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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

DeAndrea Gist Benjamin, Circuit Court Judge

Case No. 2013-CP-40-1897
Appellate Case No. 2016-000211

Kim Murphy.....Appellant,

v.

Richland-Lexington School District No. 5 by and through its Board of Trustees by and through Counsel to the Board of Trustees .....Respondent.

RECORD ON APPEAL

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FORM 4

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

JUDGMI IN A CIVIL CASE

CASE NUMBER: 2013CP4001897

Kim Murphy

PLAINTIFF(S)

Richland Lexington School District No 5
Richland Lexington School District No 5 Board Of Trustees

DEFENDANT(S)

Submitted by: _____

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

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other _____

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below 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
		$
		$
		$

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 _____ **Judge Code** _____ **Date** _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ **day of** _____, **20** _____ and a copy mailed first class or placed in the appropriate attorney's box on this 4 November 2014 to attorneys of record or to parties (when appearing pro se) as follows:

J. Todd Kincannon
Ashley Cole Story
J. Lewis Cromer
Kenneth L. Childs
John Marshall Reagle

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

SCRCP Form 4C (10/2011)

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Kim Murphy, Petitioner, vs. Richland-Lexington School District No. 5 by and through its Board of Trustees by and through Counsel to the Board of Trustees, Respondent.	)	CASE NO. 2013-CP-40-1897 **ORDER AFFIRMING THE APPELLANT'S REMOVAL FROM THE BOARD OF TRUSTEES**

FILED
2014 OCT 30 PM 2:33
JEANNETTE W. ROCKMORE
C.C.P. & G.S.

I. INTRODUCTION

This case has come before the Court pursuant to S.C. Code Ann. § 59-19-60 as an appeal by Kim Murphy ("Appellant") from her removal from the Board of Trustees (the "Board") for School District 5 of Lexington and Richland Counties (the "District"). Specifically, Appellant contends that she is a resident of Richland County and that her removal by the Board was unlawful. The Board maintains that it (1) provided Appellant with due process under S.C. Code Ann. § 59-19-60, and (2) that the Board had legal authority to remove Appellant from office under S.C. Code Ann. § 59-19-60.

The Court has carefully considered the pleadings and materials submitted, the oral arguments presented at the hearing held on September 11, 2014, and the relevant authorities governing this action. For the reasons set forth below, the Court affirms the Board's decision to remove Appellant from office.

II. PROCEDURAL BACKGROUND

The Court finds the following facts regarding the procedural background of this appeal to be undisputed. Appellant resides at 154 Old Laurel Lane, Chapin, South Carolina. By law, three trustees on the Board must reside in Richland County and four trustees must reside in Lexington

County. S.C. Act No. 326 of 2002, § 9. In November 2010, Appellant was elected to the Board of Trustees as a resident of Richland County. In October 2012, the Board Chair, Robert Gantt, received information that Appellant resided in Lexington County, not Richland County. Mr. Gantt sought a determination from the Director of the South Carolina State Budget and Control Board's Division of Research and Statistics, Bobby Bowers, concerning Appellant's residency. Mr. Bowers concluded that Appellant resided in Lexington County.

The Board then designated retired Circuit Court Judge G. Thomas Cooper, Jr. to conduct an evidentiary hearing concerning Appellant's residency and her qualifications to serve as a Board trustee and to issue findings and recommendations to the Board. The evidentiary hearing was scheduled for February 15, 2013. Appellant was provided notice of the evidentiary hearing via email and hand-delivery to her house. Appellant made an appearance on February 15, 2014, to object to the proceeding but did not otherwise attend or participate.

On March 14, 2013, Judge Cooper issued written findings and recommendations to the Board, including Appellant. Judge Cooper concluded that Appellant resided in Lexington County and that the Board had the authority to remove her from office under S.C. Code Ann. § 59-19-60. On March 19, 2013, the Board held a special meeting to receive and review Judge Cooper's findings and recommendations, as well as other evidence concerning Appellant's residency and to make a determination on her qualifications to serve on the Board. At the conclusion of the special meeting, the Board voted to remove Appellant from office pursuant to § 59-19-60.

