

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

**RECEIVED**

Appellate Case No.: 2016-001811  
Case No. 2014-CP-10-6265

DEC 19 2016

SC Court of Appeals

James C. Owens, .....Appellant,

-v-

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a  
WQSC Radio, ADC Engineering Inc., Tyler Flesch  
and Red Drum Capital Group, LLC, ..... Defendants,

Of whom ADC Engineering, Inc., is ..... Respondent.

**INITIAL BRIEF OF RESPONDENT**

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## **COUNTER STATEMENT OF ISSUES ON APPEAL**

1. Whether the circuit court correctly granted summary judgment in favor of ADC Engineering, Inc. because the determination of what constitutes a clear mandate of public policy is a question of law to be construed narrowly, the public policy in this state is at-will employment, and James Owens' opposition to the Shem Creek parking garage did not amount to protected political speech under the statute at issue?
  
2. Whether the circuit court correctly granted summary judgment in favor of ADC Engineering, Inc. because S.C. Code Ann. § 16-7-560 does not provide a private cause of action and James Owens' termination did not contravene a clear mandate of public policy?

## **COUNTER STATEMENT OF THE CASE**

James “Jim” Owens (“Owens”) filed a lawsuit against ADC Engineering, Incorporated (“ADC”) and other defendants<sup>1</sup> on October 10, 2014, in the Charleston County Court of Common Pleas. (Compl.). In his complaint, Owens alleged a single cause of action against ADC Engineering for wrongful termination. ADC filed its answer and a counterclaim on November 14, 2014, against Owens for breaching his duty of loyalty to ADC by willfully and recklessly using ADC’s equipment and technology while at work to advance a personal cause against the construction of a parking garage on Shem Creek in Mt. Pleasant, South Carolina, a project on which ADC was working as the structural engineer. (Ans. & CC).

Following discovery, ADC moved for summary judgment on February 16, 2016. (Mot. For SJ). The court heard arguments on ADC’s motion on May 16, 2016, and issued an order granting summary judgment to ADC on June 22, 2016. (Order Granting SJ). Owens filed a motion to alter or amend the judgment on June 30, 2016. (Mot. To Alter/Amend). The court heard Owens’ motion to alter or amend on July 19, 2016, and issued a Form 4 order denying Owens’ motion on August 8, 2016. (Order Denying Mot to Alter/Amend). This appeal followed.

## **COUNTER STATEMENT OF THE FACTS**

ADC is an engineering firm that handles generally every aspect of engineering, predominantly on commercial projects: envelope, structural, landscape architects and civil design. (Owens Depo. at p. 51, l. 23 – p. 52, l. 1; p. 54, l. 20 – p. 55, l. 4). Owens was a construction administrator with ADC for approximately ten years.

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<sup>1</sup> The other defendants included Bryan Crabtree and Kirkman Broadcasting, Inc. d/b/a WQSC Radio. Owens alleged defamation against Crabtree and Kirkman Broadcasting. (Compl.). Owens filed an amended complaint on June 19, 2015, wherein he added defendants Tyler Flesch and Red Drum Capital Group, LLC and asserted causes of action for defamation against both Flesch and Red Drum. (Am. Compl.).

At the time he was hired, Owens was presented an employment agreement that detailed a number of items, including working hours. (Owens Depo. at p. 47, l. 16 – p. 48, l. 4; Employment Agreement, Exhibit B to SJ Memo.). His general work hours with ADC were 8:00 a.m. to 5:30 p.m., Monday through Thursday, and 8:00 a.m. to 12:00 p.m. on Friday. (Owens Depo. at p. 49, ll. 20-23). He was also given an employee handbook. (Owens depo. at p. 56, ll. 16-24; Exhibit B to SJ Memo.). The employee handbook contains a number of policies, including a detailed policy addressing use of the company's technology, which provides in part:

[A]ll employees should remember that electronic media and services provided by the company are company property and their purpose is to facilitate and support company business. . . . All hardware, software, and all files on these systems are the sole property of ADC and may be accessed by ADC at any time. . . . E-mail messages can be traced to the sender even after they have been deleted. The employee should be aware that the firm might be required to produce e-mail messages if litigation develops. . . . Brief or incidental use of office technology for personal, non-business purposes is . . . acceptable as long as it is not excessive or inappropriate, and does not result in expense or loss to the company. . . . Failure to comply with these policies will result in discipline, up to and including termination of employment.

