S.C. Rules of Civil Procedure.

¹⁰ Id. at 27.

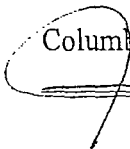
(8) The egregious nature of the Defendants' actions, if this Court so finds; should be addressed by any further or other relief that this Court deems appropriate.

RESPECTFULLY SUBMITTED

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

By: 

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

 Columbia, South Carolina

June 13, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

GEORGE TEMPEL,)

Plaintiff,)

v.)

SOUTH CAROLINA STATE ELECTION)
COMMISSION (*Marci Andino, as Executive*))
Director & Chris Whitmire as Director of)
Public Information and Training); SOUTH)
CAROLINA REPUBLICAN PARTY (*Matt*)
Moore as Executive Director & Chad)
Connolly as Chairman); CHARLESTON)
COUNTY REPUBLICAN PARTY (*Lin*)
Bennett as Chairman); CHARLESTON)
COUNTY BOARD OF ELECTIONS AND)
VOTER REGISTRATION (*Joseph L. Debney*)
as Director & Dan Martin as Chairman);)
DORCHESTER COUNTY BOARD OF)
ELECTIONS (*Joshua Dickard as Executive*)
Director); PAUL THURMOND,)

Defendants.)

IN THE COURT OF COMMON PLEAS

IN THE NINTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-10-3737

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2012 JUL -6 PM 1:59

FILED

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

TO: PLAINTIFF AND JAMES E. SMITH, JR., ESQUIRE, ATTORNEYS FOR PLAINTIFF

Defendants South Carolina State Election Commission (*Marci Andino as Executive*
Director (Andino) and Chris Whitmire as Director of Public Information and Training
(Whitmire)) (collectively, SEC) hereby answer the Amended Complaint, served upon the SEC
June 12, 2012, by Plaintiff George Tempel as follows:

1. Anything not specifically admitted shall be deemed denied.

STATEMENT OF THE CASE

2. The unnumbered paragraph under "Statement of the Case" contains legal conclusions and summary to which no response is required. To the extent a response is required, the allegations and conclusions are denied and strict proof thereof is demanded.

SUPPORT FOR GRANT OF TRO, INJUNCTIVE RELIEF,
DECLARATORY JUDGMENT, AND WRIT OF MANDAMUS

3. The allegations of Paragraph 1 are admitted on information and belief.
4. As to the allegation in Paragraph 2, the SEC avers that it is an agency of the State of South Carolina exercising the powers and duties conferred upon it by Title 7, South Carolina Code of Laws, Marci Andino is its duly appointed Executive Director, and avers that Chris Whitmire is its Director of Public Information and Training. The remaining allegations are denied.
5. The SEC admits the allegations in Paragraph 3-7.
6. The allegation of Paragraph 8 is admitted on information and belief.
7. Paragraph 9-11 and 17 contain statements of the case or law and no response is required. To the extent a response is required, the allegations are admitted upon information and belief.
8. The SEC does not have information sufficient to form a belief as to the allegations contained in Paragraphs 12-15 and therefore denies the same and demands strict proof thereof.
9. SEC denies the allegations of Paragraph 16 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.

FACTS AND ALLEGATIONS

10. The unnumbered paragraph under "Facts and Allegations" contains legal conclusions and summary to which no response is required. To the extent a response is required, the allegations and conclusions are denied on information and belief and strict proof thereof is demanded.
11. As to the allegations in Paragraphs 1-2, the SEC craves reference to S.C. Code §

8-13-1356(B) as it speaks for itself.

12. The SEC lacks sufficient information to form a belief as to the allegations in Paragraphs 3–4, and therefore denies the same and demands strict proof thereof.

13. Paragraph 5 contains a legal conclusion to which no response is required. To the extent a response is required, the allegation is denied and strict proof thereof is demanded.

14. The SEC admits the allegations contained in Paragraph 6 insofar as it alleges the South Carolina Supreme Court issued an opinion in Anderson v. South Carolina State Election Commission, No. 27120 (S.C. Sup. Ct. filed May 2, 2012) (issued its Opinion on May 2 and denied the Petition for Rehearing by Way of Clarification on May 3, 2012), and craves reference to that opinion as it speaks for itself. The SEC denies the remaining allegations and demands strict proof thereof.

15. The SEC admits the allegations in Paragraph 7, except that it denies any allegations regarding the Anderson County Election Commission and that Paul Thurmond or other candidates for Senate District 41 did not appear on the list of candidates submitted to the Anderson County Election Commission.

16. As to the allegations in Paragraph 8, the SEC admits Paul Thurmond was certified as a candidate for the June 12, 2012 Republican Primary election for South Carolina Senate District 41, but denies the SEC bears any responsibility for such certification. The SEC does not certify candidates for the ballot and only performs a ministerial function in accepting the lists of certified candidates from the political parties and preparing the ballots for the election. Any other inferences that may be drawn from the paragraph are denied.

17. The allegations in Paragraph 9 are denied as to the SEC.

18. The SEC admits the allegations contained in Paragraphs 10–11 insofar as it

alleges the South Carolina Supreme Court issued an opinion in Florence County Democratic Party v. Florence County Republican Party, No. 27128 (S.C. Sup. Ct. filed June 5, 2012), and craves reference to that opinion as it speaks for itself. Any allegations that are contrary to the opinion are denied.

19. The SEC lacks sufficient information to form a belief as to the allegations in Paragraph 12, and therefore denies the same and demands strict proof thereof.

20. The SEC admits the allegations contained in Paragraphs 13–14 insofar as they allege the South Carolina Supreme Court issued an opinion in Florence County Democratic Party v. Florence County Republican Party, No. 27128 (S.C. Sup. Ct. filed June 5, 2012), and craves reference to that opinion as it speaks for itself. Any allegations that are contrary to the opinion are denied.

21. The SEC admits on information and belief that Paul Thurmond is a part-time municipal prosecutor. As to the remaining allegations, the SEC lacks sufficient information to form a belief as to the allegation in Paragraph 15, and therefore denies the same and demands strict proof thereof.

22. Paragraph 16 contains a legal conclusion to which no response is required. To the extent a response is required, the allegations are admitted.

23. As to the allegations in Paragraph 17, the SEC craves reference to S.C. Code § 8-13-1356(E) as it speaks for itself and craves reference to Anderson and Florence County Democratic Party.

24. As to the SEC, the SEC denies the allegations contained in the final unnumbered paragraph under “Facts and Allegations” and, as to the remaining Defendants, denies the allegations on information and belief.

FOR A FIRST DEFENSE

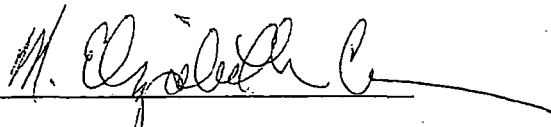
25. The SEC incorporates by reference all of the foregoing paragraphs as if set forth fully herein.

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

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

Respectfully submitted,

M. Elizabeth Crum, S.C. Bar No. 1486
lcrum@mcnair.net
Amber B. Martella, S.C. Bar No. 78706
amartella@mcnair.net
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

'By: 

Attorneys for Defendant South Carolina
State Election Commission

July 3, 2012

Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

GEORGE TEMPEL,

Plaintiff,

v.

SOUTH CAROLINA STATE ELECTION
COMMISSION (*Marci Andino, as Executive
Director & Chris Whitmire as Director of
Public Information and Training*); et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
IN THE NINTH JUDICIAL CIRCUIT

Civil Action No. 2012-CP-10-3737

CERTIFICATE
OF SERVICE

BY
JULIE L. ARMSTRONG
CLERK OF COURT

2012 JUL -6 PM 1:59

FILED

I, ElizaBeth A. Blitch; do hereby certify that I have this date served one (1) copy of the Answer of South Carolina State Election Commission, etc., upon the following counsel of record by causing said copy to be deposited with the United States Postal Service, first class postage prepaid, properly affixed thereto and addressed as follows:

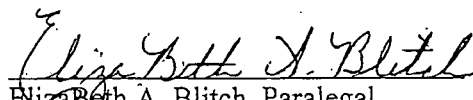
James E. Smith, Jr., Esquire
James E. Smith, Jr., P.A.
1422 Laurel Street
Columbia, South Carolina 29201

Samuel W. Howell, IV, Esquire
Howell Linkous & Nettles, LLC
106 Broad Street
Charleston, South Carolina 29401

Butch Bowers, Esquire
Womble Carlyle Sandridge & Rice, LLP
1727 Hampton Street
Columbia, South Carolina 29201

Michael A. Timbes, Esquire
Matthew E. Yelverton, Esquire
Thurmond Kirchner Timbes & Yelverton, P.A.
15 Middle Atlantic Wharf, Suite 101
Charleston, South Carolina 29401

Tanya A. Gee, Esquire
Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201.


ElizaBeth A. Blitch, Paralegal
McNAIR LAW FIRM, P.A.
Post Office 11390
Columbia, South Carolina 29211
(803) 799-9800

July 3, 2012

Columbia, South Carolina

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

GEORGE TEMPEL,) Civil Action No. 2012-CP-10-3737
)

Plaintiff,)
)

vs.)
)

ANSWER

SOUTH CAROLINA STATE ELECTION)

COMMISSION (*Marci Andino, as*)

Executive Director & Chris Whitmire as)

Director of Public Information and)

Training); SOUTH CAROLINA)

REPUBLICAN PARTY (*Matt Moore as*)

Executive Director & Chad Connolly, as)

Chairman) CHARLESTON COUNTY)

REPUBLICAN PARTY (*Lin Bennett as*)

Chairman) CHARLESTON COUNTY)

BOARD OF ELECTIONS AND VOTER)

REGISTRATION (*Joseph L. Debney*)

as Director & Dan Martin as Chairman);)

DORCHESTER COUNTY REPUBLICAN)

PARTY (*Carroll S. Duncan, Chairman*);)

DORCHESTER COUNTY BOARD OF)

ELECTIONS (*Joshua Dickard as*)

Executive Director); PAUL THURMOND)

Defendants.)

TO: THE PLAINTIFF AND HIS ATTORNEY, JAMES E. SMITH, JR, ESQ.

COME NOW Defendants the Board of Elections and Voter Registration of Charleston County, Joseph L. Debney as Director and Dan Martin as Chairman (collectively referred to herein as the "Board") and hereby fully answer the allegations of the Plaintiff's First Amended Complaint for Declaratory Judgment, Writ of Mandamus, Application for Temporary Restraining Order and Motion for Injunctive Relief (the "Plaintiff's Complaint"), and show this Honourable Court as follows:

ANSWER

1. Except as specifically admitted or qualified herein, the Board deny each and every allegation of the Plaintiff's Complaint.

2. The introductory paragraph and the paragraph entitled "Statement of the Case" are mere statements and do not require a response from the Board. To the extent a response is deemed required, the Board deny the allegations contained in said paragraphs and any demands for relief contained therein.

3. The Board admit the allegations of Paragraphs 1 and 8.

4. Paragraphs 2, 3, 6, and 7 are directed to parties other than the Board. Therefore, no response is required of the Board. If a response were deemed required of the Board, the Board admit the allegations contained in said paragraphs upon information and belief.

5. The allegations of Paragraph 5 (and footnote 2) are denied to the extent that they contain errors and misstatements of statutes, and the Board affirmatively allege that the correct name of the Board is the "Board of Elections and Voter Registration of Charleston County," and that it is composed of nine members who are appointed by the Governor pursuant to the provisions of S.C. Code Section 7-27-255.

6. No response is required of the Board to the statement set forth in Paragraph 9; however, the Board deny that the cited statutes provide for the Plaintiff's action.

7. The Board deny the allegations contained in Paragraph 10 to the extent that they allege any wrongdoing with respect to the conduct of their official duties by the Board or that the laws of South Carolina have not been complied with by the Board.

8. As to Paragraph 11, the Board deny that the Plaintiff is entitled to any relief whatsoever as requested therein, and deny that the Plaintiff is exempt from the requirement to submit a security as required by Rule 65(c), SCRCF.

9. The Board deny the allegations contained in Paragraph 12.

10. The Board lack sufficient knowledge and information to form a belief as to the truth or falseness of the allegations of Paragraph 13, which is denied.

11. No response is required of the Board to the statements set forth in Paragraphs 14 and 15. The Board specifically deny, however, that the Plaintiff is entitled to any relief requested therein.

12. The Board deny the allegations contained in Paragraph 16 and further deny that the Plaintiff is entitled to any relief whatsoever as requested therein.

13. As to Paragraph 17, the Board specifically deny that this Court is the proper forum to exercise jurisdiction over this election dispute.

14. Upon information and belief, the Board deny the allegations set forth in the unnumbered paragraph entitled "Facts and Allegations" and demand strict proof thereof.

15. As to Paragraphs 1 and 2 under Plaintiff's section entitled "Facts and Allegations," S.C. Code Section 8-13-1356 and its subparts speak for themselves. The Board deny any allegations contained in said paragraphs inconsistent therewith.

16. As to Paragraph 3 under Plaintiff's section entitled "Facts and Allegations," the Board admit on information and belief that Paul Thurmond was certified as a Republican Party candidate for the general election to State Senate District 41 to be held on 6 November 2012, but deny the remaining allegations contained in said paragraph and demand strict proof thereof.

17. As to Paragraphs 4 and 5 under Plaintiff's section entitled "Facts and Allegations," the Board lack sufficient knowledge and information to form a belief as to the truth or falseness thereof, and therefore deny the same and demand strict proof thereof.

18. As to Paragraph 6 under Plaintiff's section entitled "Facts and Allegations," the Supreme Court's decision in *Anderson v. State Election Commission* speaks for itself and is the best evidence of its terms, content, and meaning, including the findings of the Supreme Court as to the specific questions at issue in that action, which upon information and belief are not at issue here.

19. As to Paragraph 7 under Plaintiff's section entitled "Facts and Allegations," the Board admit on information and belief that Paul Thurmond has been certified for the general election, but the Board specifically deny any unlawful action on their part.

20. As to Paragraphs 8 and 9 under Plaintiff's section entitled "Facts and Allegations," the Board deny the allegations contained therein with respect to the Board, and as to the other Defendants, the Board lack sufficient knowledge and information to form a belief as to the truth or falseness thereof, and therefore deny the same and demand strict proof thereof.

21. As to Paragraphs 10, 11, 13, and 14 under Plaintiff's section entitled "Facts and Allegations," the Supreme Court's decisions in *Anderson* and *Florence County Democratic Party v. Florence County Republican Party* speak for themselves and are the best evidence of their terms, content, and meaning, including the findings of the Supreme Court as to the specific questions at issue in those actions, which upon information and belief are not at issue here.

22. As to Paragraphs 12, 15, and 16 under Plaintiff's section entitled "Facts and Allegations," the Board lack sufficient knowledge and information to form a belief as to the truth or falseness thereof, and therefore deny the same and demand strict proof thereof.

23. As to Paragraph 17 under Plaintiff's section entitled "Facts and Allegations," S.C. Code Section 8-13-1356(E) speaks for itself. The Board further allege that the Amended Complaint of the Plaintiff was filed after the date of the Primary Election of June 12, 2012, and because the Amended Complaint added a new defendants [Dorchester County Republican Party (Carroll S. Duncan, Chairman) and Dorchester County Board of Elections (Joshua Dickard as Executive Director)] to those in the original action brought before the Primary Election, it does not relate back to the original Complaint. *Cline v. J.E. Faulkner Homes, Inc.*, 359 S.C. 367, 597 S.E. 2d 27 (S.C. App. 2004). Accordingly, the Board deny the same and demand strict proof thereof.

24. As to the unnumbered paragraph immediately following Paragraph 17, the Board lack sufficient knowledge and information to form a belief as to the truth or falseness thereof, and therefore deny the same and demand strict proof thereof.

25. The Board deny that the Plaintiff is entitled to any relief demanded by him in the Complaint.

26. Having fully answered the Complaint, the Board further rely upon and incorporate the Additional Affirmative Defenses contained herein.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

(Failure to Post a Bond – Rule (c))

27. The Board incorporate and re-allege the preceding paragraphs as if fully set forth herein verbatim.

28. The Complaint must be dismissed because the Plaintiff failed to post a bond as required by Rule 65(c), SCRCP, or otherwise as required by law.

FURTHER ANSWERING AND AS AN ADDITIONAL AND AFFIRMATIVE DEFENSE

(Mootness of Temporary Relief Sought)

29. The Board incorporate and re-allege the preceding paragraphs as if fully set forth herein verbatim.

30. The Complaint must be dismissed because the temporary injunctive relief sought by the Plaintiff is now moot in light of the passing of the primary election.

FURTHER ANSWERING AND AS AN ADDITIONAL AFFIRMATIVE DEFENSE

(Temporary Injunction Improper)

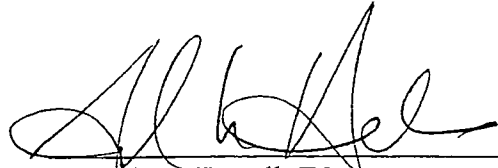
31. The Board incorporate and re-allege the preceding paragraphs as if fully set forth herein verbatim.

32. As the result of the Supreme Court's decisions in *Anderson* and in *Florence County*, all candidates for the Republican Party nomination for Senate District 41, except Thurmond, were declared disqualified prior to the June 12 Primary Election, and the remedial action required under those decisions was implemented. Consequently, only Thurmond remained as a candidate for the Republican Party nomination for Senate District 41 in the November 2012 General Election. The filing period for candidates for the Republican Party nomination for this office has closed so that no other candidates may run in the June 12 Primary Election.

33. The decisions of the South Carolina Supreme Court have set forth two essential conditions to the granting of a temporary injunction: "First, the complaint must allege facts which appear to be sufficient to constitute a cause of action for injunction; and, second, on the entire showing from both sides it must appear, in view of all the circumstances, that the injunction is reasonably necessary to protect the legal rights of the plaintiff pending the litigation." *Knohl v. Duke Power Company*, 260 S.C. 374, 376, 196 S.E.2d 115, 116 ((S.C. 1973); citing *Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296. *Transcontinental Gas Pipe Line Corp. v. Porter*, 252 S.C. 478, 167 S.E. (2d) 313.

34. *S.C. Code Ann. Section 7-11-90* provides that "[a]fter the closing of entries if any candidates shall be unopposed, the State committee in the case of State offices...shall declare such unopposed candidates as party nominees, and the names of unopposed candidates shall not be placed upon the primary election ballots but shall be certified for the general election ballots." The effect of this statute on Thurmond's candidacy is that as the result of being the sole remaining candidate for the Republican Party nomination to Senate District 41, his name should not appear on the primary election ballot, but instead the State Republican Party Executive Committee should certify Thurmond as that Party's nominee for the November 2012 General Election.

35. Because Thurmond's nomination as the Republican candidate for Senate District 41 is not dependent upon the results of the June 12 Primary Election, the Plaintiff suffers no irreparable harm as the result of the June 12 Primary Election proceeding as scheduled. No extraordinary measures are needed to protect the Plaintiff's legal rights from an irreparable injury. Rather, the adequate remedy to Plaintiff's complaint is the process provided under S.C. Code Ann. Section 8-13-1356(E) if timely brought. Under that process, the Plaintiff may develop all necessary facts to establish his case and, if proven, the relief permitted under *S.C. Code Section Ann. 8-13-1356(E)* (i.e., removal of Thurmond's name from the November 2012 General Election ballot) may be ordered by the Court. Such a remedy is adequate to protect the legal rights of the Plaintiff.



Samuel W. Howell, IV
Howell Linkous & Nettles, LLC
106 Broad Street
Charleston, South Carolina 29401
843.266.3800
SC Bar # 2720

Attorney for Defendant
Board of Elections and Voter Registration of
Charleston County
Joseph L. Debney as Director
Dan Martin as Chairman

July 3, 2012
Charleston, South Carolina

RECEIVED

JUL 9 2012

McNAIR LAW FIRM

Harris, Deborah

From: Crum, Liz
Sent: Tuesday, July 03, 2012 4:21 PM
To: Harris, Deborah
Subject: FW: Tempel case (Thurmond Election)
Attachments: Answer Thurmond (00040419).PDF

See attached

M C N A I R
ATTORNEYS

M. Elizabeth Crum
Shareholder
lcrum@mcnair.net | 803 753 3240 Direct

McNair Law Firm, P.A.
Columbia Office 1221 Main Street | Suite 1800 | Columbia, SC 29201
803 799 9800 Main | 803 753 3219 Fax
Mailing Post Office Box 11390 | Columbia, SC 29211
VCard | Bio URL | Web site

From: Samuel W. Howell [<mailto:samhowell@bond-law.com>]
Sent: Tuesday, July 03, 2012 4:19 PM
To: Butch Bowers (butch.bowers@wcsr.com); James Smith (james@jamesmithpa.com); Crum, Liz; Michael Timbes (mtimbess@tktylawfirm.com)
Cc: Dan Martin ; Joseph L. Debney
Subject: Tempel case (Thurmond Election)

Attached please find the Answer on behalf of the Board of Elections and Voter Registration of Charleston County.

Sam

Samuel W. Howell
Howell Linkous & Nettles, LLC
106 Broad Street
Charleston, South Carolina
29401
Telephone: 843.266.3801
Facsimile: 843.266.3805
Email: samhowell@bond-law.com

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

GEORGE TEMPEL,)

Plaintiff,)

-versus-)

SOUTH CAROLINA STATE ELECTION)
COMMISSION (*Marci Andino, as Executive*))
Director & Chris Whitmire as Director of)
Public Information and Training); SOUTH)
CAROLINA REPUBLICAN PARTY (*Matt*)
Moore as Executive Director & Chad)
Connolly as Chairman) CHARLESTON)
COUNTY REPUBLICAN PARTY (*Lin*)
Bennett as Chairman) CHARLESTON)
COUNTY BOARD OF ELECTIONS AND)
VOTER REGISTRATION (*Joseph L.*)
Debney as Director & Dan Martin as)
Chairman); PAUL THURMOND,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-3737

**AMENDED ANSWER OF PAUL
THURMOND TO THE PLAINTIFF'S
COMPLAINT**

TO: THE PLAINTIFF AND HIS ATTORNEY, JAMES E. SMITH, JR., ESQUIRE
COMES NOW Defendant Paul R. Thurmond, ("Thurmond") and hereby fully answers
the allegations of the Plaintiff's Complaint, and shows unto this Honorable Court as follows:

ANSWER AND FIRST AFFIRMATIVE DEFENSE

1. Except as specifically admitted or qualified herein, Thurmond denies each and every allegation of the Plaintiff's Complaint.
2. The introductory paragraph and "Statement of the Case" represent mere statements and do not require a response from Thurmond. To the extent a response is deemed required, Thurmond denies such allegations and any demands for relief contained therein.

FILED
2012 JUN 13 PM 4:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

3. Thurmond lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations of Paragraph 1 of the Complaint, which is denied.

4. Paragraphs 2, 3, 4, and 5 of the Complaint are directed to parties other than Thurmond. Therefore, no response is required to said allegations. If a response is deemed required, Thurmond admits said allegations upon information and belief.

5. No response is required to the statement set forth in Paragraph 6 of the Complaint.

6. Thurmond denies the allegations of Paragraph 7 of the Complaint to the extent they allege any wrongdoing in relation to his candidacy or that the laws of South Carolina have not been satisfied in relation to his candidacy.