III. STANDARD OF REVIEW

S.C. Code Ann. § 59-19-560 provides, in part, "the matter in controversy shall be tried by the circuit judge, de novo, with or without reference to a master or special referee." S.C. Code Ann. § 59-19-560; *Lexington Cnty. Sch. Dist. One Bd. of Trustees v. Bost*, 282 S.C. 32, 34, 316 S.E.2d 677, 678 (1984) (stating "the appeal to the circuit court from the decision of the County

Board of Education should be a trial de novo in which the record of proceedings below is admitted as evidence but not accorded deference. Section 59–19–560 requires the circuit judge to try these cases as equity cases.") The standard of review, therefore, is *de novo*. Thus, the Court can find facts in accordance with its view of the preponderance of the evidence and correct errors of law. *Id.*

IV. LEGAL ANALYSIS

A. Appellant is not a resident of Richland County, and therefore, not qualified to hold the office of Board trustee.

In South Carolina, the General Assembly alone has the power to set or change a county boundary. S.C. Const. Art. VII, §§ 7, 12. S.C. Const. Art. VIII, § 2. Thus, while counties depend on self-generated or self-maintained maps or surveys for various county purposes, in the absence of statutory authority, a survey is not binding on the adjoining county or the public generally. 20 C.J.S. Counties § 29. Accordingly, errors in an unauthorized map cannot change a legislated boundary line.

The boundary of Lexington County is established by S.C. Code Ann. § 4-3-370 and that of Richland County by S.C. Code Ann. § 4-3-460. Both of these statutory descriptions of the boundaries of Richland and Lexington Counties 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.* Based on the clear and repeated statutory references to Rocky Ford, it is evident that this common geographic feature establishes the boundary between the counties in the area of Appellant's residence at 154 Old Laurel Lane, Chapin, South Carolina. Therefore, the Court finds that the consistent placement of Rocky Ford on surveys and maps unquestionably places Appellant's residence in Lexington County. The Court finds the testimony of Mr. Bowers, with the Division of Research and Statistics, S.C. Budget and Control Board, and Mr. Miller, former

Chief of the South Carolina Geodetic Survey, clear and convincing evidence that Appellant's residence is located in Lexington County and not in Richland County.

Appellant submitted the following exhibits to demonstrate that she is in fact a resident of Richland County: (1) her vehicle taxes which are paid in Richland County; (2) a subdivision layout corresponding to the residence in question where Lexington County officials approved the proposed layout using approximate county lines, suggesting the residence to be in Richland County; (3) a certified plat. Here, the Court finds the proffered evidence to be unpersuasive. First, both the subdivision layout and the survey conducted by Lucius Cobb clearly label the county boundary line as only "approximate." It is axiomatic that the survey performed by Lucius Cobb should not be considered competent proof of the actual county boundary not only because it states the county boundary line is approximate, but also because Rocky Ford, the geographic feature referenced by statute as being a feature of the boundary, is identified on the plat but the county line is not passing through the referenced boundary feature. Second, in regard to Appellant's vehicle taxes, even if the boundary has been misidentified by the counties, errors in an unauthorized map cannot change a legislated boundary line. Moreover, since the District is a subdivision of the State it cannot be bound by a county's determination of its geographical boundary that is inconsistent with state statutes. Accordingly, the Court finds that neither the county planning nor tax maps are binding on a school district or determinative of actual, statutory boundaries.

S.C. Act No. 326 of 2002, § 9 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 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.

B. The Board Has Legal Authority To Remove Appellant From Office Under S.C. Code Ann. § 59-19-60.

S.C. Code Ann. § 59-19-60 states:

> School district trustees shall be subject to removal from office for cause by the county boards of education, upon notice and after being given an opportunity to be heard by the county board of education. Any such order of removal shall state the grounds thereof, the manner of notice and the hearing accorded the trustee, and any such trustee shall have the right to appeal to the court of common pleas, as provided in § 59-19-560.

The County Boards of Education of Lexington and Richland counties were abolished in 1994 and 1969, respectively. S.C. Act No. 601 of 1994 and S.C. Act No. 140 of 1969. The Lexington County Board of Education's powers and duties, including the power to remove school district trustees, were legislatively devolved on the respective school district boards in Lexington County, including this Board. S.C. Act No. 601 of 1994. S.C. Act. No. 140 of 1969 provides:

> Any appointments, actions or duties required of the Richland County Board of Education or the County Superintendent of Education which are not specifically devolved upon the Richland County Council shall be devolved upon the council upon the effective date of this act. The Council may, in turn, delegate such actions and duties to the appropriate county or school district agency.

Thereafter, the General Assembly passed Act 610 of 1984 which states: "Richland County Council may not remove Richland County school district trustees of school districts situated in whole or in part in Richland County."

