

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP400541

RECEIVED

Robert Gantt

Samuel J Selph

Edward White

Marjorie Johnson

OCT 14 2016

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Toad Attorney for: Plaintiff Defendant or Self-Represented Litigant

SC Court of Appeals

DISPOSITION TYPE (CHECK ONE)

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

OCT 18 2016
2:52
INDE
COMMUNITY

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:

ORDER ATTACHED

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
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 [Signature] Judge Code 2758 Date 10-10-16

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 11 day of Oct, 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Michael H. Montgomery

S. Jahue Moore

William M. Spillane

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Jeanette W. [Signature]

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

ROBERT GANTT AND
EDWARD K. WHITE,

Plaintiffs,

v.

SAMUEL J. SELPH as Director, and
MARJORIE JOHNSON, ADELL
ADAMS, E. PETER KENNEDY, SYLVIA)
HOLLEY and JANE EMERSON as the)
Members of the BOARD OF VOTER)
REGISTRATION AND ELECTIONS)
OF RICHLAND COUNTY, THE)
BOARD OF VOTER REGISTRATION)
AND ELECTIONS OF RICHLAND)
COUNTY, and KIM MURPHY,)

Defendants.

CIVIL ACTION NO. 2016-40-CP-5431

JEFFREY L. MONTGOMERY
Clerk of Court
C.C.P. & G.S.

2016 OCT 10 PM 2:52

NOEL MURPHY
FILED

**ORDER ON ACTION FOR
DECLARATORY JUDGMENT**

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[Handwritten signature]

This action seeking a declaratory judgment as to the application of Act 326 of 2002 to the candidacy of Defendant Kim Murphy was before the Court for a bench trial on October 6, 2016 at the Kershaw County Courthouse. At the call of the case, Plaintiffs, Robert Gantt and Edward K. White were present and represented by Michael H. Montgomery of the Richland County Bar. Samuel J. Selph was present on behalf of himself as Director and the Board of Voter Registration and Elections of Richland County and was represented by William M. Spillane of the Richland County Bar. Kim Murphy was present and was represented by S. Jahue Moore, Sr. of the Lexington County Bar. This is an election controversy as to whether an individual candidate for the Board of Trustees of Richland-Lexington School District 5, Defendant Kim Murphy, is properly on the ballot as a resident of Richland County.

BACKGROUND

Plaintiffs' Declaratory Judgment Action seeks to disqualify defendant Kim Murphy ("Murphy") as a Candidate for election to a seat reserved for a Richland County Resident on the Board of Trustees for School District Five of Lexington and Richland Counties ("District 5") on the grounds that she fails to meet the qualifications of Act 326 of 2002 §9, which requires that "three trustees must reside in Richland County and four must reside in Lexington County." Murphy filed with the Richland County Election Commission as a candidate for a Richland seat on the Board. Plaintiffs aver that Murphy resides in Lexington County and therefore is not statutorily qualified to be elected from or serve as a representative in the Richland County seat on the Richland Lexington School District 5 Board of Trustees ("District 5"). Plaintiffs further seek a declaration compelling the defendants in their official capacities as Director and members of the Richland County Board of Voter Registration and Elections ("Board of Elections") to remove Murphy from the November 8, 2016 ballot because she is not qualified to seek or serve in the office for which she is currently running.

Plaintiffs Robert Gantt ("Gantt") and Edward K. White ("White") are both members of the District 5 Board elected from Richland County. Plaintiff Robert Gantt ("Gantt") is the current Board Chair. He holds a Richland seat and is running for re-election as a Richland County representative. Murphy is running against him, seeking to unseat him and replace him on the District 5 Board.

The question presented to the Court is simple: Is Murphy a resident of Richland County as she is required to be by Act 326 of 2002?

After hearing the testimony of the witnesses and an extensive review of the pleadings, filed memoranda, the record before the Board of Voter Registrations and Elections stipulated to

by the parties and consideration of motions, memoranda, briefs, exhibits in evidence, affidavits, testimony, and the argument of counsel, the Court hereby finds as follows:

FINDINGS OF FACT

The facts in this case have been developed from the record of a hearing before the Richland County Board of Voter Registration and Elections in a companion action where the parties agreed to incorporate the record into this action, *Gantt and White v. Richland County Board of Voter Registration and Elections*, Civil Action No.: 2016-40-5132; together with maps, documents and additional testimony and exhibits presented at the bench trial on October 6, 2016, including the stipulated testimony of Murphy's expert witness and the live testimony of seven additional witnesses. The issue before the Court is application of Act 326 and the statutes governing the county lines and precinct lines to the facts in the record. The facts are as follows:

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1. This Court has both personal and subject matter jurisdiction over this case. On September 29, 2016, the parties entered an on-the-record agreement to convert a prior mandamus action to a declaratory judgment action by the filing of an Amended Complaint and request for declaratory judgment regarding the candidacy of Murphy and the withdrawal of the petitions for mandamus and for appeal. All parties agreed to accept service of these amended pleadings and agreed to a hearing date of October 6, 2016.