7. As to Paragraph 8 of the Complaint, Thurmond denies that Plaintiff is entitled to any relief whatsoever as requested therein.

8. No response is required to the statement set forth in Paragraph 9 of the Complaint.

9. Thurmond lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations of Paragraph 10 of the Complaint, which is denied.

10. No response is required to the statements set forth in Paragraphs 11 and 12 of the Complaint. Thurmond specifically denies, however, that Plaintiff is entitled to any relief requested therein.

11. Thurmond denies the allegations of Paragraph 13 of the Complaint.

12. As to Paragraph 14 of the Complaint, Thurmond specifically denies that this Court is the proper court to exercise jurisdiction over this election dispute, and Thurmond shows that this matter should be heard and decided in the original jurisdiction of the South Carolina Supreme Court. Thurmond submits this Answer subject to and without waiving his previously

filed petition seeking to have the Supreme Court assume jurisdiction of the case in its original jurisdiction.

13. No response is required by Thurmond to the purported "FACTS AND ALLEGATIONS" set forth in an unnumbered paragraph beginning on page 5 of the Complaint. To the extent a response is deemed required, Thurmond denies the same.

14. As to Paragraphs 1 and 2 under Plaintiff's purported FACTS AND ALLEGATIONS, Section 8-13-1356 and its subparts speak for themselves. Thurmond denies any allegations inconsistent therewith.

15. As to Paragraph 3 under Plaintiff's purported FACTS AND ALLEGATIONS, Thurmond admits that he has been certified as the Republican candidate for Senate District 41 but denies the remaining allegations therein.

16. As to Paragraph 4 under Plaintiff's purported FACTS AND ALLEGATIONS, Thurmond admits that he did not file a paper copy of his Statement of Economic Interests (SEI) at the same and with the same person as his Statement of Intention of Candidacy (SIC), but Thurmond denies that he was required to do so. Specifically Thurmond claims that he is exempt from the operable provisions relied upon as a basis for Plaintiff's Complaint pursuant to Section 8-13-1356(A), which provides that the simultaneous filing of the SEI and SIC are not required for exempted public officials. In other words, Sections 1356(B) and (E) do not apply to Thurmond or the filing and processing of this SEI in connection with his candidacy. Thurmond denies any allegation that his filing for candidacy was not proper or in accordance with the laws and statutes of this State.

17. Thurmond denies Paragraph 5 under Plaintiff's purported FACTS AND ALLEGATIONS upon information and belief.

18. As to Paragraph 6 under Plaintiff's purported FACTS AND ALLEGATIONS, the Supreme Court's decision in *Anderson v. S.C. Election Commission* speaks for itself and is the best evidence of its terms, content, and meaning, including the findings of the Court as to the specific questions on appeal in that action, which upon information and belief are not at issue here.

19. As to Paragraph 7 under Plaintiff's purported FACTS AND ALLEGATIONS, Thurmond admits that he has been certified as a candidate for Senate District 41, and, as written, denies the remaining allegations therein for lack of knowledge or information sufficient to confirm the truth or falsity thereof.

20. Upon information and belief Thurmond denies the allegations of Paragraphs 8 and 9 under the purported FACTS AND ALLEGATIONS.

21. As to Paragraph 10 under Plaintiff's purported FACTS AND ALLEGATIONS, the Court's decision in *Florence County Democratic Party v. Florence County Republican Party* speaks for itself and is the best evidence of its terms, content, and meaning, including the findings of the Court as to the specific questions on appeal in that action, which upon information and belief are not at issue here.

22. As to Paragraph 11 under Plaintiff's purported FACTS AND ALLEGATIONS, the Court's decisions in *Anderson* and *Florence County Democratic Party* speak for themselves and are the best evidence of their terms, content, and meaning, including the findings of the Court as to the specific questions on appeal in that action, which upon information and belief are not at issue here.

23. As to Paragraph 12 under Plaintiff's purported FACTS AND ALLEGATIONS, Thurmond specifically denies that he has made any admission that he did not comply with the

applicable law when filing for Senate District 41. Responding further, Thurmond admits that he is a "public official" and that his qualification as a public official independent of his candidacy is and has been the basis for his satisfaction of S.C. Code Ann. § 8-13-1356(A).

24. As to Paragraph 13 under Plaintiff's purported FACTS AND ALLEGATIONS, the pleadings, motions, memoranda and decisions issued in *Florence County Democratic Party* speak for themselves and are the best evidence of their terms, content, and meaning, including the findings of the Court as to the specific questions in that action, which upon information and belief are not at issue here. Further, Thurmond shows that he does not rely and has not relied on his candidacy for office as the basis for his status as a public official prior to and on the date Thurmond filed his SIC.

25. As to Paragraph 14 under Plaintiff's purported FACTS AND ALLEGATIONS, the Court's decisions in *Anderson* and *Florence County Democratic Party* and the statutes cited in Paragraph 14 speak for themselves and are the best evidence of their terms, content, and meaning, including the findings of the Court as to the specific questions on appeal in those actions, which upon information and belief are not at issue here.

26. No response is required to the allegations contained in Paragraph 15 of the FACTS AND ALLEGATIONS, which call for a conclusion of law as to the construction of a statute. Specifically, Thurmond shows that the allegations of Paragraph 15 represent a concession by Plaintiff that Thurmond is not among those former candidates for office who have been decertified because they relied solely on the fact of their candidacy to establish the basis for their claims to be public officials within the meaning of Section 1356. Responding further, Thurmond asserts that he is a public official within the meaning of Section 1356(A) by virtue of being a part-time prosecutor for the City of North Charleston as attested to in the attached

affidavit of J. Brady Hair. Thurmond further asserts that prior to filing his SIC, he filed, and therefore had on file, his SEI. Upon information and belief, these facts satisfy the requirements of Section 1356(A), and therefore, Thurmond is an exempt public official relieved of the remaining requirements set forth under Section 1356. The particular arguments and issues decided by the South Carolina Supreme Court do not speak to these particular facts and circumstances, and a finding that he is exempt from the remaining requirements of Section 1356 would have no effect whatsoever on the holdings in *Anderson* and *Florence County Democratic Party* and would in no way render Section 1356 meaningless.

27. No response is required to the narrative set forth in the Plaintiff's complaint in the unnumbered paragraph on page 10, following the allegations of Paragraph 15. To the extent a response is required, Thurmond denies any wrongdoing and restates his belief that he is a lawful candidate by virtue of his particular status as a public figure upon grounds that are wholly independent of his candidacy. This issue was neither raised to nor, upon information and belief, decided by the Supreme Court in *Anderson* or *Florence County Democratic Party*.

28. Thurmond denies that Plaintiff is entitled to any of the relief demanded by him in the Plaintiff's Complaint.

29. Having fully answered the Plaintiff's Complaint, Thurmond further relies upon and incorporates the Additional Affirmative Defenses contained herein.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

(Improper of Jurisdiction)
(S.C. Const. art. V, § 5)
(S.C. Code Ann. § 14-3-310 (1976))

30. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

31. This Honorable Court should refrain from hearing and deciding any of the claims and requested remedies set forth in this action, which matters lie within the original jurisdiction of the South Carolina Supreme Court.

32. Where the public interest is involved, the matter should be resolved by the South Carolina Supreme Court. Plaintiff's Statement of the Case concedes that the very heart of this case surrounds the election process, which indisputably is a matter of great public interest.¹ Further, considering that Plaintiff demands such immediate and emergency relief as would result in his request for *ex parte* relief and, further, that the Defendants be instructed to file an answer within 48 hours after service of the Summons and Complaint (which was served Friday *afternoon*, no less), it is apparent that such emergency circumstances would demand, especially in light of the public interests involved, that the South Carolina Supreme Court decide the issues in question. See *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991); *Porter v. Jedziniak*, 334 S.C. 16, 512 S.E.2d 497 (1999).

33. A petition seeking a remedial writ from the Supreme Court has been filed and is pending before that Court at this time.

34. The circuit court should decline to hear this matter and further decline to issue any rulings, temporary or otherwise, until such time as the Supreme Court has determined whether it will assume jurisdiction of this case. This is especially true considering that the Supreme Court exercised original jurisdiction over the two previous cases that touch on matters related to the pending election and the interpretation and effect of Section 1356.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

¹ In fact, Thurmond is informed and believes that no less than seven (7) additional lawsuits have been commenced in the state and federal courts since the Supreme Court's decision in *Florence County Democratic Party*. The significance of the issues before this court and its imminent impact on the voters of this state cannot be reasonably questioned.

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(Compliance with Laws and Statutes)
(S.C. Code Ann. § 8-13-1356(A))

35. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

36. Upon information and belief, Paul Thurmond is a public official who, prior to and at the time of filing his SIC, exercised a portion of the sovereignty of the State in his capacity as an appointed criminal prosecutor for the City of North Charleston, SC. Thurmond's status as a public official has no relation whatsoever to his candidacy for Senate District 41.

37. Thurmond also, at the time of filing his SIC had an SEI on file with the appropriate authority, the State Ethics Commission.

38. Upon information and belief, Thurmond falls within the exemption created by S.C. Code Ann. § 8-13-1356(A), and therefore, he has complied with all applicable laws and statutes relating to his candidacy.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Injunction Improper)

39. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

40. The purpose of injunctive relief is to *preserve* the status quo in order to prevent *irreparable* harm. Preserving the status quo in this instance means leaving matters as they are until a full decision on the merits is rendered. In other words, Thurmond should not be decertified. Further, Thurmond is unopposed as the only certified candidate for Senate District 41 by the Republican Party in the November 2012 general election. Therefore, the urgency suggested in Plaintiff's Complaint lacks substantive support. Simply put, there is time to fully hear the Plaintiff's case and to render a proper, full and final decision on the merits in lieu of

Plaintiff's requested rush to judgment after 48 hours. If Thurmond is thereafter disqualified prior to the general election, the result is the same from the Plaintiff's perspective—he cannot ultimately hold the office and the Democratic Candidate runs unopposed. On the other hand, if Plaintiff is awarded immediate yet temporary relief, such would be tantamount to a decision on the merits because Thurmond would be decertified instantly, effectively ending any campaign he is actively running for an election that is months away. Justice is not served in such fashion.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Mootness of Temporary Relief Sought)

41. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

42. The Complaint must be dismissed because the temporary relief sought by the Plaintiff, is now moot.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to Post a Bond – Rule 65(c))

43. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

44. The Complaint must be dismissed because the Plaintiff failed to post a bond as required by Rule 65(c), SCRCP, or as otherwise required by law.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to Name One or More Indispensible Parties – Rule 19, SCRCP)

45. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

46. The Complaint must be dismissed because the Plaintiff has failed to join one or more parties in whose absence complete relief cannot be accorded among those already parties, or (2) claim(s) an interest relating to the subject of the action and is so situated that the disposition of the action in whose absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

(Failure to Join One or More Necessary Parties – Rule 12(b)(7), SCRCPP)

47. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

48. The Complaint must be dismissed, as the Plaintiff failed to join one or more necessary parties to this action, barring all claims against Thurmond.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE

(Denial of Due Process, Specifically Rule 40(h), SCRCPP)

49. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

50. In accordance with Rule 40(h), SCRCPP, “no contested nonjury action may be called for trial on the merits until 120 days after the filing of the summons and complaint, or the last pleading that adds a new party to the action, unless agreed to in writing by all parties.” Thurmond has not consented to such. The only relevant cause of action is Plaintiff’s request for Declaratory Judgment, which can only be issued upon a hearing on the merits. Therefore, a

ruling on the merits prior to the opportunity to fully investigate this matter and the opportunity to be heard after reasonable time to prepare violates the applicable provisions of Rule 40(h).

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Reservation of Additional Defenses)

51. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim. Thurmond specifically reserves the right to rely upon additional defenses which may be available to him and does not waive his right to amend his answer as needed and when needed, as a matter of right, within the time periods set forth in the South Carolina Rules of Civil Procedure.

52. Thurmond denies that the Plaintiff is entitled to any remedy or form of relief prayed for in the Plaintiff's Complaint, being all the remaining allegations thereof.

WHEREFORE, having fully answered the Plaintiff's Complaint, Paul Thurmond requests that this Honorable Court issue the following relief:

(a) That this Court fully abstain from hearing or deciding any factual dispute or requested relief on the merits until the time periods set forth in Rule 40(h) are satisfied or until such time as the participating parties otherwise agree;

(b) That this Court deny Plaintiff's request for temporary restraining order, *in toto*, with prejudice, which is moot.

(c) That this Court deny Plaintiff's request for a temporary restraining order without prejudice until such time as Plaintiff actually serves the defendants named herein with the Summons and Complaint;²

(d) That this Court set an expedited schedule for a determination on the merits giving it reasonable priority on the pending non-jury docket and giving a reasonable amount of time to

² Upon information and belief, only Defendant Thurmond has been served.

confront and depose the Plaintiff and such other witnesses as may be necessary and appropriate to evaluate the basis of the allegations of the Verified Complaint;

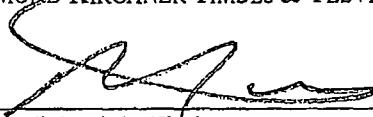
(e) That this Court deny any and all forms of relief requested by the Plaintiff; and

(f) That this Court grant unto Thurmond the relief he requests herein in relation to his Cross Claims; and

(g) That this Court grant such other and further relief as may just equitable and proper, including an award of reasonable attorney's fees and costs.

Respectfully Submitted,

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.

By: 

Michael A. Timbes
Matthew E. Yelverton
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
Phone: (843) 937-8000
Fax: (843) 937-4200
mtimbess@tktylawfirm.com
myelverton@tktylawfirm.com

—AND—

NEXSEN PRUET
Tanya A. Gee
1230 Main Street, Suite 700
Columbia, SC 29201
Phone: (803) 771-8900
Fax: (803) 253-8277
tgee@nexsenpruet.com

Attorneys for Paul R. Thurmond

June 13, 2012
Charleston, South Carolina

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**ANSWER OF PAUL THURMOND TO
THE PLAINTIFF'S AMENDED
COMPLAINT**

COMES NOW Defendant Paul R. Thurmond, ("Thurmond") and hereby fully answers the allegations of the Plaintiff's Amended Complaint, and shows unto this Honorable Court as follows:

1. Except as specifically admitted or qualified herein, Thurmond denies each and every allegation of the Plaintiff's Amended Complaint.

2. The introductory paragraph and "Statement of the Case" represent mere statements and do not require a response from Thurmond. To the extent a response is deemed required, Thurmond denies such allegations and any demands for relief contained therein.

3. Thurmond lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations of Paragraph 1 of the Amended Complaint, which is denied.

4. Paragraphs 2, 3, 4, 5, 6 and 7 of the Amended Complaint are directed to parties other than Thurmond. Therefore, no response is required to said allegations. If a response is deemed required, Thurmond admits said allegations upon information and belief.

5. Thurmond admits Paragraph 8 of the Amended Complaint.

6. No response is required to the statement set forth in Paragraph 9 of the Amended Complaint.

7. Thurmond denies the allegations of Paragraph 10 of the Amended Complaint to the extent they allege any wrongdoing in relation to his candidacy or that the laws of South Carolina have not been satisfied in relation to his candidacy.

8. As to Paragraph 11 of the Amended Complaint, Thurmond denies that Plaintiff is entitled to any relief whatsoever as requested therein.

8. No response is required to the statement set forth in Paragraph 12 of the Amended Complaint.

9. Thurmond lacks sufficient knowledge and information to form a belief as to the truth or falsity of the allegations of Paragraph 13 of the Amended Complaint, which is denied.

10. No response is required to the statements set forth in Paragraphs 14 and 15 of the Amended Complaint. Thurmond specifically denies, however, that Plaintiff is entitled to any relief requested therein.

11. Thurmond denies the allegations of Paragraph 16 of the Amended Complaint.

12. As to Paragraph 17 of the Amended Complaint, Thurmond specifically denies that this Court is the proper court to exercise jurisdiction over this election dispute, and Thurmond shows that this matter should be heard and decided in the original jurisdiction of the South Carolina Supreme Court. Thurmond submits this Answer subject to and without waiving his previously filed petition seeking to have the Supreme Court assume jurisdiction of the case in its original jurisdiction.

13. No response is required by Thurmond to the purported "FACTS AND ALLEGATIONS" set forth in an unnumbered paragraph beginning on page 6 of the Amended Complaint. To the extent a response is deemed required, Thurmond denies the same.

14. As to Paragraphs 1 and 2 under Plaintiff's purported FACTS AND ALLEGATIONS, Section 8-13-1356 and its subparts speak for themselves. Thurmond denies any allegations inconsistent therewith.

15. As to Paragraph 3 under Plaintiff's purported FACTS AND ALLEGATIONS, Thurmond admits that he has been certified as the Republican candidate for Senate District 41 but denies the remaining allegations therein.

16. As to Paragraph 4 under Plaintiff's purported FACTS AND ALLEGATIONS, Thurmond admits that he did not file a paper copy of his Statement of Economic Interests (SEI) at the same and with the same person as his Statement of Intention of Candidacy (SIC), but Thurmond denies that he was required to do so. Specifically Thurmond claims that he is exempt from the operable provisions relied upon as a basis for Plaintiff's Complaint pursuant to Section 8-13-1356(A), which provides that the simultaneous filing of the SEI and SIC are not required for exempted public officials. In other words, Sections 1356(B) and (E) do not apply to

Thurmond or the filing and processing of this SEI in connection with his candidacy. Thurmond denies any allegation that his filing for candidacy was not proper or in accordance with the laws and statutes of this State.

17. Thurmond denies Paragraph 5 under Plaintiff's purported FACTS AND ALLEGATIONS upon information and belief.

18. As to Paragraph 6 under Plaintiff's purported FACTS AND ALLEGATIONS, the Supreme Court's decision in *Anderson v. S.C. Election Commission* speaks for itself and is the best evidence of its terms, content, and meaning, including the findings of the Court as to the specific questions on appeal in that action, which upon information and belief are not at issue here.

19. As to Paragraph 7 under Plaintiff's purported FACTS AND ALLEGATIONS, Thurmond admits that he has been certified as a candidate for Senate District 41, and, as written, denies the remaining allegations therein for lack of knowledge or information sufficient to confirm the truth or falsity thereof.

20. Upon information and belief Thurmond denies the allegations of Paragraphs 8 and 9 under the purported FACTS AND ALLEGATIONS.

21. As to Paragraph 10 under Plaintiff's purported FACTS AND ALLEGATIONS, the Court's decision in *Florence County Democratic Party v. Florence County Republican Party* speaks for itself and is the best evidence of its terms, content, and meaning, including the findings of the Court as to the specific questions on appeal in that action, which upon information and belief are not at issue here.

22. As to Paragraph 11 under Plaintiff's purported FACTS AND ALLEGATIONS, the Court's decisions in *Anderson* and *Florence County Democratic Party* speak for themselves.

and are the best evidence of their terms, content, and meaning, including the findings of the Court as to the specific questions on appeal in that action, which upon information and belief are not at issue here.

23. As to Paragraph 12 under Plaintiff's purported FACTS AND ALLEGATIONS, Thurmond specifically denies that he has made any admission that he did not comply with the applicable law when filing for Senate District 41. Responding further, Thurmond admits that he is a "public official" and that his qualification as a public official independent of his candidacy is and has been the basis for his satisfaction of S.C. Code Ann. § 8-13-1356(A).

24. As to Paragraph 13 under Plaintiff's purported FACTS AND ALLEGATIONS, the pleadings, motions, memoranda and decisions issued in *Florence County Democratic Party* speak for themselves and are the best evidence of their terms, content, and meaning, including the findings of the Court as to the specific questions in that action, which upon information and belief are not at issue here. Further, Thurmond shows that he does not rely and has not relied on his candidacy for office as the basis for his status as a public official prior to and on the date Thurmond filed his SIC.

25. As to Paragraph 14 under Plaintiff's purported FACTS AND ALLEGATIONS, the Court's decisions in *Anderson* and *Florence County Democratic Party* and the statutes cited in Paragraph 14 speak for themselves and are the best evidence of their terms, content, and meaning, including the findings of the Court as to the specific questions on appeal in those actions, which upon information and belief are not at issue here.

26. No response is required to the allegations contained in Paragraph 15 of the Plaintiff's purported FACTS AND ALLEGATIONS, which call for a conclusion of law as to the

construction of a statute. To the extent a response is deemed required, these allegations are denied.

26. No response is required to the allegations contained in Paragraph 16 of the Plaintiff's purported FACTS AND ALLEGATIONS, which call for a conclusion of law as to the construction of a statute. Specifically, Thurmond shows that the allegations of Paragraph 16 represent a concession by Plaintiff that Thurmond is not among those former candidates for office who have been decertified because they relied solely on the fact of their candidacy to establish the basis for their claims to be public officials within the meaning of Section 1356. Responding further, Thurmond asserts that he is a public official within the meaning of Section 1356(A) by virtue of being a part-time prosecutor for the City of North Charleston as attested to in the attached affidavit of J. Brady Hair. Thurmond further asserts that prior to filing his SIC, he filed, and therefore had on file, his SEI. Upon information and belief, these facts satisfy the requirements of Section 1356(A), and therefore, Thurmond is an exempt public official relieved of the remaining requirements set forth under Section 1356. The particular arguments and issues decided by the South Carolina Supreme Court do not speak to these particular facts and circumstances, and a finding that he is exempt from the remaining requirements of Section 1356 would have no effect whatsoever on the holdings in *Anderson* and *Florence County Democratic Party* and would in no way render Section 1356 meaningless.

27. The allegations contained in Paragraph 17 of the Plaintiff's purported FACTS AND ALLEGATIONS are denied.

28. No response is required to the narrative set forth in the Plaintiff's Amended Complaint in the unnumbered paragraph on page 11, following the allegations of Paragraph 17. To the extent a response is required, Thurmond denies any wrongdoing and restates his belief

that he is a lawful candidate by virtue of his particular status as a public figure upon grounds that are wholly independent of his candidacy. This issue was neither raised to nor, upon information and belief, decided by the Supreme Court in *Anderson* or *Florence County Democratic Party*.

29. Thurmond denies that Plaintiff is entitled to any of the relief demanded by him in the Plaintiff's Amended Complaint.

30. Having fully answered the Plaintiff's Amended Complaint, Thurmond further relies upon and incorporates the Additional Affirmative Defenses contained herein.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Compliance with Laws and Statutes)
(S.C. Code Ann. § 8-13-1356(A))

36. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

37. Upon information and belief, Paul Thurmond is a public official who, prior to and at the time of filing his SIC, exercised a portion of the sovereignty of the State in his capacity as an appointed criminal prosecutor for the City of North Charleston, SC. Thurmond's status as a public official has no relation whatsoever to his candidacy for Senate District 41.

38. Thurmond also, at the time of filing his SIC had an SEI on file with the appropriate authority, the State Ethics Commission.