Under the Acts above, the Court finds that the Board has the statutory authority to remove a Board member for cause under § 59-19-60. It is logical, practical, and consistent with the rules of statutory construction to conclude that the Board has the authority to remove a trustee for cause. See *Brown v. County of Horry*, 308 S.C. 180, 193, 417 S.E.2d 565, 567 (1992) ("[I]t is the duty of the court to ascertain the intent of the Legislature and give it effect."); *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E.2d 778 (1964) ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish

something."); *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) ("[S]tatutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result.) *Bolton v. Doe*, 266 S.C. 344, 349, 223 S.E.2d 187, 189 (1976) ("A statute is not to be read in an atmosphere of sterility, but in the context of what actually happens when human beings go about the fulfillment of its purposes.").

It is clear under S.C. Act No. 601 of 1994, that at a minimum the four Board members from Lexington County have the authority of a county board of education under § 59-19-60 to remove a Board member. Further, it is reasonable and in harmony with S.C. Act 610 of 1984 and the South Carolina Constitution Articles III, §27 and VI, § 9, to construe S.C. Act 610 of 1984 as also vesting this authority in the Board members elected from Richland County since the District is "in Lexington County" and the Richland County Council does not possess such authority. Construction of these statutes otherwise would result in the absurd result of four Board members having authority to remove a board member under § 59-19-60, while three others do not. *Hodges v. Rainey, 341 S.C. 79, 91, 533, S.E.2d 578, 584* (2000) (stating "[t]he goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd."). Accordingly, this Court finds that the Board has the legal authority to remove Appellant pursuant to S.C. Code Ann. § 59-19-60.

C. The Board's Hearing Procedures Provided Appellant Due Process of Law.

Appellant also takes issue with the hearing procedure. The Court finds that Appellant was given notice of the evidentiary hearing before Judge Cooper and elected not to participate in the evidentiary hearing, except to object to the proceeding. Appellant was provided with a copy of the hearing officer's Findings and Recommendations. Additionally, Appellant was provided with notice of the Board's subsequent special meeting to consider her residency and qualifications to serve on the Board. Appellant attended the meeting and her counsel presented

evidence and argument to the Board for the Board's consideration. After the Board voted to remove Appellant from office pursuant to § 59-19-60, the Board issued an Order of Removal setting forth the grounds for its decision, the manner of notice, and the hearing accorded to Appellant. Therefore, the Board provided Appellant with the due process required to remove a trustee from office under S.C. Code Ann. § 59-19-60.

Moreover, substantial prejudice must be shown to establish a violation of due process. *Tall Tower, Inc. v. S.C. Procurement Review Panel*, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987); *Felder v. Charleston County Sch. Dist.*, 327 S.C. 21, 26, 489 S.E.2d 191, 193 (1997). In regard to hearings by school boards "school board members are clothed with a presumption of honesty and integrity...in the discharge of their decision-making responsibilities." *Felder v. Charleston County Sch. Dist.*, 327 S.C. 21, 26, 489 S.E.2d 191, 193-94 (1997). In *Felder*, the South Carolina Supreme Court held that where the factual findings on the merits were supported by the record and no evidence demonstrating actual bias existed, there was no substantial prejudice. Here too, the Board's decision on the merits is fully supported by the factual record and Appellant presented no evidence of actual bias. Therefore, the Court finds Appellant was provided notice of the question about her residency and legal ability to be a Board member elected from Richland County, as well as an impartial hearing on the matter; due process requires nothing more.

Appellant further contents her removal from the Board was improper because the Board's procedures violated the Administrative Procedure Act's (APA), S.C. Code Ann. §1-23-10, et seq., requirements regarding the promulgation of rules, and the Freedom of Information Act (FOIA), S.C. Code Ann. § 30-4-10, et seq. The Appellant has not clearly asserted the basis for these claims and the Court finds the Board's action removing Appellant from office did not violate the APA or FOIA. The provisions of the APA concerning the promulgation of rules apply to State agencies and not to school boards. Section 1-23-10 (4) specifically provides that

"Regulation... does not include...policy statements or rules of local school boards." Further, S.C. Code Ann. § 59-19-60 itself gives much latitude to school boards regarding the form and manner a removal hearing, requiring only that removal from office be "upon notice and after being given an opportunity to be heard...."

With respect to the FOIA, the transcript of the special meeting of the Board on March 19, 2013 shows the meeting, including the vote to remove Appellant, was a public meeting, conducted in open session, and the agenda for the special meeting was formally approved by a public vote 6 to 1. (March 19, 2013, hearing transcript, p. 6). Accordingly, likewise, Judge Cooper in his Findings and Recommendations (at page 1) states the hearing "was properly noticed to the parties, the public, and the press...." Therefore, the Board's special meeting of March 19, 2013 and removal hearing procedures did not violate the FOIA.