2. As members of the Board of Trustees of School District Five of Lexington and Richland Counties and qualified electors in Richland County, Gantt and White have standing to raise the question of Murphy's eligibility to run and serve based upon the location of her residence. Furthermore, as the candidate against whom Murphy has filed to run, Gantt has standing to challenge her eligibility.

3. Murphy lives at 154 Old Laurel Lane, Chapin, South Carolina, 29036.

4. Murphy has lived in the residence at that address since approximately the year 2000.

5. Murphy's husband, D. Jay Murphy, acquired the property on which the residence is located in 1997.

6. At the time the property was acquired a survey was performed by Lucius D. Cobb. That survey was titled "Final Subdivision Plat of Laurel Springs" and was recorded in both Lexington and Richland Counties in April, 2007.

7. A dashed line appears on the Cobb plat which is noted as "APPROX. COUNTY LINE".

8. The Cobb plat also includes a "LOCATION MAP" where the county line is shown in a significantly different position than it is shown on the survey. The county line shown on the location map passes through Rocky Ford, a point on the statutory description of the County Lines of Lexington and Richland County. Cobb testified and his original draft plat reflects that he originally relied on the Wessinger/Counts plat. Cobb listed the county line used in his original plat as derived from "the U.S. Geological Map 'Chapin, S.C.' dated 1971." He further noted that

The County line as shown hereon was delineated by using U.S. G.S. map "Chapin, S.C." dated 1971, and a plat of Richland County by W.A. Counts and J.C. Wessinger dated Nov. 25, 1921, as described in book of boundaries of existing counties, section 4-3-460, at page 126 and 127.

The statute's verbiage forms the cornerstone of the Wessinger/Counts plat (although the plat is off 1° from what is cited in the statute). That plat shows the County line in a location that appears consistent with the County line shown on the location map. Both an examination of the location map and Mr. Cobb's testimony place Murphy's residence in Lexington County had Mr. Cobb's original county line designation been used.

9. Mr. Cobb testified that when he went to file the plat, individuals at the Lexington County Planning Commission instructed him to relocate the approximate county line on his plat to a location consistent with the tax parcel maps that were then being used by Lexington and Richland Counties. At the time that the final Cobb plat was filed, Richland County has used the line Cobb identified as the approximate county line on its GIS system for tax mapping. In order to receive approval of his subdivision plat and have it recorded, Cobb—without additional surveying—changed the location of the county line on his plat from the line specified in sections 4-3-370 and -460 of the South Carolina Code as the official boundary for Richland and Lexington Counties to the tax map boundaries for the counties.

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10. Murphy later built her residence on the property. Again, apparently relying upon the approximate county line as specified in the recorded Cobb plat, she determined that she was in Richland County and obtained a building permit from Richland County.

11. After the residence was built under a Richland County permit, the improvement was included by the Richland County Assessor as property in Richland County pursuant to its records.

12. The Richland County GIS map (tax map) places Ms. Murphy in Richland County. Ms. Murphy paid (and continues to pay) taxes on her residence and vehicles registered at the 154 Old Laurel Lane, Chapin SC 29036 address and receive other services from Richland County based upon the inclusion of her residence in Richland County for tax purposes.

13. It is unclear who drew the lines for the Richland GIS maps or what information was relied upon in reaching the coordinates in these maps. However, Liz McDonald, Richland County Assessor, testified that the IT department draws the Richland GIS maps. She also testified that Richland and Lexington Counties' assessors have a "gentlemen's agreement" to use

the tax map GIS lines as the location of the county lines for tax purposes. This agreement is not in writing and has not been approved by the county councils for either county.

14. Murphy registered to vote in Richland County based upon her belief that her residence was located in Richland County. She registered in the Spring Hill precinct and voted in elections from 2000 to 2014.

15. In 2004, Ms. Murphy ran for a seat representing the Richland County portion of the District on the District 5 Board against Mr. Gantt and others. She lost that election.

16. In 2010, Ms. Murphy ran for a seat representing the Richland County portion of the District on the District 5 Board from Richland County and was elected.

17. Each time Ms. Murphy ran for office, the Board of Voter Registration and Elections accepted her candidate's application as a resident of Richland County.

18. In the fall of 2012, acting pursuant to budget proviso 80A.20 in the S.C. General Appropriations Act for Fiscal Year 2012-2013 (Act No. 288), the Office of Research and Statistics of the Budget and Control Board¹ ("Division"), the body then charged with keeping official records of voting precinct and the location of county lines, ran a routine screening of voter precinct assignment to ensure that voters were assigned to the correct precincts. During that screening, the residence at 154 Old Laurel Lane was flagged as being in the incorrect precinct.

19. Murphy served on the District 5 Board until she was removed for cause pursuant to S.C. Code Ann. §59-19-60 on March 29, 2013 after the Board determined that she was not a resident of Richland County, but rather a resident of Lexington County and therefore did not meet the residency requirements imposed by S.C. Act No. 326 of 2002, §9.