39. Upon information and belief, Thurmond falls within the exemption created by S.C. Code Ann. § 8-13-1356(A), and therefore, he has complied with all applicable laws and statutes relating to his candidacy.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Injunction Improper)

40. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

41. The purpose of injunctive relief is to *preserve* the status quo in order to prevent *irreparable* harm. Preserving the status quo in this instance means leaving matters as they are until a full decision on the merits is rendered. In other words, Thurmond should not be decertified. Further, Thurmond is unopposed as the only certified candidate for Senate District 41 by the Republican Party in the November 2012 general election. Therefore, the urgency suggested in Plaintiff's Amended Complaint lacks substantive support. Simply put, there is time to fully hear the Plaintiff's case and to render a proper, full and final decision on the merits in lieu of Plaintiff's requested rush to judgment after 48 hours. If Thurmond is thereafter disqualified prior to the general election, the result is the same from the Plaintiff's perspective—he cannot ultimately hold the office and the Democratic Candidate runs unopposed. On the other hand, if Plaintiff is awarded immediate yet temporary relief, such would be tantamount to a decision on the merits because Thurmond would be decertified instantly, effectively ending any campaign he is actively running for an election that is months away. Justice is not served in such fashion.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Mootness of Temporary Relief Sought)

42. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

43. The Amended Complaint must be dismissed because the temporary relief sought by the Plaintiff is now moot in light of the passing of the primary elections.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to Post a Bond – Rule 65(c))

44. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

45. The Amended Complaint must be dismissed because the Plaintiff failed to post a bond as required by Rule 65(c), SCRCP, or as otherwise required by law.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to Name One or More Indispensible Parties – Rule 19, SCRCP)

46. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

47. The Amended Complaint must be dismissed because the Plaintiff has failed to join one or more parties in whose absence complete relief cannot be accorded among those already parties, or (2) claim(s) an interest relating to the subject of the action and is so situated that the disposition of the action in whose absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Failure to Join One or More Necessary Parties – Rule 12(b)(7), SCRCP)

48. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

49. The Amended Complaint must be dismissed, as the Plaintiff failed to join one or more necessary parties to this action, barring all claims against Thurmond.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Denial of Due Process, Specifically Rule 40(h), SCRCp)

50. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim.

51. In accordance with Rule 40(h), SCRCp, "no contested nonjury action may be called for trial on the merits until 120 days after the filing of the summons and complaint, or the last pleading that adds a new party to the action, unless agreed to in writing by all parties." Thurmond has not consented to waive this requirement, and there has been no order by the Court setting the matter for an expedited hearing. The only relevant cause of action is Plaintiff's request for Declaratory Judgment, which can only be issued upon a hearing on the merits. Therefore, a ruling on the merits prior to the opportunity to fully investigate this matter and the opportunity to be heard after reasonable time to prepare violates the applicable provisions of Rule 40(h).

52. At the time the hearing was held on June 11, 2012, Thurmond had received notice from Plaintiff's counsel only that a hearing would be held in chambers.

53. Thurmond was given no notice whatsoever that any hearing on the merits would take place on June 11, 2012, which was less than one full business day after the summons and complaint were filed.

54. Following the hearing on June 11, 2012, Plaintiff amended his complaint to assert new allegations of fact against Thurmond and others, to which this pleading in part responds.

55. Prior to the June 11, 2011 hearing, hurmond had no opportunity to conduct discovery of the Plaintiff, the other parties, nor any third parties who might be able to provide relevant evidence.

56. Conducting a full hearing on the merits without providing Thurmond with reasonable and adequate time to investigate the allegations against him, the applicable laws and statutes, and to conduct necessary discovery constitutes and denial of due process. This is especially true where the Rules of Civil Procedure prohibit such a full and final hearing sooner than 120 days, except as ordered by the Court. No such order exists in this case.

57. Therefore, Thurmond is entitled to have this matter set for a full an final hearing at a later date under such circumstances as are necessary and reasonable to afford due process, which, upon information and belief, can be accomplished via an order for expedited discovery and well prior to the November 2012 general election.

FURTHER ANSWERING AND AS AN ADDITIONAL
AND AFFIRMATIVE DEFENSE
(Reservation of Additional Defenses)

58. Thurmond incorporates and re-alleges the preceding paragraphs as if fully set forth herein verbatim. Thurmond specifically reserves the right to rely upon additional defenses which may be available to him and does not waive his right to amend his answer as needed and when needed, as a matter of right, within the time periods set forth in the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Plaintiff's Amended Complaint, Paul Thurmond requests that this Honorable Court issue the following relief:

(a) That this Court fully abstain from hearing or deciding any factual dispute or requested relief on the merits until the time periods set forth in Rule 40(h) are satisfied or until such time as the participating parties otherwise agree;

(b) That this Court deny Plaintiff's request for temporary restraining order, *in toto*, with prejudice, which is moot.

(c) That this Court deny Plaintiff's request for a temporary restraining order without prejudice until such time as Plaintiff actually serves the defendants named herein with the Amended Summons and Complaint;

(d) That this Court set an expedited schedule for a determination on the merits giving it reasonable priority on the pending non-jury docket and giving a reasonable amount of time to confront and depose the Plaintiff and such other witnesses as may be necessary and appropriate to evaluate the basis of the allegations of the Verified Complaint;

(e) That this Court deny any and all forms of relief requested by the Plaintiff; and

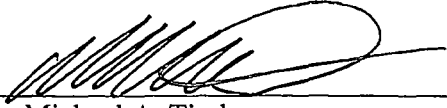
(f) That this Court grant unto Thurmond the relief he requests herein in relation to his Cross Claims; and

(g) That this Court grant such other and further relief as may just equitable and proper, including an award of reasonable attorney's fees and costs.

Signatures of Counsel to Follow

Respectfully Submitted,

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.

By: 

Michael A. Timbes
Matthew E. Yelverton
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
Phone: (843) 937-8000
Fax: (843) 937-4200
mtimbess@tktylawfirm.com
myelverton@tktylawfirm.com

—AND—

NEXSEN PRUET
Tanya A. Gee
1230 Main Street, Suite 700
Columbia, SC 29201
Phone: (803) 771-8900
Fax: (803) 253-8277
tgee@nexsenpruet.com

Attorneys for Paul R. Thurmond

June 25, 2012
Charleston, South Carolina

RECEIVED

JUN 26 2012

MCNAIR LAW FIRM

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-3737

GEORGE TEMPEL,
Plaintiff,

vs.

SOUTH CAROLINA STATE ELECTION)
COMMISSION (*Marci Andino, as*)
Executive Director & Chris Whitmire as)
Director of Public Information and)
Training); SOUTH CAROLINA)
REPUBLICAN PARTY (*Matt Moore as*)
Executive Director & Chad Connolly as)
Chairman); CHARLESTON COUNTY)
REPUBLICAN PARTY (*Lin Bennett as*)
Chairman); CHARLESTON COUNTY)
BOARD OF ELECTIONS AND VOTER)
REGISTRATION (*Joseph L. Debney as*)
Director & Dan Martin as Chairman);)
DORCHESTER COUNTY BOARD OF)
ELECTIONS (*Joshua Dickard as Executive*)
Director); PAUL THURMOND,)
Defendants.)

JOINT STIPULATION OF FACTS

The Plaintiff, George Tempel, and Defendant, Paul R. Thurmond, by and through their respective counsel, present this Court with a Joint Stipulation of Facts in a good faith effort to simplify the upcoming non-jury trial, set for Monday, August 13, 2012. The parties stipulate to the following facts:

1. George Tempel is a citizen of South Carolina, a resident of Charleston County, and a registered voter within Charleston County and District 41 for purposes of the November 2012 general election for the State Senate seat.

2. Paul R. Thurmond meets the age and citizenship requirements to hold the office of State Senator in the State of South Carolina; he resides within District 41 for purposes of the November 2012 general election for the office of State Senate.

3. Paul R. Thurmond is an attorney in good standing with the South Carolina Bar, and he is the part-time municipal prosecutor for the City of North Charleston. He spends approximately 15 to 20 hours per week fulfilling his prosecutorial duties. He has never filed an SEI in connection with this position.

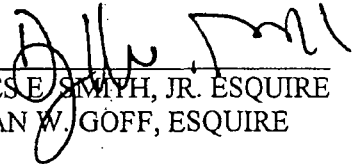
4. On March 28, 2012, at 12:07 p.m., Paul R. Thurmond electronically submitted a current Statement of Economic Interest ("SEI") to the appropriate supervisory office for the position of Senate Seat 41.

5. On March 28, 2012, after having filed his SEI electronically, Paul R. Thurmond filed his Statement of Intent of Candidacy ("SIC") for the District 41 Senate seat with Lin Bennett, the Chairperson of the Charleston Republican Party, at the Republican Party headquarters in North Charleston, South Carolina. He did not simultaneously file a paper copy of his SEI along with his SIC to Lin Bennett.

6. Paul R. Thurmond was certified by the Republican Party as a candidate for the District 41 State Senate seat on March 30, 2012.

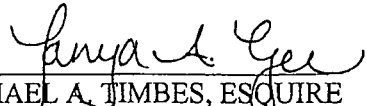
7. On June 12, 2012, the Republican Primary took place. Paul R. Thurmond's name remained on the ballot, though all other Republican contenders had previously been de-certified. He received over 1,700 votes.

On behalf of our clients, we hereby stipulate to the above facts.

By: 
JAMES E. SMYTH, JR. ESQUIRE
DYLAN W. GOFF, ESQUIRE

Attorneys for George Tempel

August , 2012
Charleston, South Carolina

By: 
MICHAEL A. TIMBES, ESQUIRE
MATTHEW E. YELVERTON, ESQUIRE
TANYA A. GEE, ESQUIRE

Attorneys for Paul R. Thurmond

3

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[illegible]

)

**DEFENDANT PAUL THURMOND'S
ANSWERS TO REQUESTIONS FOR
ADMISSION**

PURSUANT TO RULES 26 and 36 of the South Carolina Rules of Civil Procedure, the Defendant, Paul Thurmond, ("Defendant"), by and through his undersigned attorneys of record, hereby timely serves upon you his Responses to Plaintiff's Requests for Admission.

1. The Defendant did not simultaneously file his SEI in paper form with his SIC as required by SC Code Section 8-13-1356.

RECORD p. 000141

along with his SIC. Defendant denies that he was required to simultaneously file an SEI in paper form with his SIC because he is exempt from doing so pursuant to S.C. Code Ann. § 8-13-1356(A).

2. The Defendant did not present a paper copy of his SEI when filing for SC Senate District 41.

RESPONSE: Admitted.

3. George Tempel is a citizen and resident of Charleston County.

RESPONSE: Admitted.

4. George Tempel is a voter residing within the boundaries of SC Senate District 41.

RESPONSE: Defendant lacks sufficient information to respond to Plaintiff's Request for Admission number 4 as he has no information as to whether George Tempel is a registered voter. Defendant, however, admits that he has no information upon which to dispute that assertion assuming Mr. Tempel testifies to that effect.

5. The Defendant has never filed an SEI for his position as a municipal prosecutor.

RESPONSE: Admitted.

6. Before the SEI filed for SC Senate District 41 by you, the last time you previously filed an SEI was when you were a member of Charleston County Council.

RESPONSE: Admitted.

7. You are not a "public official" as contemplated by SC Code Section 8-13-1356.

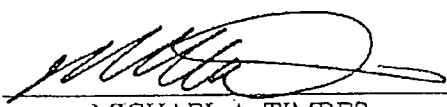
RESPONSE: Denied.

8. You were required to file a paper copy of your SEI simultaneously with your SIC when you filed to be a candidate for SC Senate District 41.

RESPONSE: Denied.

Respectfully submitted,

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.

By: 

MICHAEL A. TIMBES
MATTHEW E. YELVERTON
15 Middle Atlantic Wharf, Suite 101
Charleston, SC 29401
Phone: (843) 937-8000
Fax: (843) 937-4200
mtimb@tktylawfirm.com
myelverton@tktylawfirm.com

-AND-

TANYA A. GEE
NEXSEN PRUET
1230 Main Street, Suite 700
Columbia, SC 29201
Phone: (803) 771-8900
Fax: (803) 253-8277
tgcc@nexsenpruet.com

Attorneys for Paul R. Thurmond

July 24, 2012
Charleston, South Carolina

RECEIVED

AUG 22

JAMES E. SMITH, JR., PA.

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

George Tempel,.....Appellant/Respondent,

v.

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

Of whom South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training) and Paul Thurmond are.....Respondents/Appellants.

MEMORANDUM OF SOUTH CAROLINA STATE ELECTION COMMISSION
IN RESPONSE TO PAUL THURMOND'S VERIFIED PETITION TO ENFORCE
THE AUGUST 14, 2012, ORDER PURSUANT TO RULE 62(C), SCRCP

On Wednesday afternoon, August 15, 2012, Appellant/Respondent George Tempel filed a Notice of Intent to Appeal that portion of the August 14, 2012, Order that authorized the holding of a special primary election pursuant to S.C. Code Ann. § 11-7-55-(Supp. 2011). On Thursday morning, August 16, 2012, the South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and

Training) (collectively, SEC) also filed a Notice of Intent to Appeal that portion of the August 14, 2012, Order that authorized the holding of a special primary election pursuant to S.C. Code Ann. § 11-7-55 (Supp. 2011), in reliance, in part, on the July 10, 2012 opinion of the South Carolina Attorney General's office. Pursuant to Rule 263(b), SCACR, Respondent/Appellant SEC filed a Motion to Expedite the matter.

On Thursday afternoon, August 16, 2012, Respondent/Appellant Paul Thurmond filed a Notice of Intent to Appeal as to the Order entered by this Court on August 14, 2012. On August 17, 2012, the Supreme Court granted the SEC's Motion to Expedite. A copy of the Supreme Court's Order is attached hereto as Attachment A for the convenience of the Court. On the afternoon of August 20, 2012, Respondent-Appellant Thurmond filed a Verified Petition to Enforce the August 14, 2012 Order Pursuant to Rule 62(C), SCRCP.

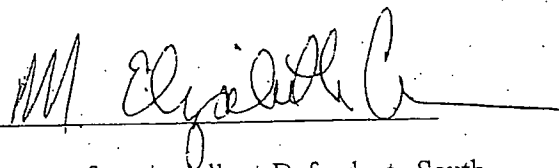
Respondent/Appellant Thurmond alleges on information and belief that the SEC "has removed his name from the list of nominees for the November general election." See Verified Petition, p. 6. On August 15, 2012, the South Carolina Republican Party (SCRCP) was required to certify candidates for the South Carolina House of Representatives and Senate to the SEC for inclusion on the November 6, 2012, general election (General Election) ballot. See S.C. Code Ann. § 7-13-350(A) (Supp. 2011). The SCRCP certified the party candidates for the South Carolina Senate before noon on August 15, 2012, as required by Section 7-13-350(A). The SCRCP did not certify Mr. Thurmond or any other candidate for inclusion on the SEC ballot for Senate District 41. See Exhibit 1, Affidavit of Marci Andino, ¶ 2. The SEC has no statutory authority to add Mr. Thurmond or any other candidate to the General Election ballot absent certification by a political party or order of this Court or the Supreme Court.

The SEC is responsible for the cost of all primary elections and special primary elections. See S.C. Code Ann. § 7-13-40 (Supp. 2011). On May 29, 2012, the Charleston County Board of Elections and Voter Registration (CCBEVR) held the special primary election to fill the unexpired term of former Senator, now Lieutenant Governor, Glenn McConnell for Senate District 41, the senate district at issue here. There was no runoff in the special primary election for the Republican or Democratic special primary election. It cost approximately \$30,000 to conduct the Senate District 41 special primary. While the composition of District 41 has changed somewhat due to reapportionment, based upon the recent special primary election costs and the cost (\$18,000) of the special primary for Senate District 16 in York and Lancaster Counties, the SEC estimates that a special election now for District 41 would cost approximately \$25,000 and a runoff, if any, would cost an additional \$20,000. Exhibit 1, Aff. of Marci Andino, ¶ 3.

In the event the Court chooses to order a Special Primary Election during the pendency of the appeal in this matter, the SEC respectfully requests that the Court impose a bond in an amount sufficient to reimburse the taxpayers for the costs associated with the Special Primary Election and runoff, if any, in the event that the Supreme Court determines that a Special Primary Election was not authorized pursuant to S.C. Code Ann. § 7-11-55 (Supp. 2011).

Respectfully submitted,

M. Elizabeth Crum, S.C. Bar No. 1486
lcrum@mcnair.net
Ariail B. Kirk, S.C. Bar No. 71101
akirk@mcnair.net
Amber B. Martella, S.C. Bar No. 78706
amartella@mcnair.net
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

By: 

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

August 21, 2012

Columbia, South Carolina

The Supreme Court of South Carolina

George Tempel, Appellant/Respondent,

v.

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

of whom South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training), and Paul Thurmond are Respondents/Appellants.

Appellate Case No. 2012-212729

ORDER

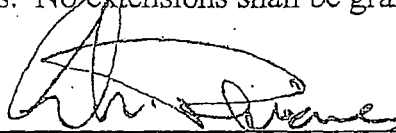
Appellant/Respondent and Respondents/Appellants have filed Notices of Appeal from an order of the circuit court declaring Paul Thurmond was disqualified as a candidate because he failed to comply with the requirements of S.C. Code Ann. § 8-13-1356(B) (Supp. 2011), as interpreted by this Court in *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 725 S.E.2d 704 (2012), and *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 727 S.E.2d 418 (2012). Respondent/Appellant South Carolina State Election Commission (the State Commission) asks the Court to expedite this matter as it involves a time-sensitive election matter.

ATTACHMENT

A

The motion to expedite is granted. The State Commission has requested an expedited copy of the transcript of the hearing held before the circuit court on August 13, 2012. The court reporter shall, within five (5) days of the date of this order, prepare and deliver the transcript to the State Commission.

Appellant/Respondent shall have five (5) days after receipt of the transcript in which to serve and file its initial brief and Designation of Matter. Within five (5) days after service of appellant/respondent's initial brief, respondents/appellants and respondents shall serve and file their initial brief(s). Any reply brief must be served and filed within two (2) days after service of respondent's initial brief. The Record on Appeal shall be served and filed within five (5) days after service of the last initial brief. The parties shall have five (5) days after service of the Record on Appeal to serve and file their final briefs. No extensions shall be granted absent extraordinary circumstances.



J.

FOR THE COURT

Columbia, South Carolina

August 17, 2012

cc:

James Emerson Smith, Jr.

Samuel W. Howell, IV

J. Robert Bolchoz

Karl Smith Bowers, Jr.

Michael A. Timbes

Matthew Evert Yelverton

Tanya Amber Gee

Mary Elizabeth (Liz) Crum

Ariail Burnside Kirk

Amber B. Martella

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

George Tempel, ... Appellant/Respondent,

v.

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

Of Whom South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training), and Paul Thurmond are Respondents-Appellants.

AFFIDAVIT OF MARCI ANDINO

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

1. She is the duly appointed Executive Director of the South Carolina State Election Commission (State Commission) and is a resident of Richland County, South Carolina.
2. On or about August 15, 2012, prior to noon, the South Carolina Republican Party (SCRП) certified candidates for the South Carolina House of Representatives and the South Carolina Senate. The SCRП did not certify any candidate, including Mr. Paul Thurmond, as a Republican candidate for Senate District 41 for the November 6, 2012, General Election.

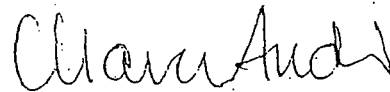
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EXHIBIT

1

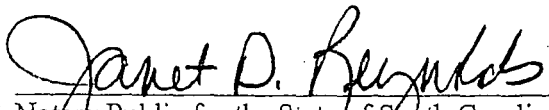
3. The SEC is responsible for the cost of all primary elections and special primary elections. See: S. C. Code Ann. § 7-13-40. On May 29, 2012, the Charleston County Board of Elections and Voter Registration (CCBEVR) held the special primary election to fill the unexpired term of former Senator now Lt.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

FURTHER AFFIANT SAITH NOT.



Marci B. Andino

Sworn to and subscribed before me
this 20th day of August, 2012.

 (L.S.)
Notary Public for the State of South Carolina.
My Commission expires: 10-4-2010

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

George Tempel..... Apellant/Respondent,

v.

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

Of Whom South Carolina State Election Commission (Marci Andino, as Executive Director and Chris Whitmire as Director of Public Information and Training) and Paul Thurmond are Respondents/Appellants.

CERTIFICATE OF SERVICE

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the SEC's Response to Thurmond's Verified Petition upon the following counsel by electronic mail and by causing said copy to be deposited with the United States Postal Service, first class postage prepaid and properly affixed thereto and addressed as follows:

James E. Smith, Jr., Esquire
James E. Smith, Jr., P.A.
1422 Laurel Street
Columbia, South Carolina 29201
James@JamesSmithPA.com

Attorney for Plaintiff George Tempel

Samuel W. Howell, IV, Esquire
Howell Linkous & Nettles, LLC
106 Broad Street
Charleston, South Carolina 29401
samhowell@bond-law.com

Attorneys for Charleston County Board
of Elections and Voter Registration

Robert Bolzchoz, Esquire
204 Princeton Street
Columbia, SC 29205-1836
robert@bolchoz.com

Butch Bowers, Esquire
Womble Carlyle
1727 Hampton Street
Columbia, South Carolina 29201
Butch.Bowers@wcsr.com

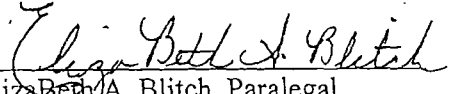
Attorneys for Defendant South
Carolina Republican Party Matt
Moore as Executive Director and
Chad Connolly, as Chairman) and
Defendant Charleston County
Republican Party (Lin Bennett, as
Chairman)

Michael A. Timbes, Esquire
Matthew E. Yelverton, Esquire

Thurmond Kirchner
15 Middle Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
mtimb@tktylawfirm.com
myelverton@tktylawfirm.com

Tanya A. Gee, Esquire
Nexsen Pruet
1230 Main Street, Suite 700
Columbia, South Carolina 29201
tgee@nexsenpruet.com

Attorneys for Defendant Paul Thurmond.


Elizabeth A. Blitch, Paralegal
McNair Law Firm, P.A.
Post Office 11390
Columbia, South Carolina 29211
(803) 799-9800

August 21, 2012

Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

FILED
2012 AUG 22 PM 1:30
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

George Tempel,.....Appellant/Respondent,

v.

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

Of whom South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training) and Paul Thurmond are.....Respondents/Appellants.

MEMORANDUM OF SOUTH CAROLINA STATE ELECTION COMMISSION
IN RESPONSE TO PAUL THURMOND'S VERIFIED PETITION TO ENFORCE
THE AUGUST 14, 2012, ORDER PURSUANT TO RULE 62(C), SCRCF

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In the event the Court chooses to order a Special Primary Election during the pendency of the appeal in this matter, the SEC respectfully requests that the Court impose a bond in an amount sufficient to reimburse the taxpayers for the costs associated with the Special Primary Election and runoff, if any, in the event that the Supreme Court determines that a Special Primary Election was not authorized pursuant to S.C. Code Ann. § 7-11-55 (Supp. 2011).