Appellant also argues that the Board failed to exhaust its administrative remedies regarding the determination of her residency in Lexington County. Specifically, Appellant argues the Board should have sought a residency determination from the Richland County Election Commission pursuant to S.C. Code Ann. § 7-5-230. In *Blair v. City of Manning*, 345 S.C. 141, 546 S.E.2d 649 (2001), our Supreme Court rejected a similar argument. In *Blair*, the Supreme Court held S.C. Code Ann. § 7-5-230 inapplicable to an election protest based on a candidate's residency, because the challenge concerned an election protest not voter registration, even though both voter registration and the election protest turned on the issue of residency. Here, the Board has challenged neither Appellant's voter registration, nor protests her election, but rather contends she is no longer qualified to hold the position of Board trustee under S.C. Act No. 326 of 2002, § 9, which requires Appellant to be a resident of Richland County. Under these circumstances, including the specific requirements of Act No. 326 of 2002 §9, and §59-19-60, it is appropriate for the Board to determine whether one of its members continues to meet the legal requirements for holding the office of Board trustee.

Appellant's status as an "elector" registered by the officials of Richland County is therefore irrelevant, as is Richland County's *ad valorem* taxation of the property on which the residence is situated. Both of these factors are matters of Richland County's administration of its internal duties, and not within the purview of this appeal or the Board's determination of "cause" for removal due to failing to meet the continuing "must reside" requirement of S.C. Act No. 326 of 2002.

Finally, Appellant argues the Board should be estopped from removing her from office. Appellant has not established essential elements of an estoppel claim.

> The potential elements of estoppel as related to the party estopped are: (1) conduct that amounts to a false representation or concealment of material facts or is at least calculated to convey the impression that facts are otherwise than, and inconsistent with, those that the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the real facts. [Citation omitted]. As related to the party claiming the estoppel, the essential elements are: (1) lack of knowledge and the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) prejudicial change in position. [Citation omitted]

McDaniel v. South Carolina Department of Public Safety, 325 S.C. 405,411, 481 S.E.2d 155, 158 (Ct.App.1996). Based on the facts before the Court, Appellant has not shown that the Board engaged in any conduct amounting to false representation or concealment regarding her residency in Lexington County or that the Board had knowledge of the fact that she resides in Lexington County prior to January 2013 when it received the correspondence from Mr. Bowers identifying her residence in Lexington, rather than Richland County. Moreover, Appellant has presented no evidence showing any reliance or prejudicial change in her position based on any representation by the Board that she was resident of Richland County. Indeed, even if such a representation were to exist, instead of being prejudiced, Appellant benefited from the apparent

misapprehension that she resided in Richland County by being permitted to be a Board trustee elected from Richland County for more than two years.

The Court, therefore, finds Appellant has not proven the Board is estopped from finding her not to be a resident of Richland County or removing her from the office of Board trustee for failing to meet the requirements of the office under SC Act No. 326 of 2002.

V. ORDER

Based on the foregoing findings of fact, analysis, and conclusions of law, the Court finds by clear and convincing evidence that (1) Appellant is a resident of Lexington County, not Richland County, and (2) Appellant does not meet the requirements and lacks the legal capacity to hold the office of Board trustee under S.C. Act 326 of 2002, § 9. The Court, therefore, affirms the Board's decision to remove Appellant from office under S.C. Code Ann. § 59-19-60.

IT IS SO ORDERED.

The Honorable DeAndrea Gist Benjamin,
Circuit Court Judge Presiding

Columbia, South Carolina
10-30, 2014

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
Kim Murphy, Petitioner, vs. Richland-Lexington School District No. 5 by and through its Board of Trustees by and through Counsel to the Board of Trustees, Respondent.	)	C.A. No. 2013-CP-40-1897 **RESPONDENT'S APPEAL BRIEF**

I. INTRODUCTION

This appeal comes before the Circuit Court pursuant to S.C. Code Ann. § 59-19-60 and concerns the removal of a school district trustee from office. As background, the Petitioner, Kim Murphy, ran for a seat on the Board of Trustees (the "Board") for School District 5 of Lexington and Richland Counties (the "District") as a resident of Richland County. By law, three trustees on the Board must reside in Richland County and four trustees must reside in Lexington County. S.C. Act 326 of 2002, § 9.

In late, 2012, the Board Chair, Robert Gantt, received information that Ms. Murphy resided in Lexington County, not Richland County, which if accurate would violate S.C. Act 326 of 2002, § 9. Consistent with the Board's legal obligations, Mr. Gantt sought a determination from the Director of the South Carolina State Budget and Control Board's Office of Research and Statistics, Bobby Bowers, concerning Ms. Murphy's residency. (Hearing Exh. 1, Let. Gantt to Bowers.) Mr. Bowers conducted a detailed review of Ms. Murphy's residency and concluded that Ms. Murphy resided in Lexington County and was therefore not qualified to hold her position on the Board under S.C. Act 326 of 2002, § 9. (Hearing Exh. 2 Let. Bowers to Gantt.)