(Exhibit C to SJ Memo, Employee Handbook, Technology Overview Policy, at pp. 11-12.). Some of the technology ADC provided to Owens included a cell phone, the number for which was: 843-991-7049. (Owens Depo. at p. 38, l. 14 – p. 39, l. 2). ADC provided him with use of a laptop computer that was hard-wired into a docking station at the office. (Owens Depo. at p. 14, ll. 8-16).

During the last year of Owens' employment, he was intimately and actively involved in opposition efforts regarding the construction of a parking garage structure being built on Shem Creek in Mt. Pleasant, South Carolina. (Owens Depo. at p. 42, ll. 18-24). ADC was the structural engineer for the Shem Creek parking garage building, having been hired by the architectural firm, Stubbs Muldrow Herin. (Dillon Depo. at p. 6, l. 11 – p. 7, ll.12). In fact, Stubbs Muldrow Herin

had been a client of ADC since 1990, was one of ADC's largest clients, and actually designed ADC's office building. (Dillon Depo. at p. 53, l. 17 – p. 54, l. 5).

Owens had previously been involved in raising concern over projects for clients of ADC, including specifically the Charleston County School District. (Owens Depo. at p. 64, l. 4 – p. 67, l. 22). At that time of his actions, Owens informed ADC of his opposition because he knew the Charleston County School District was a client of ADC. (Owens Depo. at p. 67, ll. 2-22).

Similarly, Owens informed ADC of his opposition activities involving the Shem Creek parking garage in June of 2014. (Owens Depo at p. 80, ll. 4-25). Owens contends that he did not know ADC was the engineer on the project; however, he wanted to let ADC know of his activities “as a courtesy.” (Id.) According to Owens, ADC related his opposition to the Shem Creek parking garage project to the project regarding the Charleston County School District and instructed him to keep ADC out of the media, or “something along those lines.” (Owens Depo. at p. 83, ll. 6-22). In fact, ADC did not object to Owens' actions with regard to the School District matter or the Shem Creek parking garage matter, as long as he was acting on a private basis on his own time. (Dillon Depo. at p. 18, l. 23 – p. 19, l. 10).

As part of his efforts to oppose the Shem Creek parking garage, Owens personally set up a Saving Shem Creek Facebook page in March or April of 2014. (Owens Depo. at p. 16, ll. 3-19). The purpose of setting up the Saving Shem Creek Facebook page was “[t]o make people aware of the ensuing project on Shem Creek.” (Owens Depo. at p. 41, ll. 15-25). He was an administrator of the Facebook page, such that he could post and delete items on the page. (Owens Depo. at p. 25, ll. 16-21; p. 27, ll. 21-24). Owens explained that he “possibly” posted things to the Facebook pages he set up while he was employed at ADC and that he was “sure” he read posts while employed at ADC, either at home or at the office. (Owens Depo. at p. 30, l. 22 – p. 31, l. 1; p. 32,

ll. 13-19). He was not certain whether he ever made any copies at ADC of any documents related to the Saving Shem Creek Project, though he admitted he “could have.” (Owens Depo. at p. 35, l. 23- p. 36, l. 2).

At a minimum, however, Owens confirmed numerous email communications concerning the Shem Creek parking garage project that occurred during the work day, during working hours from equipment owned and provided by ADC. (Owens Depo. at p. 88, l. 10 – p. 90, l. 9; Exhibit E to SJ Memo, May 20, 2014 e-mail exchange; Owens Depo. at p. 93, l. 12 – p. 94, l. 25; Exhibit F to SJ Memo, May 29, 2014 email; Exhibit G to SJ Memo, June 19, 2014 email; Owens Depo. at p. 95, l. 21 – p. 96, l. 6; Exhibit H to SJ Memo, June 30, 2014 email; Owens Depo. at p. 99, l. 10 – p. 101, l. 11; Exhibit I to SJ Memo, July 1, 2014 email; Owens Depo. at p. 101, l. 19 - p. 102, l. 24; Exhibit J to SJ Memo, July 29, 2014 email; Owens Depo. at p. 103, ll. 4-23; Exhibit K to SJ Memo, August 11, 2014 email; Owens Depo. at p. 104, l. 3 – p. 105, l. 4; Exhibit L to SJ Memo, August 29, 2014; Owens Depo. at p. 105, l. 19 – p. 106, l. 13; Exhibit M to SJ Memo, September 10, 2014 email).