Respectfully submitted,

M. Elizabeth Crum, S.C. Bar No. 1486
lcrum@mcnair.net
Ariail B. Kirk, S.C. Bar No. 71101
akirk@mcnair.net
Amber B. Martella, S.C. Bar No. 78706
amartella@mcnair.net
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800

By: *M. Elizabeth Anne By*
Walter J. Whitmire *STWalt*
Attorneys for Appellant-Defendant South
Carolina State Election Commission (Marci
Andino, as Executive Director, and Chris
Whitmire, as Director of Public Information
and Training)

August 22, 2012

Columbia, South Carolina

The Supreme Court of South Carolina

George Tempel, Appellant/Respondent,

v.

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

of whom South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training), and Paul Thurmond are Respondents/Appellants.

Appellate Case No. 2012-212729

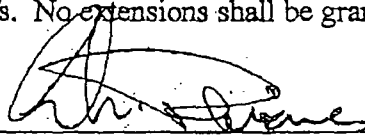
ORDER

Appellant/Respondent and Respondents/Appellants have filed Notices of Appeal from an order of the circuit court declaring Paul Thurmond was disqualified as a candidate because he failed to comply with the requirements of S.C. Code Ann. § 8-13-1356(B) (Supp. 2011), as interpreted by this Court in *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 725 S.E.2d 704 (2012), and *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 727 S.E.2d 418 (2012). Respondent/Appellant South Carolina State Election Commission (the State Commission) asks the Court to expedite this matter as it involves a time-sensitive election matter.

ATTACHMENT

A

The motion to expedite is granted. The State Commission has requested an expedited copy of the transcript of the hearing held before the circuit court on August 13, 2012. The court reporter shall, within five (5) days of the date of this order, prepare and deliver the transcript to the State Commission. Appellant/Respondent shall have five (5) days after receipt of the transcript in which to serve and file its initial brief and Designation of Matter. Within five (5) days after service of appellant/respondent's initial brief, respondents/appellants and respondents shall serve and file their initial brief(s). Any reply brief must be served and filed within two (2) days after service of respondent's initial brief. The Record on Appeal shall be served and filed within five (5) days after service of the last initial brief. The parties shall have five (5) days after service of the Record on Appeal to serve and file their final briefs. No extensions shall be granted absent extraordinary circumstances.



J.

FOR THE COURT

Columbia, South Carolina

August 17, 2012

cc:

James Emerson Smith, Jr.

Samuel W. Howell, IV

J. Robert Bolchoz

Karl Smith Bowers, Jr.

Michael A. Timbes

Matthew Evert Yelverton

Tanya Amber Gee

Mary Elizabeth (Liz) Crum

Ariail Burnside Kirk

Amber B. Martella

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

George Tempel, ... Appellant/Respondent,

v.

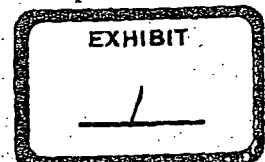
South Carolina State Election Commission (Marci Andino, as
Executive Director, and Chris Whitmire, as Director of Public
Information and Training); South Carolina Republican Party (Matt
Moore, as Executive Director, and Chad Connolly, as Chairman);
Charleston County Republican Party (Lin Bennett, as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

Of Whom South Carolina State Election Commission (Marci
Andino, as Executive Director, and Chris Whitmire, as Director of
Public Information and Training), and Paul Thurmond are Respondents-Appellants.

AFFIDAVIT OF MARCI ANDINO

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

1. She is the duly appointed Executive Director of the South Carolina State Election
Commission (State Commission) and is a resident of Richland County, South Carolina.
2. On or about August 15, 2012, prior to noon, the South Carolina Republican Party
(SCRP) certified candidates for the South Carolina House of Representatives and the South Carolina
Senate. The SCRP did not certify any candidate, including Mr. Paul Thurmond, as a Republican
candidate for Senate District 41 for the November 6, 2012, General Election.



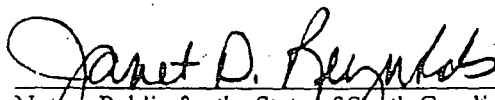
3. The SEC is responsible for the cost of all primary elections and special primary elections. See: S. C. Code Ann. § 7-13-40. On May 29, 2012, the Charleston County Board of Elections and Voter Registration (CCBEVR) held the special primary election to fill the unexpired term of former Senator now Lt.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

FURTHER AFFIANT SAITH NOT.



Marci B. Andino

Sworn to and subscribed before me
this 20th day of August, 2012.

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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-3737

GEORGE TEMPEL,

Plaintiff,

vs.

AFFIDAVIT OF PAUL REYNOLDS
THURMOND

SOUTH CAROLINA STATE ELECTION
COMMISSION (*Marci Andino, as
Executive Director & Chris Whitmire as
Director of Public Information and
Training*); SOUTH CAROLINA
REPUBLICAN PARTY (*Matt Moore as
Executive Director & Chad Connolly as
Chairman*) CHARLESTON COUNTY
REPUBLICAN PARTY (*Lin Bennett as
Chairman*) CHARLESTON COUNTY
BOARD OF ELECTIONS AND VOTER
REGISTRATION (*Joseph L. Debney as
Director & Dan Martin as Chairman*);
PAUL THURMOND,

Defendants.

FILED
2012 JUN 11 AM 9:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PERSONALLY APPEARED BEFORE ME, the Affiant, Paul Reynolds Thurmond, who,
first being duly sworn states the following:

- 1) I am over the age of eighteen (18) and fully competent to make this Affidavit.
- 2) I make this Affidavit under oath with the understanding that it will be used in connection with the above-styled action.
- 3) The matters set forth herein are within my personal knowledge, except where specifically stated to be based upon information and belief, in which case such I believe in good faith such matters to be true.

- 4) I am attorney and member in good standing with the South Carolina bar.
- 5) I am a candidate for the District 41 State Senate seat for the general election to be held in November, 2012.
- 6) I am not running in the earlier race to fill the interim vacancy that exists in District 41 Senate seat.
- 7) Upon information and belief, I am the only Republican candidate certified to participate in the November election relating to that office.
- 8) On March 28, 2012, I electronically submitted a Statement of Economic Interest ("SEI") to the South Carolina Ethics Commission ("SCEC").
- 9) After submitting my SEI to the SCEC, I presented my Statement of Intent of Candidacy ("SIC") to Lin Bennett, the Chairperson of the Charleston Republican Party, at the Republican Party headquarters in North Charleston, South Carolina.
- 10) I was certified as a candidate for the District 41 State Senate seat two days later.
- 11) Prior to and at the time of the submission of my SEI and SIC for the District 41 State Senate seat, I served as a prosecutor for the City of North Charleston, South Carolina. I have held that position for approximately 18 months.
- 12) Upon information and belief, as a prosecutor for the City of North Charleston I am a "public official" within the State of South Carolina.
- 13) As a prosecutor of criminal cases, I have duties involving an exercise of part of the sovereign power of the State of South Carolina and the City of North Charleston.
- 14) Although part-time, I spend 15 to 20 hours per week performing prosecutorial duties that are continuing and not intermittent. I handle approximately 70 criminal cases

per month. These duties include the regular prosecution of criminal cases in municipal court.

15) I prosecute criminal cases for the City in jury trials, and I represent the City in receiving guilty pleas.

16) I have discretion and autonomy on exercising the powers of the sovereignty of the State of South Carolina and the City insofar as the handling of these prosecutions is concerned.

17) It is my understanding that I serve at the pleasure of the Mayor of the City of North Charleston and am subject to removal by the Mayor.

18) To be perfectly clear, it was not my subjective intent when submitting my SEI to the State Ethics Commission that I was doing so because of my position as a prosecutor for the City of North Charleston. I submitted my SEI in anticipation of my running for State Senate District 41.

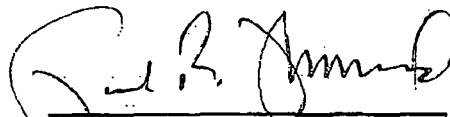
19) That said, the fact remains that prior to and at the time of submission of my SEI, I was a public official by virtue of my appointment as a prosecutor for the City of North Charleston.

20) Further, when I submitted my SIC to Lin Bennett, I was a public official with an existing SEI already on file.

21) After the Supreme Court's decision in *Anderson* was issued on March 2, 2012, I discussed the foregoing facts and circumstances with Lin Bennet and explained to her that I believe myself to be a public official due to my appointed position as a prosecutor for the City of North Charleston. I further explained to her that I believe I meet the exemption requirements set forth in 8-13-1356(A) due to my position as prosecutor for

the City. This explanation was sent by my office to Lin Bennett on March 4, 2012, two days after *Anderson* was decided and one month *prior* to the Supreme Court's decision in *Florence County Republican Party*. (see Attachment A). I have maintained this position since May 4, 2012 and I continue to maintain it now.

22) If I do not meet the exemption established under Section 1356(A) upon the facts and circumstances I have described, I agree that the remaining provisions of Section 1356 apply to me and I further agree that I did not meet the requirements set forth therein.


Paul Reynolds Thurmond

Sworn to and subscribed before me
this 11th day of June, 2012.


Notary Public for South Carolina
My Commission expires: 10/31/21

ATTACHMENT A

(to Affidavit of Paul Thurmond)

Paul Thurmond

From: Jesse Kirchner
Sent: Friday, May 04, 2012 8:53 AM
To: edlinb@comcast.net
Cc: Paul Thurmond
Subject: Thurmond
Attachments: MEMORANDUM.pdf; City Attorney.pdf

Importance: High

Lin,

See attached.

Best regards,

Jesse

Jesse A. Kirchner
Thurmond Kirchner Timbes & Yelverton, P.A.
15 Middle Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
phone: 843.937.8000
direct dial: 843.266.9944
fax: 843.937.4200
email: jkirchner@tktylawfirm.com
web: www.tktylawfirm.com



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MEMORANDUM

This Memorandum addresses the recent Supreme Court decision in Michael Anderson and Robert Barger v. South Carolina Election Commission, et al., Opinion No. 27120, relative to the candidacy of Paul R. Thurmond for Senate District 41.

In the Anderson opinion, the Supreme Court interpreted S.C. Code Ann §8-13-1356 concerning the requirements for candidates for public office to file a statement of economic interest. Notably, the first subsection of this statute sets forth an exemption. "This section does not apply to a public official who has a current disclosure statement on file with the appropriate supervisory office pursuant to Sections 8-13-1110 or 8-13-1140." S.C. Code Ann. §8-13-1356(A) (emphasis added). The referenced code section identifies persons who must file statement of economic interests. Included in the list are "public officials." S.C. Code Ann. §8-13-1110(B)(10). This chapter goes on to define public official as "an elected or appointed official of the State, a county, a municipality or a political subdivision thereof" S.C. Code Ann. §8-13-1300(28).

Thurmond is presently, and was at the time of filing his Statement of Intention of Candidacy (SIC), an appointed prosecutor for the City of North Charleston and disclosed such on his Statement of Economic Interest (SEI) filed with the State Ethics Commission. As such, Thurmond falls squarely within the statutory definition of a "public official." In fact, in determining that a city attorney for Aiken was a "public official," Attorney General Henry McMaster wrote that, "[a] critical factor in this determination is whether the city attorney prosecutes criminal cases in municipal court. As this Office noted in an opinion dated February 22, 1982, '[w]hether one acts as a prosecutor in a case tried before a jury or whether one represents the State in receiving a plea of guilty,

undoubtedly there is an exercise of a portion of the sovereignty of the State. . .” Attorney General Opinion dated September 8, 2003 (copy attached hereto). In his role as an appointed city prosecutor, Thurmond prosecutes criminal cases in municipal court, tries criminal cases before a jury, and has the authority of the State to receive a guilty plea from a criminal defendant. There can be no doubt that Thurmond is a public official.

Because Thurmond is a public official, the only remaining issue to consider is whether he had a current disclosure statement on file with the appropriate supervisory office (the State Ethics Commission). Prior to filing his SIC, Thurmond had filed with the State Ethics Commission a Statement of Economic Interest (SEI). Indeed, Thurmond’s SEI was filed with the State Ethics Commission on or before March 28, 2012. The prior filing of his SEI plainly satisfies the second prong of the test, bringing Thurmond squarely within the statutory exemption. As such, the Anderson opinion solidifies Thurmond’s proper candidacy.

CONCLUSION

Based on the foregoing, Thurmond is a public official who had a current disclosure statement on file prior to filing his SIC, and he squarely falls within the statutory exemption contained in S.C. Code Ann. §8-13-1356(A). The Anderson opinion holds that, “the names of any non-exempt individuals who did not file with the appropriate political party an SEI simultaneously with an SIC were improperly placed on the party primary ballots and must be removed.” Because Thurmond is an exempt individual as set forth above, his name shall not be removed from the primary ballot for Senate District 41.

7615 Library



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

September 8, 2003

Gary H. Smith, III, Esquire
Aiken City Attorney
Post Office Box 519
Aiken, South Carolina 29802

Dear Mr. Smith:

You have requested an opinion of this Office concerning dual office holding. Indicated in your letter is that you currently serve the City of Aiken in the position of city attorney, which is created by Section 2-281 et seq., of the Aiken City Code. Your letter provides a summary of your duties as city attorney as follows:

I am an attorney in private practice with the law firm of Smith, Massey & Brodie, P.A. In my capacity as city attorney for the City of Aiken, I am not a member of City Council. I have no authority and cannot vote on matters before Council. I serve at the Council's discretion and can be terminated by Council upon a majority vote of Council. I have a month to month contractual arrangement with Council and they are able to terminate me at will. I serve as an advisor to City Council on legal issues that they might face from time to time. In essence, I am an employee of city council. I do not think the city attorney position qualifies as office holding. . . As city attorney, I do not prosecute criminal cases on behalf of the city. This function is fulfilled by the city solicitor who is a full-time city employee.

Furthermore, you indicate that you are being considered by the Governor's Office for service as a member of the Aiken County Commission on Higher Education. Your question is whether an individual who serves simultaneously as Aiken City Attorney and a member of the Aiken County Commission on Higher Education would violate the constitutional prohibition on dual office holding.

Law / Analysis

Article XVII, Section 1A of the South Carolina Constitution provides that "no person may hold two offices of honor or profit at the same time ..." with exceptions specified for an officer of the militia, member of a lawfully and regularly organized fire department, constable, or notary public. For this provision to be contravened, a person concurrently must hold two offices which

Mr. Smith
Page 2
September 8, 2003

have duties involving an exercise of some portion of the sovereign power of the State, Sanders v. Belue, 78 S.C. 171, 58 S.E. 762 (1907). "One who is charged by law with duties involving an exercise of some part of the sovereign power, either small or great, in the performance of which the public is concerned, and which are continuing and not occasional or intermittent, is a public officer. Conversely, one who merely performs the duties required of him by persons employing him under an express contract or otherwise, though such persons be themselves public officers, and though the employment be in or about a public work or business, is a mere employee." Id., 78 S.C. at 174. Other relevant considerations involved in a determination of whether a particular position constitutes an office are whether statutes, or other such authority, establish the position, prescribe its duties or salary, or require qualifications or an oath for the position. State v. Crenshaw, 274 S.C. 475, 266 S.E.2d 61 (1980).

As noted in your request letter, this Office has concluded in an opinion dated October 14, 1994 that a member of the Aiken County Commission for Higher Education would be considered an officer for dual office holding purposes. There, we concluded that the duties of a Commissioner of Higher Education involve an exercise of a portion of the sovereign power of the State. We have also reached the same conclusion with respect to the Spartanburg County Commission for Higher Education (see Op. S.C. Att'y. Gen., dated March 27, 1992). Therefore, the question becomes whether a city attorney for Aiken would likewise be considered an office holder. If so, to simultaneously occupy both positions would contravene the dual office holding provision of the South Carolina Constitution.

This Office has reached varying conclusions with respect to the position of city attorney, depending upon the particular circumstances. See, Op. S.C. Att'y. Gen., dated January 27, 2000. "Whether or not the position of city attorney is an office would depend on how the position is created and the duties prescribed. If the duties prescribed make the position an 'office' rather than mere employment, it would be violative of the dual office holding prohibitions for one individual to hold the office of city attorney and another office." Op. S.C. Att'y. Gen., September 14, 1998. A critical factor in this determination is whether the city attorney prosecutes criminal cases in municipal court. As this Office noted in an opinion dated February 22, 1982, "[w]hether one acts as a prosecutor in a case tried before a jury or whether one represents the State in receiving a plea of guilty, undoubtedly there is an exercise of a portion of the sovereignty of the State. . ." In addition, our conclusion in a given instance has turned upon whether the municipal attorney is retained on an independent contractor basis or is appointed. See, S.C. Att'y. Gen., September 14, 1998.

The position of city attorney for the City of Aiken is established by Aiken municipal ordinance Sec. 2-281 et seq. Section 2-281 provides that "[t]he city attorney and city solicitor shall be appointed by, serve at the pleasure of, and be subject to removal by the city council." Such section further specifies that "[t]he city council, in its discretion, may appoint one person to serve as the city attorney/city solicitor, and in the event of such appointment, it shall be considered one position or office." Section 2-282 specifies that the person who is appointed as city attorney shall

Mr. Smith
Page 3
September 8, 2003

be a member in good standing in the bar of the State "at the time of his appointment and throughout his term of office."

Section 2-284 creates the Department of Legal Services for the City of Aiken. Such Department is "headed by the city attorney who shall also serve as the director of the department." The city attorney is responsible to the city manager for the operations of the department and the city solicitor reports to and is subject to the direction of the city attorney. Id. Other personnel which make up the Department of Legal Services are also answerable to the city attorney.

The duties of the city attorney are enumerated in Section 2-285 of the City Code. Such duties and authority are provided as follows:

- (1) The city attorney shall be the chief legal advisor to the city council and all offices, departments, boards, commissions and agencies of the city and all officers and employees of the city in matters relating to their official powers and duties, and in that capacity may communicate directly with the council and those offices, departments, boards, commissions, agencies, officers and employees.
- (2) The city attorney shall advise the city council, its committees, the city manager or any other city officer upon all legal questions arising in the conduct of city business.
- (3) The city attorney shall prepare and revise ordinances when so requested by any member of the city council, any committee thereof or the city manager.
- (4) The city attorney shall prepare, for execution, contracts and other written instruments to which the city is a party and shall approve, as to form, all bonds required to be submitted to the city.
- (5) The city attorney shall enter appearances for the city in all actions, cases and special proceedings. The city attorney shall conduct all suits and other proceedings before all courts in which the city is, or shall be, a party. This subsection shall not apply to prosecutions handled by the city solicitor. The city attorney may elect not to enter appearances in suits and proceedings in which the city is represented by outside counsel employed or retained by an insurer of the city or by the city, or in which he determines there is a conflict of interest.
- (6) The city attorney shall make recommendations to the city manager and city council on retaining outside legal counsel on specified matters. The retaining

Mr. Smith
Page 4
September 8, 2003

of counsel where the estimated cost does not exceed \$1,000 may be approved by the city manager.

- (7) A city officer or employee who is being sued civilly for action taken in good faith in the course of his official duties may be represented by the city attorney if there is no conflict of interest as determined by the city attorney.
- (8) With the approval of the city manager, he may settle claims against the city for an amount of \$1,000.00 or less.
- (9) The city attorney may assign any of the duties provided in this division to another attorney retained or employed by the city.
- (10) The city attorney shall perform such other duties as are prescribed by ordinance or state law or directed by the city council or the city manager.

Section 2-286 further provides that "[t]he city solicitor shall prosecute and represent the city in all criminal and related proceedings in municipal court and appeals therefrom."

The foregoing duties of the city attorney are extensive. While it is true that the city attorney does not prosecute criminal cases on behalf of the City of Aiken on a day-to-day basis, it is evident that the city solicitor is "subject to the direction of the city attorney." Thus, the city attorney is designated by the county ordinance as the ultimate decision-making authority in the prosecution of cases by the City. Nothing prohibits the city attorney from actually prosecuting a case if he sees fit, and, in any event, as supervisor, he exercises prosecutorial discretion. Accordingly, we deem this ultimate decision-making authority to constitute the exercise of sovereign power for purposes of dual office holding.

Moreover, other authority afforded the city attorney by the enabling ordinance represents the exercise of sovereign power. The city attorney is authorized by Section 2-285(5) to "conduct all suits and other proceedings before all courts in which the city is, or shall be a party." Such broad discretion to handle cases and legal actions in which the City is a party is, in our opinion, the exercise of sovereign power by the city attorney. Furthermore, the city attorney, pursuant to Section 2-285(7), makes the determination of whether to represent a city officer or employee sued civilly if the city attorney determines such officer or employee acted in good faith. Such discretion afforded the city attorney is a further indicia of holding an office.

This Office has drawn a distinction between those city attorneys who are, in essence, retained attorneys and who thus are independent contractors and those whose position is created by law and who are appointed. Compare, Op. S.C. Atty. Gen., January 27, 2000 with Op. S.C. Atty. Gen., January 12, 1979. In the latter opinion, we noted that § 5-7-230 provides that "a city council may elect or appoint a municipal attorney ... whose duties shall be prescribed by law." There, we stated

Mr. Smith
Page 5
September 8, 2003

that "[b]ased on this statute, our Office has concluded that the position of municipal or city attorney is an office within the prohibition of Article XVII, § 1A. 1977 Ops. Att'y Gen. No. 77-137, p. 114; 63 Am. Jur.2d, Public Officers and Employees, Sections 1-33." Likewise, in this instance, the Aiken city attorney is appointed by, serves at the pleasure of, and is subject to the removal of county council. Pursuant to § 2-283, the city attorney receives "a salary ... established by the city council."

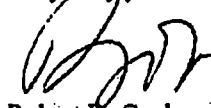
You have referenced an opinion dated September 14, 1998 in support of your view that the Aiken city attorney position is one of employment rather than an office. In that opinion, however, the Greenwood city attorney "was appointed on a contractual basis to provide legal guidance and represent the City in legal matters." The Greenwood city attorney was "provided a retainer and receives hourly compensation for civil litigation."

The key difference is that in this instance the Aiken ordinance specifies that the Aiken city attorney serves as the head of the department of legal services and as director of the department. The city attorney not only directs the work of the city solicitor, who serves as city prosecutor, but the remainder of the department of legal services staff as well. Moreover, the city attorney possesses other powers and duties, discussed above, which constitute indicia of sovereign powers. Rather than an independent contractor or city employee, it appears to us that the Aiken city attorney is a city officer. Moreover, there is no mention in the portion of the ordinance that we have been provided that the city attorney is "retained" or "employed" by the city council. Instead, the city attorney "serve[s] at the pleasure of, and [is] subject to removal by the city council." Further, § 2-281 makes reference to the term "position or office." Finally, county council itself has recognized in the enabling ordinance creating the position of city attorney that the city attorney must be a member in good standing of the state Bar "throughout his term of office." Such would constitute a recognition by County Council that the position of city attorney constitutes an office. In our view, the terms of the ordinance itself would be controlling.

Conclusion

Based upon the foregoing, it is our opinion that the Aiken city attorney holds an office for dual office holding purposes. While, admittedly, previous opinions of this Office have reached varying conclusions concerning the position of city attorney in particular jurisdictions, the particular facts in those instances are controlling. We believe the better reasoning here is that the position of Aiken City attorney constitutes an office for dual office holding purposes.

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

RDC/an

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-3737

GEORGE TEMPEL,

Plaintiff,

vs.