¹ As a result of the restructuring of State Government, that office subsequently became the Revenue and Fiscal Affairs Office of the State of South Carolina.

20. Murphy never sought a stay of the Board's action removing her for cause.
21. Murphy left the Board and did not return to her seat as a board trustee after March 29, 2013.
22. Murphy appealed the Board's administrative action to the circuit court.
23. The Circuit Court Judge tried the matter *de novo* pursuant to *S.C. Code Ann.* §59-19-560. At the conclusion of that proceeding, the Court upheld the decision of the District 5 Board removing Murphy finding, *inter alia*, that: "since Appellant was elected from Richland County, but in fact resides in Lexington County, under the statutes of South Carolina, she does not meet the requirements of Act No. 326 of 2002, §9 to be a Board trustee."
24. Murphy appealed that decision, but did not seek a stay of the Court's Order.
25. Mapping of political boundaries in South Carolina is the statutory responsibility of the South Carolina Revenue and Fiscal Affairs Office ("RFAO") which is the successor to the South Carolina Office of Research and Statistics. RFAO has several divisions. These divisions include the Mapping and Census section, which includes several distinct sub-sections including the Office of Precinct Demographics, the Geodetic Survey, Digital Cartography and Census.
26. The Office of Precinct Demographics is charged by the General Assembly to maintain the official maps and descriptions of precincts and to serve as the authority for verifying official precinct information for the counties of South Carolina.
27. The Geodetic Survey is charged by the General Assembly to maintain, survey and plat the official county and state boundaries.
28. *S.C. Code Ann.* §7-7-465 (2016) defines the voting precincts in Richland County. That statute provides that RFAO delineates the official precinct boundaries. It provides, *inter alia*, "The precinct lines defining the precincts provided in subsection (A) are as shown on the

official map prepared by and on file with the Revenue and Fiscal Affairs Office designated as document P-79-15 and as shown on copies of the official map provided to the Board of Voter Registration and Elections of Richland County by the Revenue and Fiscal Affairs office.”

29. RFAO has reviewed the official maps which it maintains as to the location of the residence at 154 Old Laurel Lane, Chapin, South Carolina 29036.

30. RFAO concluded that the residence at 154 Old Laurel Lane, Chapin, South Carolina is located wholly within the boundaries of the Chapin Precinct in Lexington County. No portion of the residence is located within the boundaries of the Springhill Precinct in Richland County. The residence is located hundreds of feet inside the Chapin precinct.

31. In 2013, RFAO's predecessor advised the Richland County Voter Registration and Election Commission of the fact that the residence at 154 Old Laurel Lane, Chapin South Carolina was not located in the Springhill precinct. In each case RFAO provided documents and reference to the official maps maintained by their office reflecting not only the precinct assignment, but House, Senate and County Council Districts. In none of these official maps was the residence at 154 Old Laurel Lane located in a Richland County voting precinct or district.

32. The South Carolina Geodetic Survey has also performed research and surveys which clearly demonstrate that the residence at 154 Old Laurel Lane, Chapin SC 29036 is located wholly within Lexington County. The residence is located more than 0.1 miles northwest of the county line in Lexington County. Mr. David Ballard, a registered land surveyor, and the director of the geodetic survey's boundary program, testified during the trial. Mr. Ballard testified about his on-the-ground review of the location of Rocky Ford a key survey location point on the line between the two counties—and his retracement and verification of its location from historical surveys referenced in S.C. Code Ann. §§ 4-3-370 and 4-3-460

(2016). Mr. Ballard testified that he had measured and surveyed relevant portions of the lines shown on the annexation plats relating to the area of Murphy's residence including annexation maps and plats surveyed October 1910 by C. W. Wannamker and F.W. Frederick, a proposed annexation map Surveyed December 4, 2012 by T. C. Hanby, H.S. Haynsworth and Z. L. Mobley, a plat prepared October 14, 1921 prepared by Counts and Wessinger and an annexation plat, completed on November 25 1921, by W. A. Counts and J. C. Wessinger, surveyors as well as other information necessary to accurately locate and verify the location of Rocky Ford as referenced in the statute.

Mr. Ballard testified that he was able to obtain closure of these surveys within reasonable degrees of professional certainty and, in fact, in several instances, the handheld GPS confirmed the coordinates previously established for Rocky Ford exactly. After confirming the location of Rocky Ford, Mr. Ballard made the necessary calculations to correct the true north and elevations to confirm the statutory bearings and then was able to map the statutory county line to the Murphy property and determine that her residence was approximately 1000 feet inside Lexington County, away from the Richland County line. Based upon the distances and the accuracy of the information developed, Mr. Ballard opined to a reasonable degree of professional certainty that it was not necessary to do a complete survey to confirm the location of the property located at 154 Old Laurel Lane, Chapin S.C., the residence was conclusively in Lexington County. He also opined that the 1-degree difference in the Wessinger/Counts plat would not make a difference as to the question of whether Ms. Murphy is a resident of Richland or Lexington County. No other surveyor who testified was able to demonstrate the field work to verify an opinion accurately locating Ms. Murphy's residence. This is particularly significant because Lucius Cobb's original plat prior to being corrected to match the tax parcel maps also placed the Murphy residence

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inside Lexington County. Mr. Cobb's original draft of his plat was also the result of extensive fieldwork, and it located Rocky Ford where Mr. Ballard located this key monument. Mr. Ballard testified that Ms. Murphy's residence is located in and she is a resident of Lexington County.