Owens also admitted to receiving assistance from another ADC employee with his personal opposition to the Shem Creek parking garage project, while the employee was being paid by ADC. (Exhibit N to SJ Memo, Requests to Admit, number 6; Dillon depo. at p. 50, l. 6 – p. 51, l. 5). Moreover, Owens sent innumerable text messages from the phone issued to him by ADC during working hours when he was being paid by ADC pertaining to his personal endeavor. (Exhibit N to SJ Memo, Requests to Admit, number 8; Exhibit O to SJ Memo, Answers to Interrogatories, number 17). There is evidence, as well, that Owens attended meetings pertaining to the Shem Creek parking garage during working hours. (Dillon depo. at p. 16, l. 16 – p. 21, l. 6). Notably, Owens testified that, if he had known ADC was the engineer on the parking garage project, he

would have backed off on his opposition efforts, as it would have presented a “conflict of interest.” (Owens depo. at p. 85, l. 18- p. 86, l. 4).

On September 16, 2014, ADC met with Stubbs Muldrow Herrin and Tyler Flesch, a principal in the owner involved with the parking garage project, to discuss Mr. Flesch’s concerns over Owens’ opposition activities. (Dillon Depo. at p. 9, l. 18 – p. 10, l. 15). Specifically, Mr. Flesch informed ADC that it would be fired from working on the Shem Creek parking garage project, unless it fired Owens. (Dillon Depo. at p. 10, l. 23- p. 11, l. 3). Mr. Flesch also threatened a lawsuit against ADC and Owens. (Dillon Depo. at p. 21, l. 24 – p. 22, l. 12; p. 24, ll. 6-23).

The partners at ADC decided they would not terminate Owens and informed Stubbs Muldrow Herrin that it was not going to fire Owens. (Dillon Depo. at p. 26, ll. 7-24; p. 47, ll. 12-25). Stubbs Muldrow Herrin then sent a letter to ADC, terminating ADC from the Shem Creek project, which ADC received on or about September 18, 2014. (Dillon Depo. at p. 25, l. 24- p. 26, l. 1; Exhibit P to SJ Memo, September 16, 2014 letter). Moreover, on September 18, 2014, ADC Engineering received an evidence preservation letter from the attorney for Shem Creek Development Group, the developer of the Shem Creek project. (Exhibit Q to SJ Memo, September 18, 2014 Letter to ADC Engineering).

Owens also received a similar letter instructing him to preserve electronic evidence pertaining to the Shem Creek development, which he forwarded to ADC. (Owens Depo. at p. 108, l. 17 – p. 109, l. 11; Exhibit R to SJ Memo, September 18, 2014 email with preservation letter). At least one of the partners at ADC had concerns over whether Owens had been sending emails from company computers during office time. (Truschka Depo. at p. 17, l. 22 – p. 18, l. 6; Exhibit T to SJ Memo, September 18, 2014 email; Dillon Depo. at p. 47, l. 12 – p. 48, l. 10).

Owens requested to meet with ADC and did at the end of the day on Thursday, September 18, 2014, during which meeting he affirmed that he had used his work computer at ADC for matters associated with the Shem Creek parking garage opposition. (Owens Depo. at p. 116, l. 17 – p. 117, l. 8; Dillon depo. at p. 34, ll. 11-25). On or about the same day, ADC had its IT specialist conduct an electronic search to preserve Owens’ emails, in conjunction with the electronic preservation letter it received. (Graham Depo. at p. 4, ll. 1-6; p. 5, l. 1 – p. 6, l. 8; Dillon depo. at p. 48, l. 6 – p. 49, l. 6). ADC also discovered Owens has used his cell phone for text messages related to the Shem Creek parking garage project. (Dillon Depo. at p. 49, ll. 4-6).