**AFFIDAVIT OF
LEONARD PATRICK ODOM**

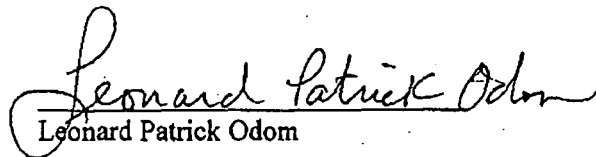
SOUTH CAROLINA STATE ELECTION
COMMISSION (*Marci Andino, as
Executive Director & Chris Whitmire as
Director of Public Information and
Training*); SOUTH CAROLINA
REPUBLICAN PARTY (*Matt Moore as
Executive Director & Chad Connolly as
Chairman*) CHARLESTON COUNTY
REPUBLICAN PARTY (*Lin Bennett as
Chairman*) CHARLESTON COUNTY
BOARD OF ELECTIONS AND VOTER
REGISTRATION (*Joseph L. Debney as
Director & Dan Martin as Chairman*);
PAUL THURMOND,

Defendants.

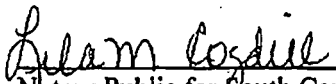
PERSONALLY APPEARED BEFORE ME, the Affiant, Leonard Patrick Odom, who,
first being duly sworn states the following:

- 1) I am over the age of eighteen (18) and fully competent to make this Affidavit.
- 2) I make this Affidavit under oath with the understanding that it will be used in connection with the above-styled action.
- 3) The matters set forth herein are within my personal knowledge, except where specifically stated to be based upon information and belief, in which case, I believe in good faith such matters to be true.

- 4) I am an attorney in good standing with the South Carolina Bar.
- 5) I am employed as the Research Director with the South Carolina Senate Ethics Committee and have been since June 1, 2009.
- 6) I am knowledgeable and familiar with Statements of Economic Interests (SEI) as they relate to the filings by candidates for the South Carolina State Senate for the 2012 General Election (including any Primary Election).
- 7) The Senate Ethics Committee did not receive a paper copy of any Senate candidate's SEI from any "official with whom the candidate files a declaration of candidacy or petition for nomination" for the South Carolina State Senate.
- 8) The Senate Ethics Committee has access to all candidates' SEIs that were electronically submitted to the South Carolina's Public Disclosure and Accountability Reporting System.


Leonard Patrick Odom

Sworn to and subscribed before me
this 11 day of June, 2012.


Notary Public for South Carolina
My Commission expires: October 26, 2014

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-3737

GEORGE TEMPEL,

Plaintiff,

vs.

AFFIDAVIT OF
J. BRADY HAIR

SOUTH CAROLINA STATE ELECTION
COMMISSION (*Marci Andino, as
Executive Director & Chris Whitmire as
Director of Public Information and
Training*); SOUTH CAROLINA
REPUBLICAN PARTY (*Matt Moore as
Executive Director & Chad Connolly as
Chairman*) CHARLESTON COUNTY
REPUBLICAN PARTY (*Lin Bennett as
Chairman*) CHARLESTON COUNTY
BOARD OF ELECTIONS AND VOTER
REGISTRATION (*Joseph L. Debney as
Director & Dan Martin as Chairman*);
PAUL THURMOND,

Defendants.

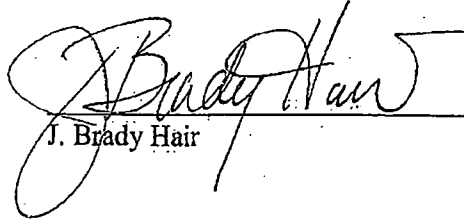
FILED
2012 JUN 11 AM 9:11
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

PERSONALLY APPEARED BEFORE ME, the Affiant, J. Brady Hair, who, first being
duly sworn states the following:

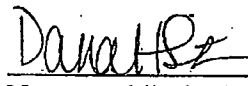
- 1) I am over the age of eighteen (18) and fully competent to make this Affidavit.
- 2) I make this Affidavit under oath with the understanding that it will be used in
connection with the above-styled action.
- 3) The matters set forth herein are within my personal knowledge, except where
specifically stated to be based upon information and belief, in which case such I believe
in good faith such matters to be true.

- 4) I am attorney and member in good standing with the South Carolina bar.
- 5) I have represented the City of North Charleston, South Carolina as its legal counsel for seventeen (17) years.
- 6) I hold that position by virtue of a North Charleston City ordinance, specifically, Section 2-151.
- 7) The ordinance that establishes my position as the City's legal counsel authorizes the appointment of additional legal counsel to assist with the City's needs.
- 8) Approximately eighteen (18) months ago, I appointed Paul Thurmond as a part-time prosecutor for the City of North Charleston to be responsible for the handling of criminal cases.
- 9) Mr. Thurmond serves in that position at the will and discretion of the Mayor of North Charleston.
- 10) Upon information and belief, as a prosecutor for the City of North Charleston Mr. Thurmond is and has been a public official.
- 11) Mr. Thurmond is given complete discretion and autonomy in exercising the powers of the sovereignty of the State of South Carolina and the City of North Charleston in the handling of criminal prosecutions.
- 12) In the exercise of his powers and duties of his position, Mr. Thurmond acts as a prosecutor for the City criminal cases that are tried before juries, and he represents the City in receiving guilty pleas. Upon information and belief, these acts involve the exercise of sovereign powers of the City and of the State.
- 13) Upon information and belief, as a prosecutor for the City of North Charleston Mr. Thurmond is a public official.

14) Upon further information and belief, Mr. Thurmond has been a public official for the duration of his service as a prosecutor for the City.


J. Brady Hair

Sworn to and subscribed before me
this 11th day of June, 2012.


Notary Public for South Carolina
My Commission expires: 10/31/21



ALAN WILSON
ATTORNEY GENERAL

July 10, 2012

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

Dear Mr. Tollison:

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

Law/Analysis

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Id. (emphasis added).

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

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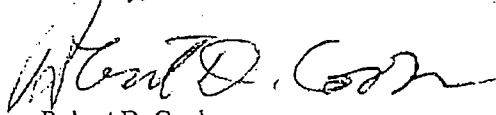
also made clear that such persons should not be certified "for the general election." Similarly, as we stated in *Op. S.C. Atty. Gen.*, May 26, 1980 (1980 WL 121244) "failure to timely file the ethics statement, thereby resulting in a prohibition of placing a candidate on the ballot, cannot be circumscribed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

Conclusion

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

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

Sincerely,



Robert D. Cook
Deputy Attorney General

RDC/an

1980 WL 121244 (S.C.A.G.)

Office of the Attorney General
State of South Carolina

*1 May 26, 1980

The Honorable Patrick B. Harris
Representative
District No. 9
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Harris:

You have requested an opinion from this office as to the procedure for refilling a position for candidates following the finding of ineligibility of a candidate due to failure to comply with the State Ethics Act.

South Carolina Code of Laws, 1976, Section 7-13-40 states in part that

[i]f, after the closing of the time for filing pledges, there be not more than two candidates for any one office and one or more of such candidates dies or withdraws, the State or county committee, as the case may be, may, in its discretion, afford opportunity for the entry of other candidates for the office involved; provided, that for the office of State Senator, the discretion shall be exercised by the State committee.

This statute speaks in terms of allowing an office to be filled if the candidate has died or withdrawn. The question, therefore, arises if this statute would authorize a political party to substitute for a candidate who has been found to be ineligible pursuant to South Carolina Code of Laws, 1976, as amended, Section 8-13-610(b) for failure to file the required ethics statement.

It is the opinion of this office that a finding of ineligibility in this case is tantamount to an involuntary withdrawal. The manifest objective of the statute is to allow the party to slate a full ballot for the primary election. This statute should be given a liberal construction to allow nomination of persons to replace candidates found to be ineligible even though this authorization is not literally contained in the terms of the statute. It would defeat the purpose of the act to not authorize the provisions of Section 7-13-40 to function where, as here, there is an involuntary withdrawal.

At least one court has also reached this conclusion by considering the purpose and the intent of an Ohio statute. In The State ex rel Flex v. Gwin, 252 N.E. 2d 289 (1969), the court interpreted an Ohio statute that authorizes a political party to fill a vacancy when a candidate dies or withdraws prior to the election, to include an involuntary withdrawal.

Additionally, you have inquired if a person who has been found to be ineligible as a candidate for failure to file the required ethic statements could be allowed to refile for that office when the party selects a new nominee pursuant to Section 7-13-40. In my opinion, they could not.

Section 8-13-610(6) of the South Carolina Code of Laws, 1976, as amended, states

[N]otwithstanding any other provision of law, if a candidate for elective public office does not submit a statement

of economic interests in accordance with the requirements of this action within twenty days after he becomes a candidate, his name shall not appear on the ballot, except upon just cause shown to the appropriate supervisory office.

*2 The terminology employed by this statute indicates an obvious intent to legislate completely in this area; and, this provision expressly prohibits allowing a candidate who fails to file the required statements on the ballot. [FN1] It would appear that a person disqualified by operation of the ethics statute before a primary election would be prohibited from getting on the ballot by operation of any of the primary election laws; and, that the ethics law prohibition of being placed on the ballot cannot be circumscribed by a procedure that would somehow authorize a political party to nominate that disqualified candidate. [FN2] Therefore, a candidate who is disqualified from the primary ballot would not be able to refile for that position if the party chooses to refill that nomination.

The question, therefore, arises if the candidate can be placed on the ballot by petition. As stated earlier in this opinion, it would appear that failure to timely file the ethics statement would prohibit a candidate from getting on the ballot through the primary procedure; however, there does not appear to be any express prohibition of allowing the ineligible primary candidate from being placed on the general election ballot by petition. It should be noted, however, that such a candidacy could violate the oath each primary candidate must file. This oath is set out in Section 7-11-210 of the Code and authorizes ex parte injunction to be brought against any person who filed the oath and thereafter runs for election to that office or any other office for which the party has selected a nominee. White v. West, Civil Action No. 74-1709, filed January 6, 1976 (copy attached). [FN3]

The only other possible procedure for a person to win nomination to the office would be by write-in. Of course, a write-in election would have to be spontaneous, an active campaign for a write-in election would still place the candidate in the position of violating his pledge.

Yours very truly,
Treva G. Ashworth
Senior Assistant Attorney General

[FN1]. See also Vandross vs. Ellisor, 347 F.Supp. 197 (DSC 1972) and South Carolina Code of Laws, 1976, Section 7-11-210 which provides a similar prohibition of candidacy when a candidate fails to file a notice of candidacy by a specified time.

[FN2]. This would also prohibit an unopposed candidate from being certified by the political party as their nominee for the general election ballot. The failure of a candidate to timely file before a primary would render that candidate ineligible for certification regardless of the factual situation of whether or not that candidate is opposed or unopposed. See Dobbins v. Cromwell, 577 S.E. 2d 190 (1979).

[FN3]. Of course, this would not prohibit a candidate from running in every situation, such as if the party does not reopen filing and no other candidate has filed for that office, a petition candidate who had been a disqualified candidate, would not be violating the oath.

1980 WL 121244 (S.C.A.G.)

END OF DOCUMENT

State of South Carolina	)	Court of Common Pleas
County of Charleston	)	Ninth Judicial Circuit
 George Tempel,	)	 Transcript of Record
Plaintiff,	)	2012-CP-10-03737
V.	)	
South Carolina Election	)	
Commission, South Carolina	)	
Republican Party, Charleston	)	
County Republican Party,	)	
Charleston County Board of	)	
Elections and Voter Registration,	)	
Dorchester County Board of	)	
Elections, Paul Thurmond,	)	
<u>Defendants.</u>	)	

August 13, 2012

Charleston, South Carolina

B E F O R E:

The Honorable J. Ernest Kinard, Jr., Judge

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

A P P E A R A N C E S:

James E. Smith, Esquire

Attorney for the Plaintiff

M. Elizabeth Crum, Esquire

Attorney for SC Election Commission

Robert Bolchoz, Esquire

Attorney for the Republican Party

Samuel W. Howell, IV, Esquire

Attorney for Board of Elections

Tanya A. Gee, Esquire

Michael A. Timbes, Esquire

Mathew Yelverton, Esquire

Jesse A. Kirchner, Esquire

Attorneys for Defendant Paul Thurmond

SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

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1 Monday, August 13, 2012

2 THE COURT: All right. It looks like we have a
3 full day. I need for everybody to identify themselves on
4 the first case. I've got three of these election things.
5 I understand I have to make a decision by tomorrow.

6 MR. SMITH: Your Honor, my name is James Smith.
7 I'm here on behalf of the plaintiff.

8 MR. TIMBES: Your Honor, good morning. Michael
9 Timbes here on behalf of the defendant, Paul Thurmond.

10 MS. GEE: Your Honor, I'm Tanya Gee. I'm also here
11 for Paul Thurmond.

12 MR. YELVERTON: Mathew Yelverton, Your Honor, here
13 for Paul Thurmond.

14 MR. THURMOND. Morning, Your Honor. I'm Paul
15 Thurmond. I'm the defendant in the case.

16 MR. KIRCHNER: Morning, Your Honor. Jesse Kirchner
17 also here for Mr. Thurmond.

18 THE COURT: All right.

19 MR. HOWELL: Your Honor, Sam Howell. I'm here on
20 behalf of Charleston County Board of Elections and Voter
21 Registration.

22 THE COURT: Okay.

23 MS. CRUM: Your Honor, Liz Crum on behalf of the
24 South Carolina State Election Commission.

25 THE COURT: All right.

1 MR. BOLCHOZ: Your Honor, I'm Robert Bolchoz on
2 behalf of the State Republican Party and the Charleston
3 County Republican Party.

4 THE COURT: Okay. All right. Somebody is the
5 moving party, I guess.

6 MR. SMITH: That's correct, Your Honor. May it
7 please the Court. I'm grateful to be here on behalf of
8 George Tempel, and we've worked, both sides -- all sides
9 of this case to really get to the issue here, and so
10 we've submitted some stipulations of facts, which I
11 believe the Court has.

12 I'd also like to provide to the Court as my first
13 and likely only exhibit is the defendant's responses to
14 our request to admit. May I approach, Your Honor?

15 THE COURT: You can do it.

16 Now, Ms. Crumb said that she didn't agree with all
17 that at one point.

18 MS. CRUM: Your Honor, I just said I didn't have
19 it.

20 THE COURT: I understand.

21 MS. CRUM: So I didn't know if I didn't agree with
22 it yet.

23 THE COURT: Well, do you agree or disagree?

24 MS. CRUM: I agree with it.

25 THE COURT: Okay.

1 MR. SMITH: And, Your Honor, I'd like to have that
2 admitted as Plaintiff's 1, the admissions.

3 (WHEREUPON, Plaintiff's Exhibit Number 1, a
4 Document, was marked and admitted into evidence.)

5 MR. SMITH: Your Honor, we also would like to add
6 to our prayer for relief, we've asked should the Court
7 find in our favor -- and we're going to get to the one
8 very narrow issue, that Mr. Thurmond is not a public
9 official as contemplated by 13-56, that he needs to be
10 removed from the ballot and enjoined from being on the
11 ballot. We also ask that we add to our prayer of relief
12 today, because I think in the interest of judicial
13 economy if we don't deal with this issue today in this
14 order we'll certainly be back before the Court with
15 another motion for injunction, should the party decide to
16 reopen filing. I would like to provide the Court with a
17 copy of the Attorney General's opinion, which was on
18 point dealing with this issue, directly. I think
19 everybody has got the copy of this.

20 (WHEREUPON, a document was handed to the Court.)

21 MR. SMITH: But, Your Honor, the issue is this.
22 Should the Court find in our favor and Mr. Thurmond be
23 removed from the ballot there's some concern that the
24 party might make an effort to the reopen filing, and it's
25 pretty clear that under the statutes you can reopen

1 filing if someone is disqualified or, you know, resigns
2 or removes for other than political reasons. There's a
3 lot of history under that statute, but this is very
4 different set of circumstances.

5 In this case, Mr. Thurmond would be declared
6 ineligible and his candidacy would be void ab initio,
7 therefore was never a candidate; therefore 7-11-50 does
8 not apply, and finally, cannot be reopened. So we're
9 asking as a part of our prayer for relief and in the
10 final court order to enjoin any reopening filing, should
11 the Court find in our favor.

12 THE COURT: All right.

13 MR. HOWELL: Your Honor, are you going to hear
14 arguments on that at this point? I assume that's a form
15 of a motion; however, the Charleston County Board of
16 Elections objects to that.

17 THE COURT: Got it.

18 MS. CRUM: Your Honor, the State Election
19 Commission takes the position that we agree with the
20 Attorney General's opinion, which would prohibit the
21 reopening of filing.

22 THE COURT: All right.

23 MR. YELVERTON: Your Honor, we object as well.
24 Paul Thurmond is a party nominee for the Republican Party
25 for this seat and we believe the statute addresses this

1 issue. If Paul is disqualified as contemplated by the
2 statute that it provides that there will be a special
3 election to put the candidate forward for that seat.

4 MR. SMITH: And again, Your Honor, we have actually
5 been discussing this issue for sometime so there's really
6 no surprise here, and there's no prejudice by allowing
7 that to be included in my prayer for relief and we ask
8 that it would be considered in the form of a memo for
9 that. And so I'd like to be able to go forward on that
10 issue.

11 THE COURT: All right.

12 MR. HOWELL: Your Honor, this is news to me. I
13 haven't been included in any conversations with the
14 plaintiff or anyone else on this issue. As recently as
15 his proposed order he filed this weekend this was not
16 mentioned. It's in none of the pleadings. So our
17 position is it's -- you know, I know these cases are
18 moving fast but this is way too late for that.

19 MR. SMITH: If I may respond to that, Your Honor.
20 There was actually -- when Mr. Howell was out of town, I
21 understand he probably was not aware of this, but his
22 fellow counsel who was standing on his behalf, we had
23 extensive e-mail communication on this very subject when
24 we were providing earlier amended orders. So it's not a
25 significant issue. I'm just trying to avoid dealing with

1 this later, which we undoubtedly will if it's not dealt
2 with now. That's all.

3 THE COURT: All right. Now, the Supreme Court had
4 an opportunity to take this in original jurisdiction
5 which would have eased the matter for everybody because
6 of the time constraints. A lot of people in here have
7 been in front of me many times. Because I speak does not
8 mean I'm ruling, okay? So if I say something nobody have
9 a heart attack. I'm just seeking clarification.

10 Do you concede that if I said he was a public
11 official he's in compliance?

12 MR. SMITH: Actually, no, and I have an argument
13 for that.

14 THE COURT: If you did it simplifies things for me
15 but if you don't --

16 MR. SMITH: No. He could be a public official but
17 not necessarily for this statute, and that's part of my
18 argument.

19 THE COURT: All right. I have read, of course,
20 everything that has been filed, and I also read this
21 Attorney General opinion. Somehow it was in one of the
22 packets. I'm fully aware of all the issues. So if
23 anybody would like to address it.

24 As I understand it, just so you all will understand
25 that I think I understand it, Mr. Thurmond never

1 previously filed an economic disclosure form. He filed a
2 form the day before he filed for his candidacy; is that
3 right so far?

4 MR. SMITH: More like minutes --

5 MR. YELVERTON: Roughly 30 minutes filed for his
6 candidacy.

7 THE COURT: Thirty. Then after the Supreme Court
8 decision came down he approached whoever, the party
9 chairman, and explained that he was a public official and
10 he had filed electronically and so forth. He then got
11 certified. That's basically it.

12 MR. SMITH: That's basically it. That's correct.

13 THE COURT: Of course, the Supreme Court says only
14 somebody running for that seat is exempt.

15 MR. SMITH: That's correct --

16 THE COURT: Hold it. Like I said, don't have a
17 heart attack. That was what they said. Now, a petition
18 for clarification was, of course, filed and if they had
19 addressed that I wouldn't have to have any of these
20 hearings today, I guess.

21 I don't even know what the Sumter hearing is about.
22 I mean, I have absolutely no clue. I am fully cognisant
23 of the other two issues involved. The next one, I think,
24 in Clarendon you've got a house member running for a
25 senate seat. And the Supreme Court was asked to clarify

1 whether a public official included all that and they
2 declined to do that.

3 Anything else I need to understand?

4 MR. SMITH: Nothing. I've got a few things I'll
5 add at argument, Your Honor.

6 THE COURT: You can, but tell me what happens if I
7 say -- if I rule with you on the first point.

8 MR. SMITH: That he's not a public official?

9 THE COURT: Or that he should have filed whether
10 he's a public official or not, the paper.

11 MR. SMITH: Absolutely, then you would find in our
12 favor, his candidacy is void ab initio. He's removed
13 from the ballot and filing cannot be reopened. That
14 would be --

15 THE COURT: Well, that's your position but that's
16 not --

17 MR. SMITH: Yes.

18 THE COURT: I have to make a second finding to
19 reach that, don't I? Yeah.

20 MR. SMITH: Yes. I think --

21 THE COURT: It's your position and Ms. Crum's
22 position?

23 MR. SMITH: Yes.

24 MS. CRUM: Yes, sir, Your Honor.

25 THE COURT: Okay. Does anybody know what happened

1 on the case that Cottingham decided on June 12th?

2 MR. SMITH: Yes. Of course Ms. Crum was there.

3 MS. CRUM: Well, actually I was on the side --

4 MR. SMITH: That's right.

5 MS. CRUM: -- the three judge panel case. Your
6 Honor, but one of my partners was there, and in that case
7 the situation was that there was a town council member
8 from the Town of Pelion. He had had his statements of
9 economic interest on file.

10 THE COURT: Right.

11 MS. CRUM: And Judge Cottingham said --

12 THE COURT: I'm aware of that. I just asked what
13 has happened.

14 MS. CRUM: What has happened, it was not appealed.
15 I'm sorry.

16 THE COURT: Was not appealed?

17 MS. CRUM: Was not appealed. Yes, sir, was not
18 appealed.

19 THE COURT: Well, you won't have the luxury of that
20 in this case if I --

21 (LAUGHTER)

22 THE COURT: -- but it would have solved all of our
23 problems if that had been appealed.

24 MR. SMITH: It might, Judge. Although there are
25 some factual differences, Your Honor, in that case.

1 THE COURT: I understand the facts but that's not
2 your case.

3 MR. SMITH: Yes, Your Honor.

4 THE COURT: That's the next case. I just was
5 curious. But if that was on appeal I was going to call
6 the Supreme Court and tell them, Listen, you give me a
7 one-day deadline, you all go ahead and decide then I can
8 tell all these people to go, because that would be the
9 law of the case.

10 Anything?

11 MR. TIMBES: Your Honor, if I may. Since we're
12 just clarifying some issues, obviously we're not into the
13 arguments yet --

14 THE COURT: Well, let me object to one of the
15 things that you put in the proposed order. Even where I
16 rule for you I would get hammered by the appellate court,
17 wouldn't I, because you put in there that he was in
18 substantial compliance? Well, so what. So was everybody
19 else that filed electronically and the Supreme Court just
20 said zap, zap, zap on all that.

21 MR. TIMBES: Your Honor, we believe he was in
22 complete compliance.

23 THE COURT: Well, I understand. But you put in
24 there he was in substantial compliance, you know, even if
25 he blah, blah, blah, blah.