Mr. Gantt shared Mr. Bower's determination with the Board. The Board, consistent with

its legal obligations, designated retired circuit court judge G. Thomas Cooper, Jr. to conduct an evidentiary hearing concerning Ms. Murphy's residency and her qualifications to serve as a board member. On February 1, 2013, the hearing officer, Judge Cooper, held a conference to address scheduling and procedures for the evidentiary hearing. Ms. Murphy was provided notice of the conference but did not attend. The evidentiary hearing was scheduled for February 15, 2013. Ms. Murphy was provided notice of the evidentiary hearing via email and hand-delivery to her house. Ms. Murphy and her former attorney, Todd Kincannon, Esq., appeared at the evidentiary hearing on February 15, 2013 to object to the proceeding, but did not otherwise attend or participate in the evidentiary hearing.

At the evidentiary hearing, Mr. Bowers and Sid Miller, the former chief of the South Carolina Geodetic Survey, both testified before the hearing officer and fifteen exhibits were admitted into evidence. On March 14, 2013, after carefully considering the testimony and other evidence, the hearing officer, Judge Cooper, issued written findings and recommendations to the Board, including Ms. Murphy. (Hearing Officer's Findings and Recommendations.) The hearing officer concluded that Ms. Murphy resided in Lexington County and that the Board had the authority to remove Ms. Murphy from office under S.C. Code Ann. § 59-19-60. (Hearing Officer's Findings and Recommendations.)

The Board then scheduled a special meeting for March 19, 2013 to receive evidence concerning Ms. Murphy's residency and to make a determination on her qualifications to serve on the Board. Ms. Murphy and her counsel attended the special meeting and presented evidence and arguments to the Board. After carefully considering all of the evidence, the Board voted to remove Ms. Murphy from office pursuant to §59-19-60. The Board issued an Order of Removal setting forth the grounds for removal, the manner of notice, and the hearing accorded to Ms. Murphy. (Order of Removal.)

Pursuant to § 59-19-560 and Rule 72, SCRCP, Ms. Murphy filed this appeal on March

28, 2013, asserting that she was denied due process and that the Board lacked authority to remove her from office under § 59-19-60. For the following reasons, this Court should affirm the Board's decision to remove Ms. Murphy from office.

II. ARGUMENT

A. The Board Provided Ms. Murphy With Due Process Under S.C. Code Ann. § 59-19-60.

To establish a procedural due process violation, Ms. Murphy must show that (1) she has a constitutional property interest in being a member of the Board, (2) the District deprived her of her property interest, (3) without due process of law (i.e. without notice and an opportunity to be heard). *Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach*, 420 F.3d 322, 328 (4th Cir. 2005). In this case, Ms. Murphy cannot establish the elements of a due process violation.

Initially, Ms. Murphy does not have a constitutional property interest in being a member of the Board. Elected public officials do not have a personal property interest in the offices to which they are elected. *Wright v. City of Florence*, 229 S.C. 419, 428, 93 S.E.2d 215, 220 (1956); *Anders v. County Council for Richland County*, 284 S.C. 142, 144, 325 S.E.2d 538, 539 (1985). Public offices are created for the benefit of the State, and individuals have no contract or property rights in their offices. *Wright v. City of Florence*, 229 S.C. 419, 428, 93 S.E.2d 215, 220 (1956); *Anders v. County Council for Richland County*, 284 S.C. 142, 144, 325 S.E.2d 538, 539 (1985). Unless it is otherwise provided by the Constitution, they are subject to legislative control, and the General Assembly may provide for removal of public officers. *Wright v. City of Florence*, 229 S.C. 419, 428, 93 S.E.2d 215, 220 (1956); *Anders v. County Council for Richland County*, 284 S.C. 142, 144, 325 S.E.2d 538, 539 (1985).

Additionally, the District provided Ms. Murphy with the statutorily required notice and opportunity to be heard. Section 59-19-60 sets forth the process necessary for removal of a school district trustee. Specifically, § 59-19-60 states that "school district trustees shall be subject to removal from office for cause...upon notice and after being given an opportunity to be

heard by the county board of education." S.C. Code Ann. § 59-19-60. Additionally, an "order of removal shall state the grounds thereof, the manner of notice and the hearing accorded the trustee." S.C. Code Ann. § 59-19-60.