The four partners of ADC met on Friday, September 19, 2014, to discuss the matter. (Truschka Depo. at p. 24, ll. 2-15). The decision was made to terminate Owens’ employment as a result of his involvement of ADC, its time, resources and equipment in his personal pursuits that damaged the company. (Dillon Depo. at p. 61, l. 8 – p. 63, l. 19). He was out sick on Monday, September 22, 2014, and did not come into the office. (Owens Depo. at p. 117, l. 15 – p. 119, l. 9; Exhibit V to SJ Memo, September 22, 2014 email). His employment was terminated the following day on September 23, 2014.

### **STANDARD OF REVIEW**

When the circuit court grants summary judgment on a question of law, this Court reviews the ruling de novo. Stoneledge at Lake Keowee Owners' Ass'n, Inc. v. Builders FirstSource-Se. Grp., 413 S.C. 630, 635, 776 S.E.2d 434, 437 (Ct. App. 2015) (citing Town of Summerville v. City of N. Charleston, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008)). The question of what constitutes public policy is a question of law for the court to decide. Barron v. Labor Finders of S.C., 393 S.C. 609, 617, 713 S.E.2d 634, 638 (2011) (“The determination of what constitutes public policy is a question of law for the courts to decide.”). Summary judgment is proper when

the moving party demonstrates that there is no genuine issue as to any material fact, such that the moving party is entitled to judgment as a matter of law. Rule 56, SCRCPP; Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). “Once the moving party carries its initial burden, the opposing party must come forward with specific facts that show there is a genuine issue of fact remaining for trial.” Sides v. Greenville Hosp. Sys., 362 S.C. 250, 255, 607 S.E.2d 362, 364 (Ct. App. 2004).

## **ARGUMENTS**

Summary judgment was appropriate because the question of what constitutes public policy is a question of law for the court that should be construed narrowly, and Mr. Owens’ cannot demonstrate that he engaged in protected political speech under S.C. Code Ann. § 16-17-560 (1976). Section 16-17-560 of the South Carolina Code, on which Owens relies to assert his cause of action for wrongful termination, is inapplicable to Owens’ conduct and Owens has not identified any clear mandate of public policy violated by his termination. Therefore, the Court should affirm the circuit court’s order granting summary judgment to ADC.

### **I. The Circuit Court Correctly Granted Summary Judgment Because Owens’ Opposition to His Employer’s Work Project Did Not Amount to Protected Political Speech Pursuant to Section 16–17–560 of the South Carolina Code**

South Carolina has a strong policy favoring at-will employment. Prescott v. Farmers Tel. Coop., Inc., 335 S.C. 330, 335, 516 S.E.2d 923, 925 (1999). The general rule is that an employer may terminate an at-will employee at any time for any reason or for no reason at all. Barron, 393 S.C. at 614, 713 S.E.2d at 636. In certain limited situations, the discharge of an at-will employee may give rise to a cause of action for wrongful termination when there is a violation of a clear mandate of public policy. Id. To constitute a claim for wrongful termination under this theory,

the employee's termination must "contravene a clear mandate of public policy." Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 223. 337 S.E.2d 213, 215 (S.C. 1985).

This exception is a narrow one, to be very narrowly applied. Id.; see also Taghivand v. Rite Aid Corp., 411 S.C. 240, 244, 768 S.E.2d 385, 387 (2015) (noting the court exercises "restraint when undertaking the amorphous inquiry of what constitutes public policy."). "Courts have invoked the public policy exception in two instances: (1) where an employer requires an employee, as a condition of continued employment, to break the law, and (2) where an employer's termination is itself illegal." Taghivand, 411 S.C. at 243, 768 S.E.2d at 387 (citing Culler v. Blue Ridge Elec. Coop., Inc., 309 S.C. 243, 422 S.E.2d 91 (1992)). While the courts in this state have made clear that this exception is not limited to the two identified situations, the courts have recognized no others. Id.

Section 16-17-560 specifically states: "It is unlawful for a person to assault or intimidate a citizen, discharge a citizen from employment or occupation, or eject a citizen from a rented house, land, or other property because of political opinions or the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State." S.C. Code Ann. § 16-17-560 (emphasis added). The circuit court correctly held that any activity by Owens opposing the Shem Creek parking garage project does not amount to protected political speech under § 16-17-560. See Vanderhoff v. John Deere Consumer Products, Inc., No. C.A. 3:02-0685-22, 2003 WL 23691107, at \*2 (D.S.C. Mar. 13, 2003) (finding that the displaying of a confederate flag decal on an employee's toolbox at work as an expression of his political view of the Confederate flag coming down from the state house is not political opinion that is covered by Section 16-17-560). Similar to the Vanderhoff court's determination, Owens' opposition to the Shem Creek parking garage "is not a political opinion or

the exercise of any political right or privilege as that phrase is intended by this criminal statute because such expression is not protected as a matter of clear public policy either as set forth in section 16–17–560 or otherwise.” Id. at \*2.