33. Ronnie Tyler, Defendant Murphy's expert agrees that the Code of Laws contains the correct county line, but contends that the line has not been surveyed properly over the years. He stated that the 1-degree difference in the Wessinger/Counts plat translates to moving the county line by 164 feet. However, since Tyler's report the state geodetic survey office has undertaken to re-survey the line. Mr. Tyler did not conduct a survey in the field.

34. Leroy J. Harrell, Mapping Manager for the Richland County Assessor's office, testified that the line shown on the county maps was "our best estimate" and that his office generally would yield to the knowledge and experience of the state geodetic survey. Mr. Harrell did not conduct a survey in the field.

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35. Elizabeth M. McDonald, Richland County Assessor, testified that there was an informal agreement among the assessors not to change tax map information where it would affect a county of residence until the Geodetic Survey completed the resurvey and certification of the County line using the process provided by the General Assembly in *S.C. Code Ann. §27-2-105* (2016).

36. Plaintiffs followed the process outlined in the statute by making their challenge to Murphy's standing as a qualified elector utilizing a written petition as required by *S.C. Code Ann. §7-5-230(A)*. The Richland County Voter Registration and Election Commission held a hearing on August 30, 2016 on the Appellants' separate petitions to disqualify Murphy.

37. The Lexington County tax maps show 154 Old Laurel Lane being located within Lexington County.

38. The Richland County tax maps show 154 Old Laurel Lane being located within Richland County.

39. The Richland County GIS maps show 154 Old Laurel Lane as being located within a Lexington County House District.

40. The Richland County GIS maps show 154 Old Laurel Lane as being located within a Lexington County Senate District.

41. The official state precinct maps show 154 Old Laurel Lane as being located within the Chapin Precinct in Lexington County.

42. S.C. Code Ann. § 4-3-370 (2016) establishes the boundaries of Lexington County.

It reads:

Lexington County is bounded on the northeast and east by Richland County; on the southeast by Orangeburg and Calhoun Counties, from which it is divided by Beaver Creek; on the Southwest by Aiken County, from which it is separated by the north fork of the Edisto River to the mouth of the southern branch of Chinquepin Falls Creek and then by said creek to a point where it intersects the line drawn from Silver Bluff, on the Savannah River, to the mouth of Rocky Creek, on Saluda River; on the northwest by Saluda County, from which it is separated by a line drawn from Silver Bluff, on Savannah River, to the mouth of Rocky Creek, on the Saluda River; and by Newberry County, from which it is separated by a line beginning at a point in Broad River, on the Fairfield-Lexington County line, about .25 of a mile below Peak, and running thence S. 40[degrees] W. to a point on the west bank of Broad River; thence S. 40[degrees] W. 1956 feet to an oak; thence S. 46[degrees] 40' W. 2410 feet to a stone on the public road; thence S. 41[degrees] W. 1143 feet to a stake; thence S. 32[degrees] 30' W. 9568 feet to a stake on a branch; thence down the run of the branch to a stake; thence S. 45[degrees] W. 575 feet to a stake; thence N. 86[degrees] 30' W. 3782 feet to a pine; thence S. 26[degrees] 30' W. 3650 feet to a stake; thence S. 53[degrees] 30' W. 4990 feet to a point on the Columbia, Newberry and Laurens Railroad; thence S. 73[degrees] 30' W. 2613 feet to a maple in a branch; thence S. 68[degrees] 30' W. 2180 feet to a stake near a negro church; thence N. 77[degrees] 30' W. 5577 feet to a stake just west of the public road, near Little Mountain; thence S. 28[degrees] W. 20850 feet to Camping Creek, near the mouth of Stevens Creek; thence up the run of Camping Creek to the old Newberry-Lexington County line; thence southwesterly with the old Newberry-Lexington County line to Saluda County on Broad River. Less however, that territory transferred to Richland County by act approved March 11