In this instance, Ms. Murphy was given notice of the evidentiary hearing before Judge Cooper and elected not to participate in the evidentiary hearing, except to object to the proceeding. Ms. Murphy was provided with a copy of the hearing officer's Findings and Recommendations. Additionally, Ms. Murphy was provided with notice of the Board's subsequent special meeting to consider her residency and qualifications to serve on the Board. Ms. Murphy attended the meeting and her counsel presented evidence to the Board for the Board's consideration. After the Board voted to remove Ms. Murphy from office pursuant to section 59-19-60, the Board issued an Order of Removal setting forth the grounds for its decision, the manner of notice, and the hearing accorded to Ms. Murphy. (Order of Removal.) Therefore, the Board provided Ms. Murphy with the due process required to remove a trustee from office under S.C. Code Ann. § 59-19-60.

Moreover, substantial prejudice must be shown to establish a violation of due process. *Tall Tower, Inc. v. S.C. Procurement Review Panel*, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987); *Felder v. Charleston County Sch. Dist.*, 327 S.C. 21, 26, 489 S.E.2d 191, 193 (1997). In regard to hearings by school boards "school board members are clothed with a presumption of honesty and integrity...in the discharge of their decision-making responsibilities." *Felder v. Charleston County Sch. Dist.*, 327 S.C. 21, 26, 489 S.E.2d 191, 193-94 (1997). In Felder, the South Carolina Supreme Court held that where the factual findings on the merits were supported by the record and no evidence demonstrating actual bias existed, there was no substantial prejudice. Here too, the Board's decision on the merits is fully supported by the factual record and Ms. Murphy presented no evidence of actual bias. Accordingly, Ms. Murphy was provided notice of the question about her residency and legal ability to be a Board member elected from

Richland County, as well as an impartial hearing on the matter; due process requires nothing more.

B. The Board Had Legal Authority To Remove Ms. Murphy From Office Under S.C. Code Ann. § 59-19-60.

Section 59-19-60 provides that school district trustees shall be subject to removal from office for cause by the county boards of education. S.C. Code Ann. § 59-19-60. The County Boards of Education of Lexington and Richland counties were abolished in 1994 and 1969, respectively. S.C. Act 601 of 1994 and S.C. Act 140 of 1969. The Lexington County Board of Education's powers and duties, including the power to remove school district trustees, were legislatively devolved on the respective school district boards in Lexington County, including this Board. S.C. Act. 601 of 1994. The Richland County Board of Education's duties were generally devolved on the Richland County Council in 1969. S.C. Act. 140 of 1969. However, South Carolina's legislature subsequently made clear that the Richland County Council did not have authority to remove school district trustees from office. S.C. Act. 610 of 1984.

Under the Acts above, Judge Cooper found that the Board has statutory authority to remove a Board member for cause under § 59-19-60. (Findings and Recommendations.) The South Carolina Attorney General has also opined that the Board "would now most probably possess the authority to remove a board member pursuant to the procedures specified in § 59-19-60." Op. S.C. Att'y Gen., 2005 WL 1609288 (June 27, 2005). It is logical, practical, and consistent with the rules of statutory construction to conclude that the Board has the authority to remove a trustee for cause under the Acts set forth above. *See Brown v. County of Horry*, 308 S.C. 180, 183, 417 S.E.2d 565, 567 (1992) ("[I]t is the duty of the court to ascertain the intent of the Legislature and give it effect."); *State ex rel. McLeod v. Montgomery,* 244 S.C. 308, 136 S.E.2d 778 (1964) ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something."); *Brown v. County of Horry*, 308 S.C. 180, 183, 417 S.E.2d 565, 567 (1992) (statutes on the same subject should be construed together); *Bolton*

v. Doe, 266 S.C. 344, 349, 223 S.E.2d 187, 189 (1976) ("A statute is not to be read in an atmosphere of sterility, but in the context of what actually happens when human beings go about the fulfillment of its purposes.").

Moreover, it is clear, under S.C. Act 601 of 1994, that at a bare minimum, the four Board members from Lexington County have the authority of a county board of education under § 59-19-60 to remove a Board member. Further, it is reasonable and in harmony with S.C. Act 601 of 1994 and the South Carolina Constitution Art. VI, § 9, to construe S.C. Act 610 of 1984, as also vesting this authority in the Board by denying it to Richland County Council. Construction of these statutes otherwise would result in the absurd result of four Board members having authority to remove a board member under § 59-19-60, while three others do not. *Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) (stating "[t]he goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd."). Accordingly, this Court should affirm the Board's removal of Ms. Murphy pursuant to S.C. Code Ann. § 59-19-60.