Section 16–17–560 expressly protects only “political” opinion, and the statute does not define what is meant by this phrase. However, “because Section 16–17–560 is a criminal statute, it must be construed narrowly.” Id. (citing State v. Prince, 335 S.C. 466, 472, 517 S.E.2d 229, 232 (Ct.App.1999)); see also Powell v. Media Gen. Operations, Inc., No. CIV.A. 7:10-3170-HFF, 2011 WL 4501836, at \*3 (D.S.C. Apr. 26, 2011), report and recommendation adopted, No. CIV.A. 7:10-03170, 2011 WL 4501564 (D.S.C. Sept. 28, 2011) (“The plain language of § 16–17–560 reveals that it does not protect all opinions, rights, and privileges. Instead, the statute expressly provides that it protects only political opinions, rights, and privileges.”).

Owens contends that the Vanderhoff decision is not controlling on this Court and, thus, suggests the case is otherwise inapplicable or unpersuasive. However, the Vanderhoff court engaged in an extensive, detailed analysis of South Carolina law and the statute at issue in addressing the political rights under the statute. Indeed, the court highlighted that the “available case law suggests the [South Carolina] state court would not construe the phrase to extend to all opinion and expression which, if a matter of public concern, may be protected under the First Amendment of the United States Constitution or the Constitution of the State of South Carolina.” Id. Indeed, Owens, a private employee of a private employer, appears to conflate alleged “free speech” rights under the First Amendment regarding state employees and actors. The statute is not as broad as Owens’ argument suggests.

Under the narrow construction of the statute, dictated by South Carolina state law, Owens’ opposition to the construction of a parking garage structure on Shem Creek, for which his employer

was the structural engineer, does not constitute protected “political” speech. The Vanderhoff court further defined what speech was to be covered by the statute at issue:

Further, the available case law suggests the state court would not construe the phrase to extend to all opinion and expression which, if a matter of public concern, may be protected under the First Amendment of the United States Constitution or under Article I, section 2, of the Constitution of the State of South Carolina. **Rather, this court concludes that the political opinion and expression covered by section 16-17-560 extends only to matters directly related to the executive, legislative, and administrative branches of Government, such as political party affiliation, political campaign contributions, and the right to vote.**

Id. (emphasis added) (citing Culler, 309 S.C. at 246, 422 S.E.2d at 92-93 (finding that if plaintiff was discharged “because he refused to contribute to a political action fund [supported by his employer], he would have a cause of action under Ludwick and ... [section] 16-17-560”). In that case, the court found to hold that the plaintiff’s actions constituted protected political speech would allow an infinite number of social issues to fall within the ambit of public debate. Id.

Similarly, Owens’ opposition to the construction of a parking garage on Shem Creek does not constitute “political” speech governed under the statute. Owens argues that his activities were much more extensive than the plaintiff’s in the Vanderhoff case. However, this argument amounts to form over substance. Notwithstanding how much of Owens’ activities took place on company time using company resources, the issue for purposes of the statute is not the amount of activity, but the activity itself. Owens opposed the building of a parking garage on Shem Creek in Mt. Pleasant, South Carolina. The fact that other individuals in the area along with Owens opposed the building of the parking garage or that he and the others were vocal and active in their opposition does not somehow transform the opposition into political speech. Notably, Owens’ actions do not pertain to political party affiliation, political campaign contributions or the right to vote. They simply are not actions that fall under the purview of Section 16-17-560. As in the Vanderhoff case, “[s]uch expression or belief may be a matter of public concern generally protected under the

United States and South Carolina Constitutions. It is not, however, a ‘political’ opinion or the exercise of a political right or privilege within contemplation of section 16–17–560.” See id. at \*3. As the Vanderhoff court astutely observed, “[t]o hold otherwise, the court would extend the application of section 16-17-560 to an infinite number of social issues that fall within the ambit of public debate and, as a consequence, at times become issues in the political arena.”