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1922, to wit: all that certain piece of land containing 8900 acres, or 14 square miles, situate in the northeastern part of Lexington County on the Broad River, and being bounded and delineated as follows, to wit: beginning at a point on said Broad River, and running S. 41[degrees] W. 82.51 chains to a stake, thence turning and running S. 32.5[degrees] W. 160.65 chains to a stake, thence running along a creek which empties into Wateree Creek 42.24 chains to a stake, thence running to the point where said creek joins Wateree Creek 71.51 chains, **thence running along said Wateree Creek 94 chains, thence turning and running S. 23[degrees] E. 142.50 chains to a point in Slice Creek known as Rocky Ford, thence turning and running northerly along Slice Creek 164 chains,** thence turning and running easterly along Wateree Creek 305.00 chains to the point of entrance of Wateree Creek and Broad River, thence turning and running in a northwesterly direction along Broad River 410 chains, said piece of land being bounded on the west by Newberry County, on the south and southwest by Lexington County, on the south by Richland County, and on the east and north by the Broad River, being more particularly known as the plat of said property, completed on November 25 1921, by W. A. Counts and J. C. Wessinger, surveyors, said plat being filed in the office of the Secretary of State. And less that territory transferred to Newberry County by act approved May 12 1953, to wit: all of that certain territory or portion of Lexington County embraced within the following lines and boundaries, to wit: beginning at a point of the intersection of Lexington County-Saluda County-Newberry County lines at Saluda River; thence N. 22[degrees] 30' E. 17710 feet to Camping Creek; thence in a general southeastern direction along Camping Creek to confluence of Saluda River; thence in a northwesterly direction along Saluda River to point of beginning, being more particularly lined and described on a plat of said territory by the Columbia Engineering Company, completed November 1 1952, said plat being filed in the office of the Secretary of State.

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[emphasis added]

43. S.C. Code Ann § 4-3-460 establishes the boundaries of Richland County. It reads:

Richland County is bounded on the north by Fairfield County, from which it is separated by new boundary lines set forth and specifically described in the location and boundary of Fairfield County; on the east by Kershaw County and Sumter County from which it is separated by the Wateree River; on the south by Calhoun County; on the west by Lexington County, from which it is separated by a line beginning on the Congaree River where the counties of Lexington and Richland meet on the southern division thereof, and running thence with the Congaree River to where the confluence of the Broad and Saluda Rivers unite to form the Congaree, and following the thread of Saluda River about two and one-half miles to a concrete boundary marker; thence in a northwesterly direction upon the circumference of a circle having Lexington courthouse as its center, with

a radius of not less than eight miles and a deflection of 1[degrees] 21' for every one thousand feet, to a concrete boundary marker on the eastern boundary line of the town of Irmo; thence along the boundary line of the town of Irmo to the northeast corner of the town; thence west along the northern boundary of the town of Irmo 2,260 feet to a stake located thereon; thence along the circumference of the circle first described 11,360 feet to a stake; then N. 42[degrees] 30' W. 878 feet; thence west 5,000 feet to a stake; thence S. 85[degrees] W. 5,000 feet to a stake; thence S. 80[degrees] W. 5,541 feet to a stake; thence N. 37[degrees] 28' W. 10,618 feet to a stake; thence S. 85[degrees] W. 750 feet to a pine; thence N. 34[degrees] 45' W. 10,491 feet to a stake; thence N. 22[degrees] E. 914 feet to a stake; thence N. 37[degrees] 5' W. 1,313 feet to a stake; **thence N. 13[degrees] 45' E. 2,597 feet to a stake; thence N. 56[degrees] 35' E. 3,920 feet to a point on Rocky Ford on Wateree Creek; thence north, northeast and east along the Wateree Creek** to where it empties into Broad River. To the above-described area of Richland County is to be added all that territory transferred from Lexington County by act approved March 11 1922, to wit: all that certain piece of land containing 8,900 acres, or 14 square miles, situate in the northeastern part of Lexington County on the Broad River, and being bounded and delineated as follows, to wit: beginning at a point on the Broad River, and running S. 41[degrees] W. 82.51 chains to a stake; thence turning and running S. 32.5[degrees] W. 160.65 chains to a stake; thence running along a creek which empties into Wateree Creek 42.24 chains to a stake; thence running to the point where said creek joins Wateree Creek 71.51 chains; thence running along Wateree Creek 94 chains; thence turning and running S. 23[degrees] E. 142.50 chains to a point in Slice Creek known as Rocky Ford; thence turning and running northerly along Slice Creek 164 chains; thence turning and running easterly along Wateree Creek 305.00 chains to the point of entrance of Wateree Creek and Broad River; thence turning and running in a northwesterly direction along Broad River 410 chains, said piece of land being bounded on the west by Newberry County, on the south and southwest by Lexington County, on the south by Richland County, and on the east and north by the Broad River, being more particularly known as the plat of said property, completed on November 25 1921, by W.A. Counts and J.C. Wessinger, surveyors, said plat being filed in the office of the Secretary of State.

[emphasis added]

44. Both statutes include Rocky Ford as a landmark with a bearing and distance to other identified points.

45. Ms. Murphy's residence is, according to testimony, within approximately 1000 feet from Rocky Ford.

46. The location of Rocky Ford is established, monumented and not in doubt. It was

established and recognized before any controversy arose over the location of the Murphy residence.

47. During cross-examination, Murphy acknowledged that she had previously communicated to her expert witness that if the Rocky Ford point used by SFAO is the point in statute that "I believe I would be in Lexington County."