C. Even Assuming, *Arguendo*, That The Board Lacked Authority To Remove Ms. Murphy From Office, This Court Now Has Such Authority Under S.C. Code Ann. § 59-63-10.

This Court granted the District's motion to prosecute a claim pursuant to S.C. Code Ann. § 15-63-60. (Order dated July 11, 2013.) Consequently, even assuming *arguendo* that the Board did not have legal authority to remove Ms. Murphy from office pursuant to § 59-19-60, this Court now has such authority under § 15-63-60 and should do for the reasons set for in the Board's Order of Removal and Judge Cooper's Findings and Recommendations.

III. CONCLUSION

For the reasons set forth above, this Court should affirm the Board's decision to remove Ms. Murphy from office under S.C. Code Ann. § 59-19-60.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

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September 9, 2014

Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned of Childs & Halligan, P.A., hereby certifies that she has served the following counsel of record with the foregoing **RESPONDENT'S APPEAL BRIEF** by hand delivering a copy of same to the following on this 9 day of September, 2014:

J. Lewis Cromer, Esq.
Ashley Story, Esq.
J. Lewis Cromer & Associates, L.L.C.
1522 Lady Street
Columbia, SC 29201

Rachel M. Lowder

Rachel M. Lowder

Mr. Chairman, I move that the board adopt the following Resolution:

STATE OF SOUTH CAROLINA	)	**BEFORE THE BOARD OF TRUSTEES**
	)	**OF LEXINGTON-RICHLAND**
COUNTY OF RICHLAND	)	**SCHOOL DISTRICT FIVE**

ORDER OF REMOVAL PURSUANT TO S.C. CODE § 59-19-60

1. On March 19, 2013, the Board of Trustees ("Board") of Lexington-Richland School District Five ("District") held a special meeting concerning the matter of the residency of trustee Kim Murphy. The Board has considered the record of proceedings and evidence of the hearing conducted by Judge Cooper on February 15, 2013. Mrs. Murphy (and/or her counsel) and the Board's legal counsel were given the opportunity to present arguments upon the question of her residency and the existence of cause for removal pursuant to S.C. Code Ann. § 59-19-60, at the March 19, 2013, special meeting.

2. The Board finds that the procedural requirements of "notice and ... an opportunity to be heard" of S.C. Code Ann. § 59-19-60 were complied with. At its meeting on January 14, 2013, and stated upon the minutes thereof, the Board approved an inquiry into the residency of Kim Murphy with reference to Act No. 326 of 2002. The Chairman of the Board issued a letter to Mrs. Murphy concerning the question of her residency dated January 15, 2013, requesting a response by January 21, 2013. Mrs. Murphy replied via legal counsel by letter dated January 18, 2013. Mrs. Murphy circulated an e-mail dated February 28, 2013, concerning the Board's inquiry, and Mrs. Murphy placed an "on the record statement" concerning this matter into the minutes of the Board's January 28, 2013, meeting. By letter of January 29, 2013, Board counsel advised Mrs. Murphy that Judge Cooper had scheduled a conference to prepare for a hearing on the matter on Friday, February 1, 2013, at 10:00 a.m., in the conference rooms of the South Carolina Bar offices, and to request that Mrs. Murphy and/or her counsel be present for the meeting. Judge Cooper issued a Pre-Hearing Order dated February 1, 2013. The Pre-Hearing order was e-mailed to *KWMurphy@lexrich5.org* on the same day. On February 4, 2013, a copy of the Pre-Hearing Order was hand-delivered to Mrs. Murphy's residence. Judge Cooper's order provided that the parties should submit to him any pre-hearing briefs and documents no later than February 13, 2013, and that he would conduct the evidentiary hearing on February 15, 2013, at 10:00 a.m. at the District Five board room at 1020 Dutch Fork Road, Irmo, SC. Reports of the Board's inquiry and Judge Cooper's plan for the hearing were widely circulated in the local press.

3. Judge Cooper convened the hearing on February 15, 2013, and took evidence as reflected in the transcript and exhibits supplied to the Board for its consideration prior to the March 19, 2013, Board meeting. The hearing before Judge Cooper is recorded in the transcript and exhibits received by the Board. Although Mrs. Murphy and her counsel were present at the Board office prior to the hearing, neither appeared at the hearing.