Indeed, it would be illogical to suggest that an employer, who depends on business to generate revenue to pay its employees, would somehow be prohibited from terminating an employee who actively opposed a specific project on which the employer was working, particularly where, as here, the employee used the employer’s equipment and time as part of his efforts. Moreover, Owens, as an employee, would have access to inside information pertaining to the very project on which ADC was employed to work. Even Owens acknowledged that ADC’s role as the engineer on the parking garage project he opposed presented a “conflict of interest.” (Owens Depo. at p. 85, l. 18- p. 86, l. 4). Owens’ actions in opposing a project on which his employer was working, regardless of whether or when he knew his employer was involved, simply does not amount to any political speech protected under section 16-17-560. Accordingly, the circuit court correctly granted summary judgment to ADC on Owens’ claim for wrongful termination.

**II. The Circuit Court Correctly Granted Summary Judgment Because Section 16–17–560 Does Not Provide a Private Cause of Action and Owens’ Termination Did Not Contravene a Clear Mandate of Public Policy.**

Section 16-17-560 is a criminal statute and does not provide a private cause of action against an employer. Owens’ counsel argued, however, that “the court in Culler v. Blue Ridge said it does.” (July 19, 2016 Trans. p. 12, ll. 2-5). This assertion is misleading and incorrectly states the holding of Culler v. Blue Ridge Electric Co-op, Inc., 309 S.C. 243, 422 S.E.2d 91 (1992).

Culler relied on the decision in Ludwick v. This Minute of Carolina, Inc., 287 S.C. 219, 337 S.E.2d 213 (1985) for its interpretation of the prohibition of retaliatory discharge in violation of a clear mandate of public policy. In Culler, the court stated, “We believe that Ludwick’s prohibition of retaliatory discharge in violation of clear mandate of public policy of this State extends at least to legislatively defined ‘Crimes Against Public Policy.’ Thus if Culler was discharged because he refused to contribute to a political action fund, he would have a cause of action for wrongful discharge under Ludwick and S.C. Code Ann § 16-17-560 (1976).” Culler, 309 S.C. at 246, 422 S.E.2d at 92-93.

Culler did not, however, hold that Section 16-7-560 itself provides a private cause of action; instead the court relied on the holding in Ludwick to extend Ludwick’s prohibition of retaliatory discharge in violation of public policy to “legislatively defined ‘Crimes Against Public Policy.’” Regardless, however, Owens’ termination did not violate the statute or otherwise give rise to a wrongful termination claim. Owens was an at-will employee who was terminated as a result of his use of ADC’s resources during his pursuit of a personal endeavor that harmed the company. His termination does not give rise to a claim for wrongful termination in violation of public policy.

Owens was terminated for using ADC’s equipment to pursue a personal endeavor on company time, while being paid by ADC. ADC is an engineering firm that works predominantly on commercial matters, which necessarily involves development. Owens, as a ten-year employee, knew and understood his employer’s business. Indeed, Owens at least tacitly acknowledged ADC’s development role generally, if not specifically, when he informed the company of his opposition to the Shem Creek parking garage as a courtesy. And, as before, ADC permitted him to pursue personal endeavors on his own time without involving ADC. Owens’ disregard for those

parameters, admittedly using ADC's equipment during company time to the detriment of ADC, resulted in his termination.

Owens admitted that he conducted some of his personal efforts to oppose the Shem Creek parking garage on company time during working hours and on company equipment. (Owens Depo. at p. 88, l. 10 – p. 90, l. 9; Exhibit E to SJ Memo, May 20, 2014 e-mail exchange; Owens Depo. at p. 93, l. 12 – p. 94, l. 25; Exhibit F to SJ Memo, May 29, 2014 email; Exhibit G to SJ Memo, June 19, 2014 email; Owens Depo. at p. 95, l. 21 – p. 96, l. 6; Exhibit H to SJ Memo, June 30, 2014 email; Owens Depo. at p. 99, l. 10 – p. 101, l. 11; Exhibit I to SJ Memo, July 1, 2014 email; Owens Depo. at p. 101, l. 19 - p. 102, l. 24; Exhibit J to SJ Memo, July 29, 2014 email; Owens Depo. at p. 103, ll. 4-23; Exhibit K to SJ Memo, August 11, 2014 email; Owens Depo. at p. 104, l. 3 – p. 105, l. 4; Exhibit L to SJ Memo, August 29, 2014; Owens Depo. at p. 105, l. 19 – p. 106, l. 13; Exhibit M to SJ Memo, September 10, 2014 email; Owens Depo. at p. 116, l. 17 – p. 117, l. 8).