48. Because the location of Rocky Ford is established and the statutes defining the county boundaries contain specific bearings from that point which can be plotted to locate the county line near Murphy's property, the line is neither ill-defined, unmarked or poorly marked.

49. The residence at 154 Old Laurel Lane is located inside of Lexington County. That location is established by clear and convincing evidence.

CONCLUSIONS OF LAW

Kim Murphy is not a resident of Richland County.

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The starting point of the analysis of this issue is S.C. Act No. 326 of 2002, §9. That act only permits a resident of Richland County to run for the particular seat Ms. Murphy seeks on the School Board (one of the seats allocated to Richland County). Act No. 326 clearly states: "[n]otwithstanding another provision of law, in Richland-Lexington School District 5: (1) three trustees must reside in Richland County and four must reside in Lexington County." The Court finds that since Murphy seeks office in Richland County, but in fact resides in Lexington County, under the law of South Carolina, she does not meet the requirements of Act No. 326 of 2002, to serve as a Board trustee and because she does not meet the requirements to serve, she is not qualified to run for the office and her name should be removed from the ballot. Not only does Murphy's residence in Lexington County deprive her of the qualification for the office, but her failure to reside in Lexington County under a mandatory residence requirement specially imposed by the General Assembly directly affects the rights and interests of the public and is a

matter of significant public interest. The public has a right to have only legally qualified candidates on the ballot.

In adopting S.C. Act 326 of 2002, §9, the General Assembly transferred one of seven Board seats from Lexington to Richland counties - in fact this was the only portion of the Act that passed Justice Department "preclearance" under the Voting Rights Act. The purpose of the move was to accommodate the changing balance of population in the two portions of the District to comply with Constitutional one-man-one-vote requirements for local representation, whereby, "[i]f voters residing in oversize districts are denied their constitutional right to participate in the election of state legislators, precisely the same kind of deprivation occurs when the members of a city council, school board, or county governing board are elected from districts of substantially unequal population." *Avery v. Midland County Tex.*, 390 U.S. 474,480-81 (1968). The very purpose of the Act was to assure Richland County the constitutionally required level of representation on the Board. "Area representation is a familiar form of local representative government. . . . The purpose is to give each and every part of the city or town representation. "Such legislative plan is modeled in accordance with the national and state systems. It is designed to render a council a popular branch and keep it more directly in touch with the people." *Gaud v. Walker*, 53 S.E.2d 316, 327 (S.C. 1949) (quoting, McQuillen, *Municipal Corporation*, 2d Ed., Volume 2, §598).

So, to be able to run for the seat she seeks, Ms. Murphy must reside in Richland County. Plaintiffs seek a declaration as to whether she lives in Richland County as she contends or in Lexington County as they allege. The question then presented to the Court is in which county is her residence at 154 Old Laurel Lane located? In South Carolina, the General Assembly alone has the power to set or change a county boundary. S. C. Const Art. VII §§7, 13 and Art VIII, §2.

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Counties also depend on self-generated or self-maintained maps such as tax parcel maps for various county purposes. However,

In the absence of statutory authority, county may survey its boundaries for the temporary guidance of its officers, but a survey so made is not binding on the adjoining county nor on the public generally.

20 C.J.S. Counties §29. Location of a disputed boundary line is a question of fact. *Williams v. Moore*, 733 S.E. 2d 224, 230 (S.C. App. 2012). Neither Richland County nor Lexington County can establish or move a county boundary – the boundaries must be set by the General Assembly. Accordingly, errors in an unauthorized map cannot change a legislated boundary line. The Code of Laws states the county line, so the question becomes: where is that line located in relation to Ms. Murphy's residence? The facts in this case establish that both Lexington and Richland Counties have developed and maintained maps for the internal use and purposes that while they are designed to approximate the county line between them are subject to a number of informal agreements regarding property taxation such that the tax maps are neither reliable nor compelling evidence of the actual location of the County line.

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The State Fiscal Affairs Office and its predecessor the Office of Research and Statistics have the responsibility to identify the actual location of the county line as defined by the General Assembly. The Geodetic Survey is a part of this office. Statutes enacted by the General Assembly give the Geodetic Survey the responsibility and authority to coordinate mapping activities within the State to insure consistent, accurate, and reliable county and state maps for a myriad of purposes. (See, e.g. S. C. Code Ann. § 27-2-85, § 27-2-9 and § 27-2-10). When the question arose, the Geodetic Survey not only undertook to verify the location of the monument in statute (Rocky Ford), its employees did so using multiple techniques which are scientifically recognized to provide the correct result. They followed and traced the relevant portions of the

old surveys to confirm the location of Rocky Ford and converted and verified the statutory bearings to ensure accuracy. They then made a determination to a level of precision necessary to provide professional confidence in their determination. Their location of the county line has been made in a reliable, verifiable and repeatable manner. While it is not the certified plat of the county line which will ultimately be developed pursuant to *S.C. Code Ann. §27-2-105 (2016)* which the defendants argue is the only acceptable way to make this determination, it is a determination that is compelling evidence necessary to resolve this question.

