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Case # 2015-002237

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

JAN 22 2016

SC Court of Appeals

APPEAL FROM ANDERSON COUNTY, SOUTH CAROLINA
COURT OF COMMON PLEAS

HON R. SCOTT SPROUSE, CIRCUIT JUDGE

Case # 2014-CP-04-01780

NANCY C. PEREZ

Petitioner

Vs

SOUTH CAROLINA
DEPARTMENT OF LABOR, LICENSING AND REGULATION –
BOARD OF NURSING

Respondent

**APPELLANT'S VERIFIED
MOTION FOR REHEARING AND REHEARING EN BANC**

Appellant Nancy C. Perez hereby respectfully moves the Appellate Court for a rehearing and rehearing en banc. As grounds therefore she shows:

- 1- On August 17th, 2015 Ms. Perez submitted to the trial court a Motion pursuant to Rule 59 (e) for reconsideration and a new trial
- 2- On August 26th, 2015 the Court of Appeals dismissed the first appeal without prejudice because Ms Perez had filed a timely post trial motion which was pending adjudication.
- 3- On October 29, 2015 Ms. Perez submitted her 2nd Amended Notice of Appeal.
- 4- On November 2nd, 2015 the Appellate Clerk of Court issued a deficiency letter purportedly because Ms. Perez is required to provide a copy of the Order issued by the Trial Court disposing of Ms. Perez' Rule 59(e) Motion.
- 5- On November 17th, 2015 Ms. Perez submitted a Motion objecting to the deficiency notice. Ms Perez showed therein that the South Carolina Supreme Court has ruled that "If an issue has been raised at trial, and the trial court fails to rule on it, and it is raised again in a motion for reconsideration, **the issue is preserved for appellate review even if the trial court does not rule on it**¹." It has been the law in South Carolina, since , at least, 1939 that

¹ Town of Kingstree vs Chapman , 747 SE 2d 494, 510 (SC App – 2013) citing Pye v. Estate of Fox, 633 SE 2d 505, 510 (2006).

error preservation only requires a litigant to fairly raise the issue to the trial court, thereby giving it an opportunity to rule on the issue². The Trial Court has had over 5 months to either grant or deny the motion. It has failed to rule.

- 6- The Appellants/Defendants have failed or refused to object. Consequently, they have not shown prejudice³.
- 7- On January 13th, 2016⁴ Ms. Perez filed an Amended Verified Motion To Dispense with the trial court's order regarding the Rule 59(e) Motion.
- 8- On January 13th, 2016 the Court of Appeals denied Ms. Perez' Motion. The Court of Appeals failed or refused to identify the legal basis for excluding Ms. Perez from the case law and binding precedents⁵ identified herein.
- 9- Ms. Perez is a 67 year old Hispanic female proceeding pro se. Her lawsuit shows , inter alia, (a) that nurses have a right to jury trials before being deprived of their right to work as nurses. That is the way it was done at common law⁶. ; (b) The State cannot abridge Ms. Perez' right to work as a

² State v. Brannon, 697 S.E.2d 593, 388 S.C. 498 (S.C. 08/09/2010) citing . Hubbard v. Rowe, 192 S.C. 12, 19, 5 SE 2d 187, 189 (1939).

³ Gold Kist, Inc v C&S National Bank of SC, 286 S.C. 272, 333 S.E.2d 67 (S.C.App. 07/08/1985)

⁴ Service by mail is complete upon mailing, SCRAP 262(b).

⁵ Hutto v Southern Farm Bureau Life Ins. Co., 259 S.C. 170, 191 S.E.2d 7 (S.C. 08/10/1972)

⁶ South Carolina regulated nurses for the first time when The Nursing Act of February 23rd, 1910 was enacted. The Nursing Act of 1910 allowed aggrieved nurses to access the circuit courts⁶.

nurse except as a reasonable exercise of its police powers when it it is clearly found that abridgement is necessary for the preservation of the health, safety, and welfare of the public. ⁷. (c) The pleadings also show that Ms. Perez worked as a nurse in Texas for eighteen years⁸ and that the Texas Nursing Board never challenged Ms. Perez' right to work as a nurse. Assuming, arguendo, that Ms Perez has been convicted of a crime within the last ten years⁹, and which is directly related to the nursing profession¹⁰, then her career shows that her potential for harm is unrecognizable, remote and/or dependent upon tenuous argument¹¹;

⁷ Accord 2009 South Carolina Code 40-33-1315. Recognition of multi-state licensure privilege A party state may, in accordance with that state's due process laws, revoke, suspend, or limit the multi-state licensure privilege of any licensee to practice in its state and may take any other actions under its applicable state laws that are **necessary to protect the health and safety of its citizens**; see also **SECTION 1-23-370** Procedures regarding issuance, denial or renewal of licenses. No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. **If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action.** These proceedings shall be promptly instituted and determined.(emph. Added)

⁸ Nancy C Perez Affidavit is attached and incorporated herein.