He also admitted to receiving assistance from another ADC employee with his personal opposition to the Shem Creek parking garage project, while the employee was being paid by ADC. (Exhibit N to SJ Memo, Requests to Admit, number 6; Dillon depo. at p. 50, l. 6 – p. 51, l. 5). Notably, Owens testified that his opposition efforts presented a conflict of interest for ADC. Specifically, he testified that, if he had known ADC was the engineer on the parking garage, he would have backed off his opposition efforts, because they would have presented a “conflict of interest.” (Owens Depo. at p. 85, l. 18- p. 86, l. 4).

On September 16, 2014, ADC met with Stubbs Muldrow Herrin and Tyler Flesch, a principal in the owner involved with the parking garage project, to discuss Mr. Flesch's concerns over Owens' opposition activities. (Dillon Depo. at p. 9, l. 18 – p. 10, l. 15). Specifically, Mr.

Flesch informed ADC that it would be fired from working on the Shem Creek parking garage project, unless it fired Owens. (Dillon Depo. at p. 10, l. 23- p. 11, l. 3). Mr. Flesch also threatened a lawsuit against ADC and Owens. (Dillon Depo. at p. 21, l. 24 – p. 22, l. 12; p. 24, ll. 6-23). According to Owens, ADC knew at that time that he had been using its equipment to oppose the Shem Creek parking garage. He seems to suggest that ADC should have terminated him then and, because ADC did not, his termination must have been because of his political activities. Owens argument is wholly illogical.

The partners at ADC informed Stubbs Muldrow Herrin that they did not intend to fire Owens. (Dillon Depo. at p. 26, ll. 7-24; p. 47, ll. 12-25). Stubbs Muldrow Herrin then sent a letter to ADC, terminating ADC from the Shem Creek project, which ADC received on or about September 18, 2014. (Dillon Depo. at p. 25, l. 24- p. 26, l. 1; Exhibit P to SJ Memo, September 16, 2014 letter). Moreover, on September 18, 2014, ADC Engineering received an evidence preservation letter from the attorney for Shem Creek Development Group, the developer of the Shem Creek project. (Exhibit Q to SJ Memo, September 18, 2014 Letter to ADC Engineering).

Owens also received a similar letter instructing him to preserve electronic evidence pertaining to the Shem Creek development, which he forwarded to ADC. (Owens Depo. at p. 108, l. 17 – p. 109, l. 11; Exhibit R to SJ Memo, September 18, 2014 email with preservation letter). At least one of the partners at ADC had concerns over whether Owens had been sending emails from company computers during office time. (Truschka Depo. at p. 17, l. 22 – p. 18, l. 6; Exhibit T to SJ Memo, September 18, 2014 email; Dillon Depo. at p. 47, l. 12 – p. 48, l. 10).

At that time, Owens affirmed to ADC that he had used his work computer at ADC for matters associated with the Shem Creek parking garage opposition. On or about the same day, ADC conducted an electronic search to preserve Owens' emails, in conjunction with the electronic

preservation letter it received. (Graham Depo. at p. 4, ll. 1-6; p. 5, l. 1 – p. 6, l. 8; Dillon depo. at p. 48, l. 6 – p. 49, l. 6). ADC also subsequently discovered Owens has used his cell phone for text messages related to the Shem Creek parking garage project. (Dillon Depo. at p. 49, ll. 4-6). Owens suggests that because ADC only searched his emails, in the face of his having received an electronic preservation letter, his termination was somehow because of his political activities. This argument is, again, wholly illogical.