The boundary of Richland County is set by the General Assembly in *S.C. Code Ann. §4-3-460 (2016)*. The boundary of Lexington County is described in *S.C. Code Ann. §4-3-460 (2016)*. Both statutory descriptions reference "a point in Slice Creek known as Rocky Ford" which is shown on "the plat of said property, completed on November 25, 1921 by W. A. Counts and J.C. Wessinger Surveyors, said plat being filed in the office of the Secretary of State", *Id.* Rocky Ford is a common geographic feature used to establish the boundary between the counties in the area of Murphy's residence. The statutes describing Richland and Lexington Counties contain language that the county line runs "S.23° E. 142.5 chains to a point in Slice Creek known as **ROCKY FORD**; thence turning and running northerly along Slice Creek 164 chains" [emphasis added]. The maps presented demonstrate a consistent placement of Rocky Ford on surveys and maps which establish the fact that Murphy's residence is clearly and unambiguously located in Lexington County. The testimony of David Ballard of the South Carolina Geodetic Survey compellingly demonstrates the consistent placement of Rocky Ford and the efforts taken to confirm that placement. His professional actions and work are documented by his testimony and establish the accuracy and credibility of his conclusions. Mr. Ballard visited the site numerous times and used the tools available to him to verify the location of the county line. The

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testimony of Lucius Cobb as to how the "approximate county line" came to be located on the filed subdivision plat as well as his placement of the county line on the plat prior to making changes to match the tax mapping parcels at the request of Lexington County provides further compelling evidence locating Murphy's property in Lexington County. Most importantly, where the Cobb plat passes the county line through Rocky Ford, Murphy's residence is located in Lexington County. The testimony of these two professionals provides clear and convincing evidence that the Murphy residence is located in Lexington County and not Richland County. The fact that Mr. Ballard and the geodetic survey have located and documented the location of Rocky Ford at a place identified by the ancient plats, and that Mr. Cobb's plat corroborates this location when the County Line shown on his plat line runs through Rocky Ford compels the Court to conclude that the residence has been properly located in Lexington County.

Likewise, the testimony of Messrs. Rainwater and Roberts convincingly establishes additional evidence which clearly demonstrates that Murphy lives in Lexington County: her house is located in the Chapin precinct; it is located in Lexington County House and Senate Districts, and it was previously shown in Lexington County. Moreover, they testify that the residence at 154 Old Laurel Lane, Chapin, S.C. is located in Lexington County based upon the U.S. Census Block database. Conversely, only the tax maps in Richland County locate the Murphy residence in Richland County. Neither Mr. Rainwater, Mr. Roberts or Mr. Ballard expressed any doubt as to the location of the Murphy residence. Each was certain that the residence was located within Lexington County. Moreover, Mr. Cobb agreed that based upon his original county line, the residence would be located in Lexington County. Mr. Tyler's criticism of the location is based upon a contention that the county line has not been surveyed properly over the years. He stated that the difference in the Wessinger/Counts plat translates into

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moving the county line by 164 feet. However, since Tyler's report, the state geodetic survey office has undertaken to re-survey the lines. Ballard's testimony addressed this issue.

The testimony of the County officials generally demonstrates that in their administration of their internal affairs the accurate location of the County line is not of paramount import. Rather they seem to be most interested in preserving the status quo until such time as the geodetic survey completes a recertification of the county line.

S.C. Code Ann. §7-7-465 (2016) establishes Richland County voting precincts. *S.C. Code Ann. §7-7-465(B)* provides that:

The precinct lines defining the precincts provided in subsection (A) are shown on the official map prepared by and on file with the Revenue and Fiscal Affairs Office designated as document P-79-15 and as shown on copies of the official map provided to the Board of Voter Registration and Elections of Richland County by the Revenue and Fiscal Affairs Office.

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[emphasis added]. The official map referenced in the statute was placed into evidence and the testimony surrounding that map demonstrates that the location of Murphy's residence is not within the Spring Hill Precinct of Richland County. This official map clearly establishes that the residence at 154 Old Laurel Lane is not located in the Spring Hill Precinct or in any legislative, senate or county council district representing the Spring Hill Precinct.

The overwhelming evidence in the record in this case is that Murphy lives in Lexington County. The official state precinct maps establish that Kim Murphy's residence is located in the Chapin Precinct in Lexington County. Her residence is located hundreds of feet inside of Lexington County on every identified official State record. When he extended the statutory bearings from Rocky Ford pursuant to statute in both directions as he described in his testimony, Mr. Ballard confirmed that Ms. Murphy's home is in Lexington County. The US Census tract maps, the work of the South Carolina Geodetic Survey and the district maps established by the

General Assembly for the South Carolina House and Senate further demonstrate that she is a Lexington County resident.