1 MR. TIMBES: The clarity that I want to add to the
2 issue that Mr. Smith raised regarding the -- in fact if
3 you decide Mr. Thurmond is not entitled to the exemption.
4 The Attorney General opinion you have was requested of
5 the Attorney General under a very specific exception
6 under 7-11-50.

7 The particular exception that we would be relying
8 on would be 7-11-55, which relates to folks who were
9 nominated as the party nominee by virtue of a primary
10 election, and that's what happened in this case.

11 So I don't necessarily agree with the way in which
12 the question was even presented to the Attorney General
13 in the Greenville County situation. I just want to bring
14 that issue. We're talking about two different statutes.

15 THE COURT: All right. Well, Mr. Smith didn't
16 quite answer my question properly. What happens if I
17 rule with him on all the issues?

18 MR. TIMBES: In regards to my client, Your Honor --

19 THE COURT: Yeah.

20 MR. TIMBES: We would concede that if Mr. Thurmond
21 is not entitled to the exemption that Florence County
22 would apply.

23 THE COURT: Okay. But you still haven't answered
24 my question. I understand that he's off of the ballot.
25 What happens if he's off the ballot? What do they do,

1 they print about -- that's the urgency, isn't it, to send
2 it out with just -- that's my question. You all don't
3 seem to understand English.

4 MS. GEE: Well, let me hope that I do now that I've
5 stood up. What would happen then is he would not be on
6 the ballot that they are printing on August the 15th, as
7 I understand, that's being sent off to the absentee
8 voters.

9 In November, come November he wouldn't be on the
10 ballot but there would be a democrat on the ballot. So
11 this isn't one of those situations as in other counties
12 where just everybody has been kicked off. This could be
13 a default finding of who the next senator is, honestly.

14 MS. CRUM: Your Honor, if I might on behalf of --

15 THE COURT: He could still run write-in, couldn't
16 he?

17 MS. GEE: Or write-in. That's right.

18 THE COURT: See, you didn't answer my question.
19 Any time I ask a question I expect a full answer.

20 MS. GEE: Yes, sir.

21 THE COURT: But if I rule for him he couldn't even
22 do that.

23 MS. CRUM: Your Honor, the Election Commission's
24 position is in the event you determine that the exception
25 does not apply Mr. Thurmond could not be on the ballot as

1 a republican nominee. He could run for a write-in.

2 Mr. Hundley, who was just elected in the special
3 election as a republican, has petitioned under the
4 petition candidacy, and as I understand it his petition
5 is still under review to determine whether or not he got
6 sufficient votes.

7 The democrat would be on the ballot as the
8 democratic nominee. That would be what would happen from
9 the Election Commission's standpoint, Your Honor.

10 THE COURT: All right.

11 MR. HOWELL: Sam Howell, Charles County Election
12 Commission. Your Honor --

13 THE COURT: Well, let me go one step further.
14 Suppose -- and again, don't nobody have a heart attack.
15 I'm going to rule on all three of these cases whenever
16 I've heard the last one. I'm not going to rule on this
17 one at the end of this because that wouldn't be fair
18 because some of these other attorneys on the other cases,
19 you know, might just have arguments that bring tears to
20 my eyes. So that said, what else were you going to say?

21 MR. HOWELL: Your Honor --

22 THE COURT: Well, suppose I let him open the
23 election, what's the time limits on that?

24 MR. HOWELL: Well, Your Honor, I don't want to
25 reduce you to tears but I do want to suggest that this is

1 a democracy we live in.

2 THE COURT: I understand.

3 MR. HOWELL: And these cases have dealt a blow to
4 democracy.

5 THE COURT: I understand that but that's not my --

6 MR. HOWELL: This plaintiff is now in the courtroom
7 today asking for you to deliver yet another blow to
8 democracy, which is not required by Anderson or Florence
9 County cases.

10 No Supreme Court decision would prohibit the
11 Charleston County -- well, it's actually the South
12 Carolina Republican Party from reopening filing because
13 of disqualification of a candidate and we're a free
14 country, we're a free state. Anybody who's qualified can
15 file and then the party will select its nominee. So
16 there will be a democratic election in the fall with a
17 republican on the ballot.

18 THE COURT: All right. All that is fine. You
19 didn't quite answer my question.

20 MR. HOWELL: Well, that's what we would like to see
21 happen.

22 THE COURT: No. Tell me some timeline. That's
23 what I'm interested in. If I say he's off but he can
24 file, and I'm not ruling that way. Again, I'm not ruling
25 that way, he's off but he can open it.

1 MR. HOWELL: Well, the party opens -- I might ask
2 counsel for the parties, since he has the only copy of
3 the law, to respond to that, Your Honor.

4 THE COURT: All right.

5 MR. BOLCHOZ: Your Honor, that entire process is
6 laid out in 7-11-55. So just quickly reading through
7 this it says, The filing period for the special primary
8 election opens the second Tuesday after the
9 disqualification for a period of one week.

10 THE COURT: All right. That's fine.

11 MS. CRUM: Your Honor, on behalf of the Election
12 Commission, under 7-11-55 we do think that the Attorney
13 General's opinion is applicable, albeit it specifically
14 addressed 7-11-50.

15 On page three of Attorney General Wilson's, signed
16 by Robert Cook, of his opinion it talks about 7-11-55
17 applies when a party nominee becomes disqualified after
18 his nomination; 7-11-55 also says if a party nominee
19 becomes disqualified after his nomination.

20 So the central issue is whether or not the party --
21 the nominee was disqualified. In the Attorney General's
22 opinion what he says is an ineligible candidate was never
23 a proper candidate. And what the Supreme Court has said
24 in Atwell (ph) and Florence was that if somebody was not
25 properly on the ballot the candidacy was void ab initio,

1 therefore you never had a candidate.

2 We believe that applies here. And, Your Honor, the
3 other concern that the State Election Commission has is
4 that if you reopen in this instance there are other
5 situations in the State where there were candidates that
6 were nominated in the primary but the challenges, and
7 there have been a number of them, weren't filed until
8 after the primary nomination, and I think it would open
9 the proverbial floodgates.

10 And the one other thing I would say, Your Honor, is
11 that you are not the one, if you were to rule in favor of
12 reopening the primary, the Legislature made the statutes
13 not Your Honor. So to the extent that there is --

14 THE COURT: Now, why are you saying something like
15 that, Ms. Crum? I mean, here I am, there you are, and
16 you and I have a very long relationship, goes back almost
17 40 years --

18 MS. CRUM: Your Honor --

19 THE COURT: The Supreme Court sent me here to hear
20 these things. Take it up with them if I rule. Don't
21 tell me I shouldn't be here ruling. Lord knows.

22 MS. CRUM: And I thank you, Your Honor. I was just
23 responding to what Mr. Howell said, because that was his
24 argument. So I was responding to it, Your Honor.

25 MR. BOLCHOZ: Your Honor, if I could just say on

1 behalf of the parties as well, to sort of reflect on what
2 Mr. Howell offered. You know, to find otherwise to find
3 that 7-11-55 doesn't apply is basically going to mean
4 choosing the next senator.

5 THE COURT: Right.

6 MR. BOLCHOZ: So we take the position that this
7 provision lays out a very simple process, if you find him
8 not certified, for us to give the people a chance to make
9 the decision.

10 THE COURT: Right. I understand the issues. I
11 understand the ramifications but I am only ruling on the
12 three cases in front of me. Statewide consequences are
13 something the Supreme Court deals with, not me.

14 MR. TIMBES: Your Honor, if I may briefly respond
15 to the positions of the State Election Commission.

16 In complete candor of the Court I'm a little
17 disappointed to hear this because we served discovery
18 requesting what positions do you intend to take in this
19 case and we were told, We object, we're just
20 administrative process -- or an administrative part of this
21 process, so we just apply what comes before us.

22 And now it's the Commission's position that, it's
23 the Commission's position that. That's inconsistent with
24 what has been provided to us in discovery.

25 Secondly, I don't think there's a problem opening

1 up the floodgates to allow voters to have more options to
2 choose who is going to serve them in the General
3 Assembly. I hope that's the result in this.

4 Lastly, just in regards to the Attorney General's
5 opinion, what they tried to do -- and if you go back and
6 review the actual form of the question that was
7 presented, if you come back to that all they did was they
8 took the same folks who had been nominated, who were
9 unopposed originally, and they just said we're going to
10 renominate the same folks.

11 So it doesn't take a whole lot of analysis to
12 figure out that would render any application to the
13 statutes meaningless, if you are going to completely
14 ignore them and just renominate whoever you want to
15 renominate. I don't think that's what the Republican
16 Party -- I can't speak for them. I don't think that's
17 what they are asking you to do, and I know that's not
18 what Mr. Thurmond is asking you to do.

19 If he is not entitled to the exemption we are
20 simply asking that Mr. Thurmond, along with whomever else
21 wants to put their name in the hat, give the opportunity
22 to the voters to have a choice and have their vote count.

23 THE COURT: All right.

24 MR. SMITH: I guess lastly if I could, Your Honor.
25 If you look at Anderson and the Florence County what the

1 Supreme Court was really trying to do was protect the
2 voters and they were very specific about it, talking
3 about how the voters rely on the political parties to
4 ensure that only those individuals who are qualified
5 candidates to appear on the part of the primary ballots.

6 So our effort and the effort of Mr. Tempel is to do
7 just that, protect the integrity of the electoral process
8 and protect democracy as we know it. So I think that if
9 you look at what was written by the Attorney General and
10 look at what was written in these cases if you grant --
11 getting back to what happens dependant upon what decision
12 you make, if you grant the relief we've requested he is
13 not disqualified, he is not, you know, decided to leave
14 for other than political reasons. He is void ab initio
15 as a candidate. He never was a candidate.

16 All of those statutes, 55 and 50, speak of a
17 primary elected person or the candidate. They don't
18 speak of someone who was never a candidate being able to
19 avail themselves of those statutes.

20 And that actually would do an injustice to the
21 voters and to our democracy, if someone fails to comply
22 from the start to be on the ballot to begin with can also
23 use something that is there for somebody who is properly
24 on the ballot to then be able to reopen and file. So the
25 injustice would actually be granting the request that

1 they asked for. Thank you, Your Honor.

2 MS. GEE: Your Honor, Mr. Smith is asking you to
3 infer legislative intent into Section 8-13-13-56. And if
4 we've learned anything from the Anderson case and the
5 Florence County case it's that the Supreme Court found
6 those statutes to be clear on their face.

7 And if Subsection B and E are clear so is
8 subsection A. B and E kicked off hundreds of people from
9 the ballots. Subsection A, which is equally clear,
10 allows Paul Thurmond to stay on the ballot. All
11 Subsection A -- the plain language of Subsection A
12 applies to a public official.

13 Well, we're going to have testimony, if you'll
14 allow it today, to show that a city prosecutor is a
15 public official. The public official has to have an SEI
16 on file. We've got a stipulation of facts that shows
17 that Mr. Thurmond had his SEI on file, and it has to be
18 on file with the appropriate supervisory body. Again,
19 you've got a stipulation to show that Mr. Thurmond's SEI
20 was on file with the appropriate supervisory body.
21 That's all the statute requires.

22 Now, to the extent that there's this argument that
23 it only applies to incumbents, that's reading into the
24 statute something that the statute doesn't say. It
25 speaks of public officials, doesn't speak about

1 incumbents. That's one reason.

2 The second reason is that the exemption itself
3 speaks to two different subsections by which a public
4 official can have their SEI on file. One is 11-10 and
5 one is 11-40. If you are an incumbent you always have
6 your SEI on file by virtue of Section 11-40. You would
7 have to render the mention of 11-10 meaningless in order
8 to apply it to only candidates.

9 So if our Supreme Court is willing to read the
10 statute only by looking at the word saying it's
11 completely unambiguous, we are not going to construe the
12 statute and try to infer from it legislative intent and
13 as a result of that was hundreds of political aspirations
14 being dashed, I don't understand why the Supreme Court
15 would in turn not apply that same plain language for this
16 exemption when the words say --

17 THE COURT: Why didn't they do it when they had the
18 opportunity on petition to rehear it? That troubles me.

19 MS. GEE: Well, I don't think that that question
20 was in front of them and so it wasn't properly argued
21 before them. At the time -- that was in the Florence
22 County case. The arguments before them were whether
23 candidates were public officials.

24 So in writing their opinion they used language that
25 has since confused people because in their opinion in

1 Florence County they said that the candidates were not
2 entitled to this exemption, and the reason for that was
3 because they did not hold the office and it was not with
4 the appropriate supervisory office.

5 Our position is when they said they didn't hold the
6 office they were talking about the office that would make
7 them a public official. At the time they filed their SEI
8 they had not yet filed for candidacy so they didn't hold
9 the office of a candidate. That's what that language in
10 the Florence County case says. At the time Mr. Thurmond
11 filed his SEI he held the office of a city prosecutor.

12 THE COURT: I have understand all that.

13 MS. GEE: Excellent.

14 THE COURT: But that doesn't mean I'm going to rule
15 for you, you know. You read the opinion one way.

16 MS. GEE: Sure.

17 THE COURT: I have to take into account they were
18 asked to clarify it specifically and we wouldn't be here,
19 and they declined to do that.

20 MS. GEE: And I believe that's because it would
21 have changed the result of what they had ruled. They
22 were asked a specific question about whether candidates
23 were public officials. They had ruled on that.

24 In the ruling people interpreted that to mean, Oh,
25 my goodness, does this mean that incumbents -- you can

1 only be an incumbent? Does this affect the Greg Hembrees
2 of the world? Does this affect the Youngs of the world
3 from Aiken? What's going to happen to them?

4 And the Supreme Court got that question and they
5 said, You know what? That was not what was argued before
6 us. We are not going to rule on that. We said what
7 we've had to say on the issue.

8 MR. SMITH: Your Honor, I think this is a good
9 point and the Court's looking at, I think, an important
10 issue here. Not only did they not take it up in the
11 petition for rehearing but in this case, Your Honor, in
12 this case Mr. Thurmond's lawyers asked the Supreme Court
13 to take original jurisdiction in this case. They thought
14 there was something new they hadn't ruled on.

15 I think the Supreme Court was -- not what opposing
16 counsel said. There was nothing confusing about it. It
17 was abundantly clear. As a matter of fact, this is one
18 of those decisions that they were emphatic about the
19 clarity. And in this case the Supreme Court chose not to
20 take the case on original jurisdiction because --

21 THE COURT: Well, they remanded it to make a
22 finding but there were no findings of fact to have in
23 dispute, were there?

24 MR. SMITH: Well, there really aren't today which
25 is why we were not going to present any -- you know, all

1 the evidence is before you with all the facts you need to
2 make a decision are before you.

3 THE COURT: I'm not denying anybody the right to
4 testify but you've got stipulated facts. Anything you
5 want to add to them?

6 MS. GEE: If he would agree that Paul is a public
7 official, that's where we were having folks come forward
8 to explain his roles. We've got case law that explains
9 public officials, it's based on what you actually do in
10 your job. So we were planning to call witnesses to
11 explain what he does in his job.

12 And I just want to take issue with one thing
13 Mr. Smith said about the Supreme Court and incumbents.
14 He filed on Friday an action in the original jurisdiction
15 of the Supreme Court asking this very question to the
16 Supreme Court. So if he thought that it was clear he
17 wouldn't have needed to file that, it seems.

18 MR. SMITH: Well, I have to respond to that. It is
19 a different issue. The facts of this case, you have a
20 situation in here where someone who is trying to say that
21 they simply filed their Statement of Economic Interest,
22 you know, minutes before and then that therefore
23 satisfies the matter on the file.

24 It is a factually different set of circumstances.
25 But as you know, we as lawyers represent clients who ask

1 us to pursue cases on their behalf, and for various
2 reasons it has been brought, the original jurisdiction of
3 the Supreme Court hasn't been taken up yet. The Court
4 may not do that.

5 But the fact is is I think when we get to arguments
6 you have everything you need to decide this case. The
7 Supreme Court is clear on this issue, particularly in
8 this case, and I look forward to making my arguments.

9 MS. GEE: I was just going point out that again
10 he's asking you to infer meaning into the statute.
11 There's nothing in the statute that says how long before
12 you file for your candidacy he had to have had the SEI on
13 file. The fact that it was just moments before, there's
14 nothing in the statute.

15 THE COURT: I understand.

16 MR. SMITH: Thank you.

17 THE COURT: Anything else or do you all want to
18 come back later today?

19 MR. SMITH: We're ready, Your Honor, if they want
20 to proceed with any witnesses they have.

21 THE COURT: All right. The stipulation of facts
22 set forth what he does and I can find that he's a public
23 official or not, on what you've already agreed to, I
24 think, but, I mean, if you want to call witnesses I'm
25 certainly not opposed to that but, I mean, you set forth

1 that he does this and he does that, and he serves at the
2 pleasure of the mayor, and he's done this and so fourth.

3 MR. TIMBES: Your Honor, and I think the problem
4 that we run into is this; is procedurally as this case
5 unfolded this case -- the first time we got to stand and
6 speak about this was during a T. R. O. proceeding, you
7 know, less than a full business day after the case was
8 filed. So we came in and we walked in with affidavits
9 that you have in your file, which are Mr. Thurmond's
10 affidavit and the affidavit of Mr. Brady Hair, who
11 appointed him to his position in North Charleston, and
12 that's all we had. We came in and we argued the case.

13 And since that time we have been able to agree on
14 certain facts that are stipulated, but very importantly,
15 and I'm sure Mr. Smith is going to make this argument
16 repeatedly today, he does not concede that Mr. Thurmond
17 is a public official. And absent that concession from
18 him we have no choice but to go forward with the
19 presentation of our evidence that shows that he is.

20 THE COURT: Well, I don't need Mr. Thurmond to
21 testify. If he will just stand and say, I stand by my
22 affidavit. You know, the other guy, I stand by my
23 affidavit.

24 MR. TIMBES: Well, he does stand by his affidavit.
25 That doesn't necessarily mean that his affidavit is

1 complete. That doesn't necessarily mean that we've --

2 THE COURT: Again, I'm not preventing you.

3 MR. TIMBES: Sure. I understand.

4 THE COURT: It's just I get hammered with three
5 cases and one of them told me they had 31 witnesses.

6 MR. TIMBES: We have two, Your Honor, and I believe
7 they will be extremely brief.

8 THE COURT: All right. Call them.

9 MR. TIMBES: Your Honor, the first witness we would
10 call is Mr. Paul Thurmond.

11 THE COURT: All right.

12 PAUL R. THURMOND, after having been duly
13 sworn, testified as follows:

14 THE CLERK: State your full name and spell your
15 last, please.

16 MR. THURMOND: Good morning, Your Honor. Paul
17 Reynolds Thurmond, T-h-u-r-m-o-n-d.

18 DIRECT EXAMINATION

19 BY MR. TIMBES:

20 Q. Mr. Thurmond, how long have you been practicing
21 law?

22 A. November will be 10 years.

23 Q. And where do you practice?

24 A. Well, I actually have two separate jobs. One, I'm
25 a partner of Thurmond, Kirchner, Timbes and Yelverton;

1 and I'm also a part-time prosecutor for the City of North
2 Charleston.

3 Q. And you've been with the City of North Charleston
4 for 19 months now?

5 A. Approximately 19 months.

6 Q. And other than prosecuting cases, other than
7 prosecuting criminal cases do you do any other functions
8 for the City of North Charleston?

9 A. No.

10 Q. You don't do any civil work or anything of that
11 nature?

12 A. Not a bit.

13 Q. Now, what is your understanding of how you came to
14 hold that position?

15 A. I got a call from Brady Hair. There was a fellow
16 named Dale DuTremble that had either recently passed away
17 from cancer or that was very close. I think he was in
18 Hospice. And I got a call from Brady Hair who asked me
19 if I had an interest in coming to work on a part-time
20 basis for the City of North Charleston to prosecute
21 criminal cases.

22 Q. Okay. And were you placed into that position?

23 A. I was.

24 Q. And what is your understanding of how you came to
25 hold that title?

1 A. He appointed me to that position.

2 Q. Did you fill out a job application with the City of
3 North Charleston?

4 A. I did not.

5 Q. Are you compensated?

6 A. I am.

7 Q. Now, the money that you receive, is it paid to you
8 or is it paid to our law firm?

9 A. It's paid directly to me.

10 Q. Does our law firm share the monies from the work
11 that you do in any way?

12 A. No, it does not.

13 Q. Okay. Do you receive benefits from that position?

14 A. I do. Just health benefits.

15 (WHEREUPON, Defendant's Exhibit Number 1, E-mails,
16 were marked for identification only.)

17 BY MR. TIMBES:

18 Q. Mr. Thurmond, I'm handing you what's been marked as
19 Defendant's Number 1, a stack of e-mails. Can you tell
20 the Court what those are.

21 A. Michael, you had asked me to provide you some
22 documentation as to what I do on a monthly basis and I
23 went back to the month of February, I printed off
24 approximately 35 to 40 e-mails which are offers and
25 correspondence with different defense lawyers associated

1 with cases in North Charleston, specifically D. U. I.
2 cases, and that's predominantly what I prosecute.

3 Q. And these e-mails, they came from your e-mail?

4 A. They did.

5 Q. They are all from you?

6 A. They came from my sent e-mail box.

7 MR. TIMBES: Your Honor, I'd move to enter these as
8 Defendant's Exhibit 1 into evidence.

9 MR. SMITH: They are loaded with all kind of
10 hearsay, Your Honor. I don't believe they are relevant.
11 I'll object to it but --

12 THE COURT: We'll let them in.

13 MR. SMITH: That's fine, Your Honor. Thank you.

14 MR. TIMBES: We're not offering them for the truth
15 of the matter asserted. Appreciate it, Your Honor.

16 (WHEREUPON, Defendant's Exhibit Number 1, E-mails,
17 were admitted into evidence.)

18 BY MR. TIMBES:

19 Q. Are these e-mails demonstrative of the time and
20 energy you put into prosecuting cases?

21 A. They represent a little bit of what I do on a
22 monthly basis. There are also other opportunities
23 throughout the month in which I handle plea offers and/or
24 try cases. There are a public defender time period where
25 I will literally go and sit with the public defender and

1 make decisions on behalf of the State and the City of the
2 North Charleston as to what kind of offer I want to make
3 to people that are represented by the Public Defender's
4 Office.

5 There's also pro se defendants that come in that
6 would like to handle their case themselves, in which I
7 inform them that I represent the State and the City of
8 North Charleston but then also if they are choosing to go
9 forward I make an offer to them to try to resolve their
10 case. If we cannot get it resolved I put them on a trial
11 docket.

12 I'm sure, in my recollection, these e-mails talk
13 about that, after I've made an offer I refer to them. If
14 they were not willing to accept it I will put it on the
15 nearest trial docket and I will be trying it.

16 Q. And when you try these cases or you accept these
17 guilty pleas who do you represent?

18 A. I represent the State of South Carolina and the
19 City of North Charleston.

20 Q. And when you negotiate a plea deal do you have to
21 seek anyone's authority to do that?

22 A. No, I do not.

23 Q. When you decide to take a case to trial do you need
24 anyone's authority?

25 A. No, I do not.

1 Q. If you decide to dismiss an action do you need to
2 run that by anyone?

3 A. I do not. I have autonomy on the decision making
4 that I make in North Charleston. Frankly, it's one of
5 the best parts about the job, that I get a chance to use
6 my background both as a former prosecutor and also as a
7 defense lawyer and try seek justice for the State of
8 South Carolina and the City of the North Charleston.