Importantly, Owens does not deny that he used ADC's time, equipment and other resources in pursuing his opposition efforts to the Shem Creek parking garage project. Nevertheless, he contends that his termination was because of his opposition efforts to the Shem Creek parking garage project, in violation of S.C. Code Ann. § 16-17-560. Owens' termination was undoubtedly related to the Shem Creek parking garage project but that is the direct result of Owens having used company property, time and resources to oppose a project on which the company was working which ultimately resulted in damage to the company, not because of any political opinion or speech.

Interestingly, under Owens' theory, ADC could have terminated him for using company property to work on a personal building project, such as a home addition, or using company resources to create a "Go Fund Me" campaign to raise money for an individual or a charity. Moreover, according to Owens, ADC could have terminated him for opposing the Shem Creek parking garage because he did not like the material used to construct the garage, because it blocked his view of the water or because he did not like the color paint being used, regardless of whether those actions occurred on company time or using company property. However, under Owens' theory, he cannot be terminated for using company property and time to oppose the construction of the parking garage altogether, individually or as a group endeavor. His argument is

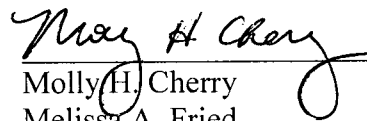
fundamentally flawed and illogical, at best, but, in any event, does not amount to a political opinion or speech under the statute or otherwise constitute a violation of South Carolina's public policy.

Under these circumstances, Owens' termination does not give rise to any claim for wrongful termination in violation of public policy. Therefore, the circuit court correctly granted summary judgment in favor of ADC.

### CONCLUSION

For the reasons stated, this Court should affirm the order of the circuit court granting summary judgment in favor of ADC.

Respectfully submitted,



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December 15, 2016

ATTORNEYS FOR RESPONDENT

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No.: 2016-001811  
Case No. 2014-CP-10-6265

**RECEIVED**  
DEC 19 2016  
SC Court of Appeals

James C. Owens, .....Appellant,

-v-

Bryan Crabtree, Kirkman Broadcasting, Inc. d/b/a  
WQSC Radio, ADC Engineering Inc., Tyler Flesch  
and Red Drum Capital Group, LLC,..... Defendants,

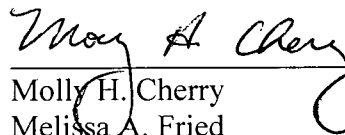
Of whom ADC Engineering, Inc., is.....Respondent.

**PROOF OF SERVICE**

I, Molly Hughes Cherry, Esquire, hereby certify that on the 15<sup>th</sup> day of December, 2016, I served a copy of the INITIAL BRIEF OF RESPONDENT and RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL, submitted by Respondent ADC Engineering, Inc., upon counsel for Appellant via United States Mail, postage prepaid, and addressed as follows:

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*ATTORNEYS FOR PLAINTIFF*  
*JAMES C. OWENS*



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**Molly Hughes Cherry**  
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Certified Specialist in Employment and Labor  
Law  
Admitted in SC

December 15, 2016

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

**Re: *James C. Owens v. Bryan Crabtree, Kirkman Broadcasting, Inc.  
d/b/a WQSC Radio and ADC Engineering, Incorporated  
Appellate Case No. 2016-001811  
Civil Action No. 2014-CP-10-6265***

Dear Ms. Kitchings:

Please find enclosed an original and one copy of the following in the above-referenced matter:

**Charleston**

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

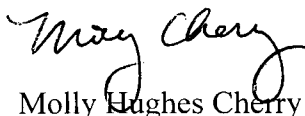
Myrtle Beach

Raleigh

1. Initial Brief of Respondent;
2. Respondent's Designation of Matter to be Included in Record on Appeal; and
3. Proof of Service.

Please file the originals and return file-stamped copies in the enclosed self-addressed postage paid envelope.

Sincerely,



Molly Hughes Cherry

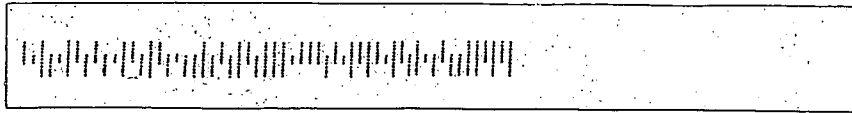
MHC/ksh

cc: John E. Parker, Esquire  
William F. Barnes, III, Esquire

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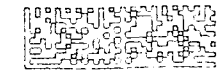


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