⁹ Any allegation that any crime purportedly committed by Ms Perez is older than years is irrelevant within the meaning of SC Rules of Evidence 401-403 and 609, United States v. Rogers, 542 F.3d 197 (7th Cir. 09/04/2008); United States v. Cobb, 588 F.2d 607 (8th Cir. 12/07/1978); State v. Young, 661 S.E.2d 387, 378 S.C. 101 (S.C. 05/19/2008); Green vs Hewett, 407 SE 2d 651, 653 (1991); United States v. Sanders, 964 F.2d 295 (4th Cir. 04/29/1992)

¹⁰ South Carolina Law, Section 40-1-140

¹¹ SC Statute 40-1-10(B)(1)

10- The general assembly's police power is limited to protecting the public interest rather than protecting or promoting the interests of individuals or groups¹². But documents obtained from the Clemson University Library show that the nursing profession was regulated by the state for the first time in 1910¹³. The documents also show that it was the South Carolina Nursing Association, not the South Carolina general assembly, who requested that nurses be "registered"¹⁴. Actually, the General Assembly refused to register nurses in 1909¹⁵. The documents show that the health and safety of South Carolinians was not an issue.

11- The actions of the Court of Appeals deprive Ms. Perez of , inter alia, her Fourteenth Amendment right to access the courts effectively , adequately and meaningfully¹⁶; the First Amendment Right to petition the courts¹⁷, her right to appeal, her right to a jury trial, her right to proceed pro se.

¹² Edens , et al v. City of Columbia, et al, 228 S.C. 563, 91 S.E.2d 280 (S.C. 01/30/1956) citing Bookhart v. Central Elec. Power Co-op., 219 S.C. 414, 65 S.E.2d 781, 788 (1951)

¹³ Record On Appeal (ROA) pp 49 - 64,

¹⁴ id

¹⁵ id

¹⁶ Johnson v. Avery, 393 US 483, 89 S. Ct. 747, 21 L. Ed. 2d 718 (1969)]Chambers v. Baltimore & Ohio Railroad, 207 US 142 (1907)

¹⁷ California Motor Transport Co. v. Trucking Unlimited, 404 US 508 , 92 S. Ct. 609, 30 L. Ed. 2d 642 (1972), the Supreme Court found in the first amendment a second constitutional basis for this right of access: "Certainly the right to petition extends to all departments of Government. The right of access to the courts is indeed but one aspect of the right of petition." Id. 92 S. Ct. at 612.

12- Furthermore, since the SC Department of Labor , Licensing and Regulation has not , and can not , allege that it clearly found that abridgement of Ms. Perez' right to work as a nurse is necessary for the preservation of the health, safety, and welfare of the public then the administrative agency has failed to implement the statute according to its terms thereby converting a civil statute to a punitive one in derogation of the Fifth Amendment Double Jeopardy Clause¹⁸.

13- Under the due process clause of the Fourteenth Amendment no state shall deprive any person of life, liberty or property without due process of law¹⁹. The Equal Protection Clause embodies a general rule that states must treat like cases alike²⁰. Ms Perez is in a protected class by virtue of her age and her ethnic group²¹. She is in a class of one²² because she is proceeding pro se²³ and exposes SC laws dealing with the nursing profession as a sham.

¹⁸ Seling v. Young, 121 S.Ct. 727, 531 U.S. 250, 531 U.S. 250, 148 L.Ed.2d 734 (U.S. 01/17/2001) ; Hudson v. United States, 522 U. S. 93, 100 (1997)

¹⁹ In re Doe, 757 S.E.2d 711, 719 (S.C. 04/30/2014) citing U.S. Const. amend. XIV, § 1 and S.C. Const. art. I, § 3

²⁰ In re Treatment and Care of Luckabaugh, 351 S.C. 122, 568 S.E.2d 338 (S.C. 07/22/2002) citing Marley v. Kirby, 245 SE 2d 604 (1978); Vacco v Quill, 521 US 793, 799 (1997)

²¹ Hessenthaler v. Tri-County Sister Help, Inc., No. 25650 (S.C. 10/18/2004) citing Title VII of the Civil Rights Act of 1964.