9 Q. In your deposition you were asked about whether
10 you've ever been involved in any policies that were
11 established through your position as a prosecutor for the
12 City of the North Charleston; can you elaborate on that.

13 A. When I first got there there was a significant
14 backlog of D. U. I. cases. Through interaction with the
15 clerk of court and the chief admin judge I created a
16 policy in which we have a designated D. U. I. day. That
17 way I have a chance to review all the cases for that one
18 day, try to make offers prior to that day.

19 It was something that was not done prior to that.
20 I needed the coordination of the clerk and the judge and
21 it was something that I brought to the table so-to-speak
22 and what I wanted to do as a prosecutor there. Since,
23 it's streamlined significantly the amount of D. U. I.
24 cases that we have.

25 It allows me to try to be consistent in my handling

1 of those cases, allows me to have consistent interaction
 2 with the officers that are handling these types of cases.
 3 We've got a couple that are pretty much designated to do
 4 that. And I'm hoping going forward we will be able to do
 5 that with some of the other types of serious but, you
 6 know, not as high penalty type cases that are municipal
 7 in level so-to-speak.

8 I also instrumented what I think is extremely
 9 important, which is an open-file policy. It is known in
 10 the defense bar that any time they want to come see any
 11 of the files that I have, with the exception of my notes
 12 that I make, they are welcome to any part of that file.

13 There's my own personal policies on how I handle
 14 cases. I think I refer to that in my deposition. But I
 15 have a set way of making sure that I'm consistent in how
 16 I handle the case and the things that I'm looking for to
 17 try to make sure I have consistency.

18 Q. Mr. Thurmond, I want to ask you about the all
 19 important issue of these Statements of Economic Interest.
 20 When you filed to run for the District 41 senate seat,
 21 did you file an SEI?

22 A. I did.

23 (WHEREUPON, Defendant's Exhibit Number 2, an SEI
 24 Document, was marked for identification only.)

25 BY MR. TIMBES:

1 Q. Mr. Thurmond, I've presented you with Defendant's
2 Exhibit Number 2. Do you recognize that?

3 A. I do.

4 Q. Is that a copy of your SEI?

5 A. It is.

6 Q. Did you disclose your position with the City of
7 North Charleston on your SEI when you filed it?

8 A. I did.

9 Q. And after you filed your SEI did you turn in your
10 paperwork to run as a candidate for the office?

11 A. I did.

12 (WHEREUPON, Defendant's Exhibit Number 3, a
13 Document, was marked for identification only.)

14 BY MR. TIMBES:

15 Q. Mr. Thurmond, is Defendant's Exhibit 3 a copy of
16 your paperwork that you turned in when you submitted your
17 SIC?

18 A. It is.

19 MR. TIMBES: Okay. Your Honor, I'd like to move
20 Defendant's Numbers 2 and 3 in evidence at this time.

21 THE COURT: All right.

22 MR. SMITH: Without objection, Your Honor. I don't
23 have an objection.

24 (WHEREUPON, Defendant's Exhibit Numbers 2 and 3,
25 Documents, were admitted into evidence.)

1 BY MR. TIMBES:

2 Q. And, Mr. Thurmond, after you turned in your
3 paperwork were you certified as the nominee for the
4 primary?

5 A. I was.

6 Q. Candidate for the primary.

7 And did you receive any votes in that primary
8 election?

9 A. I did.

10 Q. How many did you receive?

11 A. Michael, I know it was in excess of 1700 votes.

12 Q. And at some point in this process did you become
13 familiar with some challenges that knocked a bunch of
14 candidates off the ballots?

15 A. I became familiar with a couple of challenges.

16 Q. Okay. And in particular did you become familiar
17 with the Anderson case in the upstate?

18 A. I did.

19 Q. And in response to that did you have any
20 discussions with Lin Bennett, people affiliated with the
21 Republican Party about whether that opinion affected you?

22 A. Well, we started off and we looked at the opinion
23 and we started to read the statute, and as a result we
24 reached out to Lin because it ultimately was her
25 responsibility to make a decision how the Anderson

1 opinion would affect the candidates from Charleston
2 County.

3 Our effort was immediately to review the statute
4 and it became very clear to me that I fit the exemption
5 as a public official and in order to make sure that Lin
6 had what she needed we provided her a memorandum. One of
7 my partners actually wrote it. I reviewed it and I was
8 copied on the e-mail that was sent to her including that
9 as to being exempt from Section B, 13-56 Section B, and
10 falling under the A Section.

11 (WHEREUPON, Defendant's Exhibit Number 4, an E-mail
12 Document, was marked for identification only.)

13 BY MR. TIMBES:

14 Q. Mr. Thurmond, Defendant's Exhibit 4, do you
15 recognize that?

16 A. These are the documents that were sent, the
17 memorandum and copy of the A. G. opinion that was sent to
18 Lin Bennett that I was copied on indicating that I was
19 exempt from Section B, and the reason being that I was a
20 public official.

21 Q. Did you review those materials before they were
22 sent to Lin Bennett on your behalf?

23 A. I did.

24 Q. Did you authorize them to be sent on your behalf?

25 A. Absolutely.

1 Q. And what was the date and time on the e-mail?

2 A. They were sent Friday, May 4th at 8:53 in the
3 morning. My recollection was that Lin was under a
4 deadline to make a decision very quickly and I wanted to
5 make sure that she had that information to be able to
6 make the appropriate decision.

7 MR. TIMBES: Your Honor, I'd move Defendant's
8 Exhibit 4 into evidence.

9 THE COURT: All right.

10 MS. CRUM: Your Honor, could we get a copy of it?

11 THE COURT: You don't already have it?

12 MR. TIMBES: They've been produced with the packet
13 that we have for everybody.

14 MS. CRUM: Thank you.

15 (WHEREUPON, Defendant's Exhibit Number 4, an E-mail
16 Document, was admitted into evidence.)

17 BY MR. TIMBES:

18 Q. Mr. Thurmond, have you ever relied on your status
19 as just a candidate to suffice as you being a public
20 official?

21 A. No, I have not.

22 Q. If you remain on the ballot and you are successful
23 in your bid to become the next senator for Senate
24 District 41, what are your intentions with regard to your
25 position with the City of North Charleston?

1 A. It is my understanding in reading the Attorney
2 General's opinions that I would absolutely have to no
3 longer stay in that position, that it would be considered
4 dual office holding and as a result I would have to
5 resign.

6 Q. And you would resign your position with the City
7 not your position with the Senate; is that far enough?

8 A. That's correct.

9 MR. TIMBES: Your Honor, at this time I have no
10 further questions.

11 THE COURT: All right.

12 MR. TIMBES: Answer any questions Mr. Smith may
13 have.

14 MR. SMITH: I'll be very, very brief, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. SMITH:

17 Q. Mr. Thurmond, there are other prosecutors that work
18 for the City, correct?

19 A. There are.

20 Q. You are not the only one. And this position, I
21 believe you already testified was part time; is that
22 correct?

23 A. It is, James. It's continuous though. It's 15 to
24 20 hours per week. Some weeks are more, some weeks are
25 less, but generally speaking it's approximately 15 to 20

1 hours a week and it is continuous.

2 Q. And you believe yourself to be a public official?

3 A. I do.

4 Q. But in that office you've never filed a Statement
5 of Economic Interest?

6 A. I have not.

7 Q. And are you concerned at all of whether or not your
8 failure to file an SEI is a violation of the Ethics Act?

9 A. I am concerned, James, but I'll tell you, I have
10 gone to the website, the Ethics Website, and there is no
11 ability for me to file as a part-time or full-time
12 prosecutor. You asked me on a deposition about when I
13 was a prosecutor in Charleston County. As assistant
14 solicitor there's no ability to file that as a part-time
15 or even a full-time assistant solicitor.

16 So I am concerned and I will certainly take the
17 penalty if Ethics feels like that is necessary; however,
18 if I wanted to file it I could not file it, and I did not
19 become aware of it until I read the law.

20 Q. And could it be that because it's not available for
21 you as an assistant solicitor to file and is not
22 available for you as a part-time city municipal
23 prosecutor to file that because it's not available that
24 you are not a public official?

25 A. I will greatly disagree with you in that regard and

1 I will tell you that Ethics certainly has a tough
2 challenge. They review the law and they make some
3 decisions, and frankly, we're here because Ethics
4 interpreted the law wrong.

5 As far as me being a public official, I think it
6 solely depends on what I do on a regular basis, and what
7 I do on a regular basis is I make decisions on behalf of
8 the State of South Carolina and the City of the North
9 Charleston, and that's all I do.

10 Q. There is no document memorializing this so-called
11 appointment of you as a part-time?

12 A. There's not.

13 Q. And what policies you described earlier, of a
14 policy in handing a D. U. I. case or a policy in an open
15 file, that is your policy, is it not?

16 A. They are.

17 Q. And you can't direct -- like, Mr. Kaiser, he's
18 another prosecutor, right? He handles criminal cases for
19 the City of North Charleston.

20 A. He does.

21 Q. And so your policies that you've established, he
22 doesn't have to follow those policies, does he?

23 A. He doesn't. And it goes to kind of the autonomy
24 that I have and that I think he has as well.

25 Q. So actually none of the policies you've created

1 anyone really has to follow. They are just your
2 policies.

3 A. I would disagree with you. I mean, we have -- the
4 officers and the City of North Charleston write for a
5 certain day for D. U. I.'s as result of my policy that I
6 got established through working with the Court and
7 working with the clerk's office.

8 Q. Well, and let's talk about your work with the
9 clerk's office and the Court, too. This policy of a
10 D. U. I. day or D. U. I. -- the way you're handling
11 D. U. I. cases, that was actually in response to a
12 directive of the Chief Justice, correct?

13 A. The directive was we needed to move D. U. I. cases,
14 and I'm sure in your work you're familiar with the
15 directive because I know you do D. U. I. cases as well.

16 Q. Right.

17 A. The directive was to move them. The way we got
18 about moving them was based on the policy that I
19 presented.

20 Q. And that was a response to her directive, that's
21 correct. And you couldn't do that without the approval
22 of the Judge and the clerk, right? You had to run it by
23 them and they agreed to go along with you.

24 A. James, any time there is a decision made I have to
25 be able to make sure that the Court is open in regards to

1 a time, a setting of a time, the Court is open and I have
2 somebody on the bench. So if I am going to be effective
3 in my job I need to be able to communicate with him my
4 desires and they simply let me know when it works.

5 Q. But if you wield the power of the sovereignty and
6 you are a public official and it's your decision, your
7 policy, they would have to follow it. You don't need
8 their approval.

9 A. I would -- first of all, the Judge certainly wields
10 his power as well and I am there to work to come to a way
11 of making sure the cases get resolved. When I wield the
12 sovereignty of the State that is indeed in regards to the
13 defendant. That is in regards to the offers that I make,
14 the desire to dismiss a case. That is in regards to the
15 desire to take a case to trial. That is who I am
16 affecting.

17 The other mechanisms for the Court to be open,
18 that's the clerk's job. The mechanism for the Judge to
19 accept those offers, that's his job. But when it comes
20 to me representing the State of South Carolina, the City
21 of North Charleston, that's associated with the defendant
22 and me wielding the sovereignty in that regard.

23 Q. And what you are describing is prosecutorial
24 discretion. That's what you have, correct?

25 A. It is, and it's -- I have complete autonomy in

1 regards to my prosecutorial discretion.

2 Q. Thank you.

3 A. Thank you.

4 MR. TIMBES: I don't have any follow-up.

5 THE COURT: All right. Mr. Thurmond, you can --

6 MS. CRUM: Your Honor, I have one question.

7 THE COURT: Okay. Ms. Crum is ready.

8 CROSS-EXAMINATION

9 BY CRUM:

10 Q. When you were appointed as the assistant prosecutor
11 did you take an oath of office?

12 A. I did not. And, you know, Ms. Crum, it's
13 interesting as I put my hand on the Bible today I don't
14 know necessarily if I need to do that because I'm an
15 officer of this Court, and when I was sworn in by the
16 Chief Justice my understanding was that as an officer of
17 the Court I am always to uphold the Constitution, uphold
18 the laws of the State.

19 Q. Right. I understand as an officer of the Court.
20 Did you take an oath of the office as an assistant public
21 defendant -- I'm sorry, assistant city prosecutor?

22 A. I did not.

23 MS. CRUM: Okay.

24 THE COURT: Anybody else?

25 (There was no response.)

1 MR. THURMOND: Thank you, Your Honor.

2 MR. TIMBES: Your Honor, the defense would next
3 call Mr. Brady Hair.

4 THE COURT: Okay, Mr. Hair.

5 JAMES BRADY HAIR, after having been duly
6 sworn, testified as follows:

7 THE CLERK: State your full name and spell your
8 last.

9 THE WITNESS: My James is James Brady Hair,
10 H-a-i-r.

11 DIRECT EXAMINATION

12 BY MR. TIMBES:

13 Q. Mr. Hair, thank you for being here. Explain to the
14 Judge what you do for a living.

15 A. I have a private practice, and within that private
16 practice I have a partner; so I represent a variety of
17 different clients. I pretty much specialize in federal
18 white collar criminal defense and civil fraud cases. As
19 part of my practice I am currently the City Attorney for
20 the City of North Charleston and have held that position
21 for 17 years now.

22 In that role, I represent the City, along with my
23 partner, in a variety of capacities. And I also appoint
24 lawyers to assist me in that regard and supervise some of
25 them, and also work with and coordinate the efforts of

1 lawyers that are appointed to represent the City through
2 the State Insurance Reserve Fund and lawyers that I hire
3 or retain to do specific jobs outside of my area of
4 expertise.

5 (WHEREUPON, Defendant's Exhibit Number 5, North
6 Charleston City Ordinance, was marked for identification
7 only.)

8 BY MR. TIMBES:

9 Q. Mr. Hair, I'm presenting you with a copy of what's
10 been marked as Defendant's Exhibit Number 5. Do you
11 recognize this document?

12 A. Yes, I do.

13 Q. What is it?

14 A. It's the City statute that describes the
15 appointment process of myself and my authority to appoint
16 and retain other lawyers as needed for the City.

17 Q. And which part of the statute references your
18 actual appointment?

19 A. Subsection A.

20 Q. And you mentioned there's a -- your ability to
21 appoint other lawyers. Is that addressed separately in
22 the ordinance?

23 A. Yes. It's in Subsection B.

24 Q. And what does Subsection B allow you to do?

25 A. It says, Chief legal counsel shall have authority

1 to retain, appoint or hire as independent contractor such
2 additional attorneys or co-counsel, as well as legal
3 support personnel as may be required to provide adequate
4 and effective legal representation subject to the limits
5 of budgeted funds and any contrary direction of City
6 Council.

7 Q. And in your experience of 17 years with the City
8 does that mean there's certain lawyers that you just have
9 on retainer, like you would enter into a retainer
10 agreement with them?

11 A. Yes, a variety of different types of agreements.

12 Q. And then you have certain lawyers that you were
13 appointed to those positions. Is that also what you do?

14 A. That's correct.

15 Q. Where does Paul Thurmond fit into that mix?

16 A. He was appointed as a part-time city prosecutor.

17 Q. And what is your familiarity with the history of
18 this ordinance?

19 A. Well -- and Judge Kinard probably will remember
20 some of this. This ordinance is very different than most
21 city ordinances and even ours in that this ordinance gives
22 basically an inordinate amount of authority and power to
23 the Office of City Attorney.

24 Typically in a strong mayor form of government the
25 mayor is the chief executive officer and he handles all

1 personnel matters and it's totally within his purview.

2 In 1991 there was an election in the City of North
3 Charleston and a guy named Bobby Kinard was elected, and
4 Bobby served for a couple of years and then got into a
5 very serious fight, disagreement with the City Council
6 and with the then city attorney, James Gonzales.

7 I guess it got so bad at that time that the City
8 Council basically through ordnances stripped the mayor of
9 many of the powers that the mayor typically has. That
10 was in two predecessor ordinances to this one that were
11 adopted in 1994 which gave the City Attorney's Office
12 really wide range as far as sweeping powers.

13 When Bobby Kinard then resigned and a special
14 election was held and Keith Summey was elected in late
15 1994, in 1995 City Council went back and revisited the
16 ordinances that had stripped the mayor of power and
17 amended those ordnances, changed them to the ordinance
18 that you see today, which was adopted in 1995.

19 Notwithstanding all of the powers that they took
20 away in the subsequent ordnances, which were much longer
21 and much greater than this one, they left this ordinance
22 in affect. And so this is what we have operated under
23 since 1995.

24 MR. TIMBES: Your Honor, at this time I'd like to
25 move Defendant's Exhibit 5, it's a copy of the North

1 Charleston City ordinance, in evidence.

2 THE COURT: All right.

3 (WHEREUPON, Defendant's Exhibit Number 5, North
4 Charleston City Ordinance, was admitted into evidence.)

5 BY MR. TIMBES:

6 Q. Mr. Hair, does Mr. Thurmond do anything besides
7 prosecute cases for the City of North Charleston?

8 A. No.

9 Q. Do you agree with Mr. Thurmond's statement that he
10 has complete autonomy on how he handles his cases?

11 A. I do.

12 Q. Have you ever worked in criminal matters? You do
13 defense work now, I take it. Have you ever been on the
14 prosecutorial side of that fence?

15 A. Yes. I was a city prosecutor for the City of North
16 Charleston back in the mid 80's. I served four and a
17 half years in the U. S. Attorney's Office as an assistant
18 U. S. attorney here in the Charleston office and worked
19 for Mr. Pete Strom, who is with us today. And since I
20 left the U. S. Attorney's Office in 1995 I have
21 represented, I would say hundreds of criminal defendants
22 in the last 17 years.

23 Q. In your experience with being at the U. S.
24 Attorney's Office is it your position that you were
25 exercising sovereign power of the State when you were

1 prosecuting cases?

2 A. In the U. S. Attorney's Office I was authorize -- I
3 was wielding the authority of the Federal Government, but
4 yeah.

5 Q. With your familiarity with matters in State Court
6 would it be any different in your mind?

7 A. Certainly some differences as to how you did things
8 but as to the ultimate responsibility of making the
9 decisions of whether to prosecute people or not prosecute
10 people, same thing, different standards.

11 Q. And one final question for you, Mr. Hair. Are you
12 a resident of District 41?

13 A. I am not.

14 Q. Please answer any questions the attorneys may have
15 of you.

16 A. Sure.

17 CROSS-EXAMINATION

18 BY MR. SMITH:

19 Q. Mr. Hair, you were hired by the City Council,
20 correct?

21 A. That's correct.

22 Q. And then you then hired Mr. Thurmond?

23 A. That's correct.

24 Q. And City Council, they chose to --I'm sure you do a
25 good job for them but if they chose to they could

1 terminate you, correct?

2 A. They could.

3 Q. And if you chose to, but I'm sure Mr. Thurmond does
4 a good job, that you could terminate him, correct?

5 A. I could.

6 MR. SMITH: Thank you. I don't have anything
7 further.

8 MS. CRUM: One question.

9 CROSS-EXAMINATION

10 BY MS. CRUM:

11 Q. Mr. Hair, when you became city attorney for North
12 Charleston did you take an oath of office as city
13 attorney?

14 A. You know, I don't believe I did. It's been 17
15 years but I don't believe I did.

16 Q. But you don't know for sure?

17 A. I really don't remember.

18 MS. CRUM: Thank you, sir.

19 MR. TIMBES: Very briefly.

20 REDIRECT EXAMINATION

21 BY MR. TIMBES:

22 Q. Mr. Hair, when you -- if it's true that you did not
23 take an oath 17 years ago has that stopped you from
24 performing your duties for the City of North Charleston
25 during the time?

1 A. No.

2 MR. TIMBES: Nothing further.

3 THE COURT: You can step down.

4 MR. HAIR: Thank you.

5 MR. TIMBES: Your Honor, that's the defense's final
6 witness.

7 THE COURT: Okay. All right. I'm going to take
8 the exhibits and read them and then I'm come back to you
9 all.

10 MR. TIMBES: Thank you, Your Honor.

11 THE COURT: It will be -- we got a lot of people,
12 be 15 minutes probably. I'm a speed reader so it won't
13 take me long.

14 (WHEREUPON, a brief recess was taken.)

15 THE COURT: Okay. Anybody want to sum up or
16 anything?

17 MR. SMITH: May it please the Court, Your Honor?

18 THE COURT: Sure.

19 MR. SMITH: It's been a privilege to represent
20 Mr. Tempel in this matter, and my colleagues on defense
21 counsel are very good lawyers and have done a good job of
22 what I think is a very difficult case but they made a
23 valiant effort, but the fact is that it just doesn't add
24 up to Mr. Thurmond being a public official.

25 And we're fortunate, we've got a lot of very clear

1 guidance and I want talk a little bit about that and I
2 want to talk about some of the cases that they've raised
3 to us as a reason for him being a public official, but it
4 actually is contrary to that.

5 Your Honor, first some of the indicia that makes
6 someone a public official is their ability to wield the
7 power of the State, you know, to issue policy or require
8 those to follow which is then using the sovereign power.
9 What you heard described by Mr. Thurmond was nothing more
10 than having prosecutorial discretion.

11 He is not appointed by an elected body or someone
12 who was an elected official, an individual official, as
13 is the case. This so-called appointment was really
14 nothing more than a hiring of a public employee, and
15 everything about that indicated that, you know, you're
16 paid on an hourly basis, he can be hired and fired. Not
17 of an elected body, not even of somebody who was
18 appointed by another elected official but he has somebody
19 who is above him, Mr. Hair, who did not take an oath of
20 office, who we argue himself is not a public official,
21 but he can be hired and fired.

22 And as the statute says, he's completely supervised
23 by his activities. He is at best a part-time assistant
24 prosecutor for a municipal body in which he has to
25 respond to an unelected individual who is appointed over

1 him. And as you heard, he did not take any oath of
2 office. And he does not wield ultimately the power, say,
3 beyond simply prosecutorial discretion.

4 It is important for you to look at, Your Honor,
5 their argument and why they say he is a public official.
6 They point to a case -- and I'd like to provide a copy of
7 it to the Court, State vs. Bridges. It relates to
8 troopers being considered as public officials under a
9 statute governing the threatening of a public official.

10 And the Supreme Court said in that case that
11 troopers are public officials really solely for the
12 purpose of that statute.

13 THE COURT: The purpose of that statute. I'm
14 familiar with the case.

15 MR. SMITH: Absolutely, Your Honor. That's the
16 point. I think it's important that, you know, is he a
17 public official for the purpose of this statute, is the
18 question. He might be a public official but is he a
19 public official for the purpose of this statute? And it
20 is very clear and we have an abundance of guidance, and I
21 sense even some exasperation from the Supreme Court in
22 their writing of the Florence County opinion because they
23 said the decision in Anderson was clear.

24 As decided by this Court in Anderson -- and I'm
25 reading from Florence County on their S. C. 2d page 421,

1 As decided by this Court in Anderson, Section 8-13-13-56
2 requires that a candidate must simultaneously file a copy
3 of an SEI with an SIC unless the candidate already holds
4 the office -- Mr. Thurmond does not, And has an SEI on
5 file with the appropriate supervisory office, which he
6 did not.