Murphy wishes to argue against all manner of authorities that she lives in Richland County because it carries her residence on the County tax maps and she pays taxes there. She submitted property and vehicle tax bills to demonstrate that she is a resident of Richland County. She testified that she believes that she is a resident of Richland County. She submitted voting and registration records showing that she has been registered to vote and, in fact, has voted in Richland County during the entire time that she has resided at 154 Old Laurel Lane. She also endeavors to assert that there is some kind of dispute as to the location of the county line solely because Richland County has improperly located her residence inside its borders when her residence is located in Lexington County. One reason her residence is located on the Richland County GIS and she is taxed in Richland County may be because she (or her husband's) filed a plat wherein the County line was based on tax map parcels and obtained a building permit in Richland County. Murphy endeavors to argue that the counties have agreed that she is a resident of Richland County and that their decision should be a binding determination of her residence.

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The clear evidence in the record is that Murphy's residence is located in Lexington County. The agreements between the Counties are not official - there is no evidence that they have been approved by either County Council - but even if they were, the Counties cannot by agreement, laches, or any other way change or alter the County line. Only the General Assembly is authorized to do move, change or alter a county line.

All in all, every survey/map and the testimony (except the Richland GIS map and Cobb's second map) place Ms. Murphy in Lexington County. These include the state geodetic survey maps and census maps (used to create House and Senate districts and precinct lines), and most of

the expert testimony. Even Tyler stated that the statute contains the correct coordinates. He merely took issue with the surveying that had been done and the impact of the 1-degree difference between the language of the statute and the Wessinger/Counts plat. Thus, based on the entirety of the evidence and testimony, I conclude that Ms. Murphy is a resident of Lexington County, and cannot be considered on the Richland County ballot in the upcoming election.

Even if the boundary has been misidentified by the counties, errors in an unauthorized map cannot change a legislated boundary line. Something as important to the public as the qualifications of a candidate cannot be bound by a county's determination of its geographical boundary where that determination is inconsistent with state statutes. Accordingly, the Court finds that neither the county planning nor tax maps are binding on the Court or determinative of the actual, statutory boundary.

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Murphy argues that her status as an "elector" registered by the officials of the Board of Elections and Voter Registration of Richland County is dispositive of her residence. She also argues that the *ad valorem* taxation of the residence and her vehicles by Richland County prove that she is a Richland County resident. Both of these factors are matters of Richland County's administration of its internal duties, and not within the purview of this matter. While they also may reflect Murphy's intentions and perhaps even her domicile, they do not establish her residence in Richland County. Our Courts have construed the term resident when used in a statute for eligibility for elected office strictly as "actual physical residence ... rather than mere domicile." *Ravenel v. Dekle*, 265 S.C. 364, 218 S.E. 2d 521 (1975).

Murphy also argues that Plaintiffs and the counties are estopped to deny that she is a resident of Richland County. Murphy neither pled nor proved the elements of estoppel.

Murphy also pleads that the line has been established by acquiescence. Her claim is

based upon the informal agreement between the counties. Since only the General Assembly can constitutionally alter a county line, the county map is not binding on the General Assembly and generally estoppel or acquiescence is not an available remedy against the state.

ORDER

Based upon the foregoing findings of fact, analysis and conclusions of law, the Court orders that:

(1) Kim Murphy is a resident of Lexington County, not Richland County. Her residence at 154 Old Laurel Lane, Chapin SC 29036 is located in Lexington County.

(2) Kim Murphy is a resident of the Chapin Precinct in Lexington County and not a resident of the Spring Hill Precinct in Lexington County pursuant to the official precinct maps of the State of South Carolina.

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(3) Kim Murphy does not meet the requirements to hold the office of Board trustee representing Richland County under S.C. Act 326 of 2002, §9 because she does not physically reside in Richland County.

(4) Kim Murphy is not a qualified candidate to appear on the 2016 Ballot for the Office of Board Trustee representing Richland County on the School Board of School District Five of Lexington and Richland Counties as she fails to meet the "must reside in Richland County" requirement of S.C. Act No. 326 of 2002, §9.

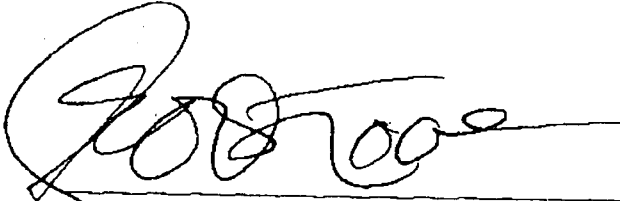
(5) Kim Murphy's name cannot legally appear on the Richland County Ballot for the Richland County Seat for the Board of Trustees of School District Five of Lexington and Richland Counties and her name should be removed from the 2016 ballot.

(6) The Defendant Board of Voter Registration and Elections for Richland County is Ordered to remove Murphy's name from the 2016 ballot for the Office of School Board Trustee

from Richland County on the School Board for School District Five of Lexington and Richland Counties as she fails to meet the statutory qualifications to seek that office.

AND IT IS SO ORDERED.

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Honorable Jean Hoefer Toal
Circuit Court Judge
Fifth Judicial Circuit

Columbia, South Carolina
October 10, 2016.