²² Where an alleged equal protection violation does not implicate a suspect class the rational basis test is used, The Town of Hollywood v. William Floyd, A/K/A Jeff Floyd, Troy Readon and Edward Mccracken, No. 27252 (S.C. 05/15/2013) citing Vill. of Willowbrook v. Olech, 528 US 562, 564 (2000);

²³ Illiberal Construction of Pro Se Pleadings, 159 University of Pennsylvania Law Review 585, 597 (2011) by Rory K. Schneider, Esq: **Courts and attorneys treat pro se litigants disdainfully,**

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

AFFIDAVIT OF NANCY C. PEREZ

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I, Nancy C. Perez, after being first duly sworn on oath, depose and state to the court as follows:

The SC Board of Nursing has prevented since me from exercising my common law profession as a nurse.

Nurses in South Carolina were regulated for the First time by The Nursing Act of February 23rd, 1910. The act did not prevent nurses from accessing the circuit courts nor deprive them of jury trials nor of the preponderance of evidence standard. In 1910 The general assembly consented to register nurses as requested by the SC Nurses Association.

I worked as a nurse in Texas for eighteen years. The Texas Board of Nursing never challenged my right to work .

The SC Board of Nursing has never informed me that they have evidence showing that abridgement of my right to earn a living working as a nurse is necessary for the preservation of the health, safety, and welfare of the public.

The SC Board of Nursing has never informed me that I have been convicted of a crime within the last ten years nor that I have been convicted of a crime directly related to the practice of nursing.

Historical Documents obtained from the Clemson University Library show that the nursing profession was regulated by the state for the first time in 1910. The documents also show that it was the South Carolina Nursing Association, not the South Carolina general assembly, who requested that nurses be "registered" Actually, the General Assembly refused to register nurses in 1909. The documents show that the health and safety of South Carolinians was not an issue.

I attached to the original motion a true and correct copy of the Anderson County Tenth Judicial Publix Index Trial Court Docket dated January 11th, 2016.

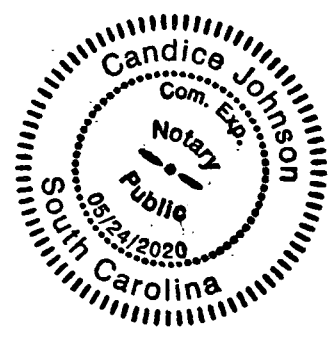
On August 17th, 2015 I filed a Rule 59(e) Motion to Reconsider. The Trial Court has never informed me that it has ruled upon the motion

Nancy C. Perez
Nancy C Perez

Subscribed and sworn to before me this
9th day of January, 2016

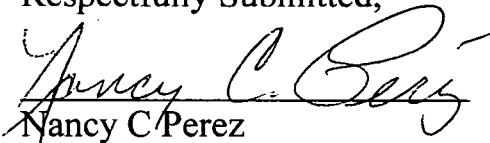
[Signature] Notary Public

STAMP



Wherefore, Ms. Perez respectfully the submits that the January 13th, 2016 Court of Appeals decision ought to be set aside. The Clerk of Court 's letter of deficiency ought to be quashed. And Ms. Perez' appeal ought be allowed to proceed. In the alternative, that the basis for denying Ms. Perez right to equal treatment of law and to binding precedents be disclosed.

Respectfully Submitted,



Nancy C Perez
713 E. Greenville St – D220
Anderson, SC 29621
281-746-4948

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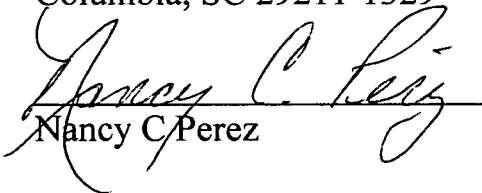
JAN 22 2016

SC Court of Appeals

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing “ Appellant’s Motion For Rehearing and en banc rehearing” “was delivered by mailing a copy thereof on January 19th, 2016 to :

Donnell G. Jennings , Esq
South Carolina Department of Labor , Licensing
And Regulation
PO Box 11329
Columbia, SC 29211-1329



Nancy C Perez

RETURN RECEIPT
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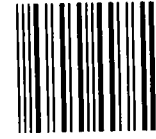
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Ms Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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