7 Your Honor, in looking at the Anderson case -- I
8 mean, correction, the Florence County case, it is
9 actually even a better case for their argument but the
10 Supreme Court, of course, rejected it.

11 Because when you read the statute that's
12 incorporated defining a public official for the purpose
13 of this statute, that statute includes as public
14 officials candidates who are seeking office, and that was
15 the argument by the County Republicans in the Florence
16 County case saying that, Look, we're public officials,
17 it's in the statute and names candidates and the Supreme
18 Court wholly and resoundingly rejected that argument.

19 Mr. Thurmond is a part-time city municipal
20 prosecutor. That's not mentioned in the statute as a
21 public official and he would not be considered a public
22 official for the purpose of this statute.

23 These cases are really -- and this case
24 particularly, is very clear. He's not a public official,
25 and if he is construed to be one he's not one for the

1 purpose of this statute.

2 Last point, Your Honor. The Court was also clear
3 in Florence County to not construe statutes in a way to
4 reach an absurdness, and that's exactly what they're
5 asking for you to do.

6 They are asking for you to say that he's a public
7 official despite all the defects in that argument to
8 begin with, but then saying that he had one on file
9 because he did it 30 minutes before, and it's clear the
10 statute contemplates you have one on file for the office
11 that you are holding and it's on for that prior year.
12 It's not that you somehow scooted in and skated in
13 minutes or seconds before you file your SIC and I'm good.

14 And, you know, this is fundamentally important to
15 our democracy, Your Honor. It is why the Supreme Court
16 made the decision that they made and stood for what they
17 stood for, which is protecting the integrity of this
18 electoral process, in making sure that only those that
19 are on the ballot, only those that come before the people
20 comply with 8-13-13-56. And that's fundamentally
21 important to this process, and it is abundantly clear
22 that Mr. Thurmond did not and as a result he must be
23 removed from the ballot. He must not be certified.

24 And lastly, without going into the argument again,
25 he would not be eligible for any filing to be reopened

1 because he is not disqualified. He is not resigning
2 because of nonpolitical reasons. He is ineligible. His
3 candidacy is void ab initio for failing to comply with
4 8-13-13-56 and there can be no reopening of filing.

5 Thank you, Your Honor.

6 MR. TIMBES: Your Honor, very briefly. Your Honor
7 has obviously got our proposed orders so I'll be brief
8 and not try to repeat myself.

9 The right to vote is fundamentally a part of our
10 democracy here in this great country of ours and it's
11 that right to vote which is why very good men like James
12 Smith put himself in harms way to go fight for those
13 rights, which I personally thank you.

14 And where we find ourselves now is in a dangerous,
15 dangerous situation. As I said earlier, when did it
16 become bad to have options for voters to chose who to
17 represent them. It used to be of the people, by the
18 people, for the people. Now it's not, and that's why
19 there are three branches of government because you now
20 have an opportunity to help us cure that situation on the
21 facts of this particular case.

22 Hundreds and hundreds of candidates have been
23 dealing with this ever since the Anderson case came out,
24 and Paul Thurmond took a different approach to this
25 process from day one. He has never relied on the

1 arguments that failed the candidates in Florence and in
2 Anderson County.

3 And what is interesting about those two cases is
4 13-56 Sections B and below were used as a sword to carve
5 those candidates off the ballots because they did not
6 comply. Here, Your Honor, we're not taking about this.
7 We're taking about the very introductory subsection,
8 Section 13-56(a).

9 We're asking you to use it as a shield to protect
10 Mr. Thurmond from the result in that case. It's why the
11 shield exists. It is an exception from the filing
12 requirements that are the sole basis for the plaintiff's
13 case. And it boils down to whether Mr. Thurmond is a
14 public official.

15 And I agree, it actually matters that we're only
16 worried about this particular statute. I do agree with
17 Mr. Smith in that regard. So let's look at the language
18 of 13-56(a) and see where it takes us.

19 It simply says that this section, remaining
20 sections that were fatal to everyone else do not apply to
21 a public official who has a current disclosure statement
22 on file with an appropriate supervisory body.

23 The stipulations of facts that you have before you
24 resolve all of those except the issue of whether he's a
25 public official. So we then have to focus on that

1 particular definition as it is defined in the code
2 itself. And if you look at 13-56, up at the very top of
3 the statute it will say -- this is within Article 13.
4 And there's a set of definitions that apply to Article
5 13. The legislature chose them.

6 And it simply says, As used in this section --
7 Article 13 includes its own definition of exactly what a
8 public official is and it's specific to that article.
9 Public official means an elected or appointed official
10 with a state, county or municipality.

11 That's exactly what the testimony and evidence
12 before this Court reveals and it's without contradiction.
13 Mr. Thurmond was appointed to the position. He
14 constitutes a public official by virtue of wielding the
15 sovereign power of the State.

16 There's no definition out there that says it has to
17 be a certain type of wielding of the power of the
18 sovereign state. It is that you simply exercise that
19 authority. He does it continuously. He's been doing it
20 for 19 months on a continuous basis 15 to 20 hours a
21 week. There's no evidence that any of that is
22 contradicted. He holds complete autonomy with what he
23 does with his cases.

24 And this was interesting. Our Attorney General has
25 said whether one acts as a prosecutor in a case which is

1 tried before a jury or whether one represents the State
2 in receiving a plea of guilty undoubtedly there is an
3 exercise of apportion to sovereignty of the State.

4 Whether we look at the definition from when -- from
5 within the statute or we step back to the common law, and
6 it's interesting that we're talking about State vs.
7 Bridges because one of the interesting points about this,
8 the Court of Appeals actually said, No, the definition
9 that's given to us by Legislature does not include the
10 definition of law enforcement deputies for this public
11 official exception.

12 The Supreme Court said, Hold tight, because the
13 Legislature is presumed to know the common law when it
14 uses a term so widely known and understood. And in
15 common law the Supreme Court held, A public official is
16 one who is charged by law of the duties involving the
17 exercise of some part of the sovereign power, either
18 small or great, and performs in which the public is
19 concerned.

20 Thurmond's prosecutorial duties fall squarely
21 within that definition and it's buttressed by the A. G.'s
22 opinion that I just cited to you.

23 THE COURT: Speaking of the A. G.'s opinion. You
24 handed up, I believe it was number 4, your number 4 --

25 MR. TIMBES: Yes, Your Honor.

1 THE COURT: -- where the first two pages say that
2 he was a public official, and you represent that the
3 Attorney General said it but that's not signed anywhere.

4 MR. TIMBES: I'm sorry, Your Honor?

5 THE COURT: It's not signed. It's not signed.
6 What is signed is a letter from Cook dated back in 2003.

7 MR. TIMBES: Yes, sir, and let me -- if I could,
8 Your Honor, what I would direct you to is there is a 2000
9 Attorney General opinion that we've cited to in our
10 proposed order, I don't know if I have a copy of it that
11 I can give to Your Honor, which is very particular in
12 this case because in it we have pretty much all the
13 apples lined up.

14 It was an assistant city attorney up in Greenville,
15 I believe, and he was prosecuting cases, and he also
16 happened to hold the office of state senator. So he
17 wrote to the Attorney General -- if I may approach, I'll
18 hand you this copy.

19 He wrote to the Attorney General and he asked, Is
20 this going to be a problem for me if I prosecute cases
21 for the City of -- I believe it was Greenville, while I
22 hold the office of state senator?

23 And the A. G.'s instructions are not only clear but
24 they are very helpful to the issues before you, and I'll
25 quote from that case. It says, While most of the duties

1 described in your letter do not involve the exercise of
2 sovereign power I am concerned by your prosecution of
3 cases in municipal court -- and he goes through and he
4 cites some previous opinions. In an opinion dated
5 February 22 of 1982 Attorney General Danny McLeod noted
6 whether one acts as a prosecutor in the case -- and
7 that's the language I cited to you before that reads
8 undoubtedly there is an exercise of apportion of the
9 sovereignty of the State.

10 And so he says, Unless this particular duty, the
11 prosecution of cases, can be assigned to another attorney
12 I must advise you that you would violate the
13 constitutional prohibition of dual office holding for
14 being both the city prosecutor and the state senator at
15 the same time.

16 Now, the issues that we need to really focus on
17 here is, is he a public official? And James says, Well,
18 even if he's a public official he doesn't necessarily --
19 he doesn't file an SEI for that, so therefore it
20 shouldn't matter. That's letting the tail wag the dog.

21 The fact that Mr. Thurmond has not filed an SEI as
22 a prosecutor for the City of the North Charleston has no
23 bearing whatsoever on the duties that he performs, and
24 whether he we look at In re Richland County Magistrate's
25 Court, which I've cited to Your Honor, or we look at the

1 A. G.'s opinions or we look at the language of State vs.
2 Bridges it's the performance of the duties is what is
3 dispositive, not whether or not he files an SEI.

4 Your Honor, it really, really boils down to that.
5 And the A. G. opinion is enlightening. That's why I
6 asked Mr. Thurmond that question, what his plans were if
7 he is successful in his bid to become the next state
8 senator. If Mr. Thurmond has to resign his position with
9 City of North Charleston for fear of violating dual
10 office holding if he's elected to senate that necessarily
11 applies that he is holding at last one of those offices
12 now, given the election hasn't occurred yet, and it would
13 be entirely inequitable to require him to quit if he wins
14 yet not give him the benefit of the shield of 13-56(a)
15 during the campaign.

16 In a way what we are charged to do here is try to
17 reconcile some of the issues that have become murky over
18 the course of the last few months in the election cases.
19 That explain how this should work.

20 Now, one of the issues that has come up from the
21 plaintiff is that, Well, this exemption only applies to
22 incumbents, and I want to speak to that for a moment. I
23 also want to speak to the issue of the petition for
24 clarification that was heard by the Supreme Court in the
25 Florence County case.

1 Your Honor was concerned, Well, they didn't look at
2 that, they didn't take it up. They could have fixed it
3 and maybe we wouldn't all be here today.

4 But I think there might be a reason why they didn't
5 take it up; it's because addressing that issue, whether
6 they said it did apply or did not apply, would not have
7 changed the outcome of that case.

8 And if there's anything our Supreme Court is
9 reluctant to do was to issue an advisory opinion. And so
10 why not wait until that issue is before the Court, which
11 Mr. Smith has now placed it there by virtue of filing he
12 did on Friday, to take it up in due course.

13 Secondly, although not binding on Your Honor,
14 obviously Judge Cottingham didn't agree with that
15 analysis. His order says that no, that's just not the
16 law. We don't need to -- that's not what the Court was
17 trying to say. And actually, I agree with that, and I
18 think that the statute itself gives us the explanation
19 that we need.

20 When an officer who is required to file an SEI, if
21 you look at 11-10, it states right in the preamble of it
22 before they take the oath or before they perform their
23 duties there's two ways you can be an officer, you can
24 perform the duties or take an oath, but before you do
25 that you have to have an SEI on file.

1 By virtue of running in a race, winning that
2 election and taking the oath of office every incumbent in
3 this State already has an SEI on file, and an incumbent
4 when it runs for re-election he or she isn't going to
5 file pursuant to 11-10, Your Honor. They are going to
6 renew and update their SEI pursuant to 11-40.

7 So if Mr. Smith's interpretation of the exception
8 13-56(a) is to make any sense it ought to read an
9 incumbent who has updated their SEI pursuant to 11-40.
10 That's not at all what the statute says. The statute
11 says a public official with one on file pursuant to
12 either 11-10 or 11-40.

13 The interpretation Mr. Smith is asking you to
14 decide would render entirely meaningless that portion of
15 the statute, and if there's anything we've learned from
16 Florence County, if there's anything we've learned from
17 Anderson, they are not going to render a portion of this
18 statute meaningless.

19 Your Honor, in the end it really all boils down to
20 one issue, and that is whether the next senator for
21 District 41 is going to be chosen by a democracy, by
22 default, and only one of those options lies in the hands
23 of the voters of this district.

24 We're asking you to apply the exemptions set forth
25 in 13-56(a) according to its plain language as written

1 and return that issue back to voters. Thank you for your
2 time, Your Honor. I appreciate you.

3 THE COURT: Anybody else?

4 (There was no response.)

5 THE COURT: Not that it matters but last week I was
6 in nonjury in the 14th Circuit in five counties. I
7 didn't hear them all but I counted them up. It looks
8 like we had 167 motions in front of me, and my new and
9 improved law clerk, this is his second week on the job,
10 how many times have we heard an attorney say, Judge, it's
11 absolutely clear?

12 (LAUGHTER)

13 THE COURT: It's not absolutely clear.

14 Well, I'll give you all a decision. I won't wait
15 six months, of course, either today or tomorrow,
16 depending on how long -- because I'm not going to stay
17 here all night on this thing. We might have to continue
18 the second one into tomorrow but -- I mean, the third
19 one. So you all can hang around or you can leave numbers
20 and we can call you whenever the second and third, or you
21 can listen to what they say because it's going to be some
22 similar issues, I'm sure.

23 MR. SMITH: Thank you, Your Honor.

24 MR. BOLCHOZ: Your Honor, when you rule your
25 decision will include the issue of whether or not the

1 party can reopen the ballot as well, depending on what
2 you rule, obviously.

3 THE COURT: I will certainly address that. If I
4 forget to just remind me.

5 MR. BOLCHOZ: Yes, sir.

6 MR. SMITH: Thank you, Judge.

7 MR. TIMBES: Thank you, Your Honor.

8 (WHEREUPON, the hearing was recessed for the
9 morning, to reconvene in the afternoon for the Court's
10 ruling.)

11 THE COURT: Okay. I can't make anybody happy, can
12 I? This is how the Thurmond case looks. Well, I guess I
13 should call it the Tempel case.

14 MR. SMITH: Yes, Your Honor.

15 THE COURT: All right. You know, I don't even get
16 into whether I would originally have ruled electronic
17 filing complies. It looks pretty close to me, the paper
18 filing and all that, but I'm not an appellate court. All
19 right. So I think the issue is whether Mr. Thurmond is a
20 public official or not. That's your position, basically?

21 MR. SMITH: Well, whether he's a public official
22 and whether he's a public official within the context of
23 that.

24 THE COURT: Within that. So, Mr. Smith, I'm going
25 rule that he is not a public official within the

1 contemplation of section one of that statute.

2 He did not take an oath of office. He's not
3 required, actually, to file a financial statement like
4 public officials do and I think that's what encompasses
5 it. But, on the other hand, I'm certainly going to let
6 him file again, let the party open the filing, which you
7 certainly oppose, of course.

8 MR. SMITH: Yes, Your Honor.

9 THE COURT: Vigorously, I take it. He doesn't have
10 time to get a petition or anything and I don't want to --
11 I think if he can get on the ballot he'd probably win,
12 but that's neither here nor there. That's not the basis
13 of it. Part of it is he never filed a financial
14 statement until 30 minutes before as a public official.

15 I'm not holding that against him but I kind of view
16 that as a simultaneous filing, and in his affidavit he
17 says when he filed it electronically he filed it with the
18 intention of running for senate.

19 Thirty minutes before is almost simultaneous. If
20 he had filed one much further back and relied on that I
21 might have ruled different, but I'm not saying so. I
22 just don't think under the facts as presented -- he's not
23 having to take an oath of office being a part-time
24 prosecutor. Even though he represents the State and has
25 power to dismiss things he is a public official in some

1 sense but not under that statute as I read it. I haven't
2 had time to study all that, you know. You all can take
3 it up. Just address it.

4 Now, do you want them to prepare the whole order?

5 MR. SMITH: Your Honor, I'm happy to do it.

6 THE COURT: Well, I hate to do it piecemeal.

7 MR. SMITH: Yes, I think so. I'm prepared to
8 prepare the order and send it to them before it gets
9 forwarded up to you.

10 THE COURT: You need to put in there about -- I'm
11 ruling that the party is not foreclosed from opening the
12 primary.

13 MR. SMITH: Absolutely. I will have it there and
14 they will certainly have a chance to review it before it
15 comes to the Court.

16 THE COURT: That suit you all? I'm not staying the
17 ruling suits you but for him to prepare it.

18 MR. TIMBES: Your Honor, I think it would be
19 appropriate that if Mr. Smith and I are unable to come to
20 terms on it that I just can just submit a competing
21 order. I think that would resolve it.

22 THE COURT: I don't really care who submits it. I
23 don't need two submissions from you all.

24 MR. SMITH: What I would say, Your Honor, is I will
25 allow them -- maybe what we'll do is if you'll draw the

1 portion about reopening, I'll draw the other portion. If
2 you'll send it to me I'll incorporate it and we'll do
3 this together.

4 MR. TIMBES: Yes. That will be fine.

5 THE COURT: And you all have to get it here
6 tomorrow because it's important that it gets here
7 tomorrow and then --

8 MR. SMITH: Okay. I'll work with you on that.

9 THE COURT: I don't even like to be involved in
10 this.

11 MR. SMITH: Well, listen, I understand, Your Honor
12 thank you.

13 THE COURT: Anything else I can help you all with?

14 MR. SMITH: Just my apologies for not being here.
15 I misunderstood.

16 THE COURT: That's all right.

17 MR. SMITH: I appreciate the opportunity to get
18 back.

19 MR. TIMBES: Thank you, Your Honor.

20 (WHEREUPON, the hearing was concluded.)

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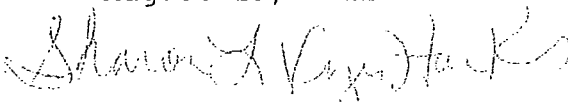
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I, Sharon L. Vizer-Hanks, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 13th day of August 2012.

I do further certify that I am neither of kin, counsel nor have an interest to any party hereto.

August 19, 2012



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.
ATTORNEYS & COUNSELORS AT LAW

15 MIDDLE ATLANTIC WHARF, SUITE 101
CHARLESTON, SOUTH CAROLINA 29401

Paul R. Thurmond
Jesse A. Kirchner
Michael A. Timbes*
Matthew E. Yelverton**
Steven D. Epps
Christopher P. Deters
David L. Barnes, Jr.
Christine L. Williams

David L. Savage
Of Counsel

Phone: 843.937.8000
Fax: 843.937.4200
www.tkylawfirm.com

*Also admitted in Georgia
**Also admitted in North Carolina

June 14, 2012

VIA EMAIL

The Honorable Deadra L. Jefferson
Charleston County Judicial Center
100 Broad St., Suite 336
Charleston, SC 29401-2236
Email to: djeffersonsc@sccourts.org

Re: *George Tempel v. South Carolina State Election Commission, et al.*
Case No.: 2012-CP-10-3737

Your Honor:

On behalf of Mr. Thurmond, I write to bring three points to your attention regarding the proposed order submitted on behalf of the Plaintiff. Your consideration of these important matters is respectfully requested as you deliberate the issues before you.

First, Your Honor has previously been provided a copy of the ruling handed down by Judge Cottingham in the case involving Mr. Wiszowaty (Case. No. 2012-CP-32-2425). I have provided a copy herewith for your convenience. In that case, Judge Cottingham ruled that a Mayor running for a seat in the House (i.e., a different public office) was entitled to the exemption because he was a public official with a current SEI on file. He was a public official because he was the Mayor, not because he was a candidate for the House. This is the same argument Thurmond makes. Although this ruling is in no way binding on Your Honor, I urge you to consider his reasoning, which would be incorrect if you accept Plaintiff's suggestion in his proposed order that Thurmond had to already hold the Senate seat he is seeking in order to avail himself of the exemption. There is nothing in Section 8-13-1356(A) mandating that Thurmond be an incumbent to qualify for its protection.

Second, I join in Mr. Howell's request that any judgment for the Plaintiff be clarified so that it does not contradict or foreclose the applicable provisions of S.C. Code Ann. 7-11-55.

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Third and finally, in response to Plaintiff's reference to Thurmond's request for 120 days, it is important to remember how this matter unfolded. When the petition was filed with the Supreme Court, Thurmond was facing a request for TRO on the eve of the primary. There was urgency on Monday. Now that the primary has passed, and the urgency of Plaintiff's TRO along with it, adhering to Rule 40(h) for a fully developed hearing on the merits is warranted. There is nothing inconsistent in Thurmond's position in this way.

Thank you in advance for your consideration of these points.

With kindest regards, I remain,

Very truly yours,

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.



Michael A Timbes
mtimbess@ktvlawfirm.com

/mwk

Enclosures: as stated.

cc: James E. Smith, Jr., Esquire (via email)
Samuel W. Howell, Esquire (via email)
Elizabeth M. Crum, Esquire (via email)
Butch Bowers, Esquire (via email)
Tanya A. Gee, Esquire (via email)

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COPY

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS
FILED ELEVENTH CIRCUIT

2012 JUN 11 4:39

James E. Wiszowaty,

C/A # 2012-CP-32-2425

Plaintiff,

vs.

ORDER GRANTING
PLAINTIFF'S MOTION

The South Carolina Republican Party, The
Lexington County Republican Party, The
Saluda County Republican Party, Steve
Isom, Jerry Strawbridge, Chad Connelly,
The South Carolina Election Commission,
The Saluda County Election Commission,
and The Lexington County Election
Commission,

Defendants.

This matter is before the Court upon a verified Complaint and Affidavit filed by the Plaintiff. This Court had a hearing on the merits on the record in Lexington County on June 11, 2012, and that oral record is encompassed and made a part of this order.

The Plaintiff is a candidate for South Carolina House District 39. He is the Mayor of Batesburg-Leesville, South Carolina and claims to be exempt from the application of S.C. Code § 8-13-1356 by virtue of S.C. Code § 8-13-1356(A) which reads as follows:

This section does not apply to a public official who has a current disclosure statement on file with the appropriate supervisory office pursuant to sections 8-13-1110 or 8-12-1140.

1 of 2

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THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2012-CP-10-3737

RECEIVED

SEP 14 2012

S.C. Supreme Court

George Tempel,.....Appellant/Respondent,

v.

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

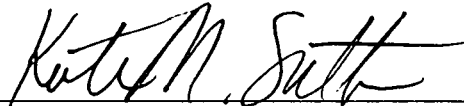
Of Whom South Carolina Republican Party (Matt Moore, as Executive Director, and Chad Connolly, as Chairman); Charleston County Republican Party (Lin Bennett, as Chairman); Charleston County Board of Elections and Voter Registration (Joseph L. Debney, as Director, and Dan Martin, as Chairman); Dorchester County Republican Party (Carroll S. Duncan, Chairman) are..... Respondents,

And

South Carolina State Election Commission (Marci Andino, as Executive Director, and Chris Whitmire, as Director of Public Information and Training) and Paul Thurmond are..... Respondents-Appellants,

CERTIFICATE OF COUNSEL

The undersigned certifies that this Record on Appeal complies with Rule 210, SCACR and that the Record on Appeal contains all material proposed to be included by any of the parties, but for the trial exhibits designated by Paul Thurmond, and not any other material.



Kate M. Sutton, S.C. Bar No. 12868

Kitty@JamesSmithPA.com

James E. Smith, Jr.

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

1422 Laurel Street

Columbia, South Carolina 29201

(803) 933-9800

Attorneys for Appellant/Respondent George
Tempel