4. Judge Cooper sent a Report and Recommendation to the Chairman, which was received at the District Office on Friday, February 15, 2013. The Chairman scheduled the special meeting of March 19, 2013, and arranged the complete transcript and exhibits, along with Judge Cooper's Report and Recommendation, to be published to the Board and the public on Monday, March 18,

2013. These materials were also hand-delivered to the Board and to Mrs. Murphy's counsel on March 18, 2013.

5. Upon due consideration and deliberations upon the complete record, the supplementary arguments before the Board of Trustees at its March 19, 2013, and the Report and Recommendation prepared by Judge Cooper, *see, Young v. Charleston County Sch. Dist.*, 397 S.C. 303, 725 S.E.2d 107 (2012), the Board of Trustees hereby concurs in, and adopts as its own, Judge Cooper's Report and Recommendations as the Board's own findings of fact and conclusions of law in this matter, incorporating the same into this Order.

6. Accordingly, the Board finds legal cause exists for the removal of Mrs. Murphy from the office of trustee pursuant to S.C. Code Ann. § 59-19-60.

7. Therefore, pursuant to S.C. Code Ann. § 59-19-60, the Board hereby REMOVES Mrs. Murphy from the office of school trustee of School District Five of Richland and Lexington Counties, effectively immediately.

8. The Chairman shall provide copies of this Resolution to Mrs. Murphy and to any public official with responsibilities pertaining hereto.

ADOPTED THIS 19TH DAY OF MARCH, 2013.

Robert Gantt, Board Chairman

Attest: Board Secretary

BOARD OF TRUSTEES OF SCHOOL DISTRICT FIVE OF LEXINGTON AND RICHLAND COUNTIES	))))	**IN RE: KIM MURPHY RESIDENCY**

Findings and Recommendations of
G. Thomas Cooper, Jr.
Hearing Officer Presiding

This matter comes before me as a result of a request by the Lexington Richland County Board of School Trustees, District Five (District Five), to inquire into and conduct a hearing to determine the location of the legal residence of Mrs. Kim Murphy. Mrs. Murphy presently sits as member of the Board of Trustees from Richland County. The disputed issue is whether Mrs. Murphy actually resides in Richland or Lexington County. The enabling statutes have strict residency requirements for sitting on the combined Board of Trustees for each of these contiguous counties. A hearing was conducted by me at 10:00 a.m. on Friday February 15, 2013 at the District Five Board Room, 1020 Dutch Fork Road, Irmo, South Carolina.

Appearing at the hearing, which was properly noticed to the parties, the public and the press, were Robert W. Gannt, Chairman of the Board of Trustees, and the Board's counsel, Mr. Kenneth L. Childs and Mr. John M. Reagle of Childs & Halligan. Neither Mrs. Murphy nor her counsel made an appearance.

The Board has the statutory authority to remove a Board member from the Board. Pursuant to S.C. Act No. 601 of 1994 (Lexington) and Act No. 141 of 1969 (Richland), the Board exercises all of the powers and has all of the duties and obligations of both a Board of Trustees under S.C. Code § 59-19-10, et seq. and of a County Board of Education under S.C. Code § 59-15-10 et seq.

Included among the Board's other powers and obligations is the power to remove a Board

member for cause upon notice and an opportunity to be heard by the Board. S.C. Code Ann. § 59-19-60; 2005 WL 1609288, *3 (S.C.A.G. June 27, 2005) ("the board of trustees of Lexington-Richland District Five would now most probably possess the authority to remove a board member pursuant to the procedures specified in § 59-19-60."); 2008 WL 1960281 (S.C.A.G. Apr. 2, 2008). This code section provides: "School district trustees shall be subject to removal from office for cause by the county board of education . . ." Any such removal order, however, must specify the grounds for removal, the manner of notice, and the manner of hearing accorded the removed member. Further, a Board member removed from office has the right to appeal her removal to the Court of Common Pleas.

In addition to this statutory authority, the South Carolina Constitution, Article III, § 27 provides that "officers shall be removed for incapacity, misconduct, or neglect of duty, in such a manner as may be provided by law, when no mode of trial or removal is provided in this Constitution". No mode of trial or removal is specified in the South Carolina Constitution relative to school board members. Consequently, the General Assembly's authorization of school boards to remove trustees from office is wholly appropriate, lawful, and consistent with the Constitution, as long as "cause' for removal is limited to those grounds specified in the Constitution, i.e., incapacity, misconduct, or neglect of duty. *See, State v. Seigler,* 94 S.E. 2d 231 (S.C. 1956); 2005 WL 1609288 (S.C.A.G. June 27, 2005).

As the Attorney General's Office has repeated several times in opinions, the term "cause" in such statutes has a legal meaning, *i.e.*,

> for reasons which the law and sound public policy recognize as sufficient warrant for removal, that is, legal cause, and not merely cause which the appointing power in the exercise of discretion may deem sufficient. ... The cause must relate to and affect qualifications appropriate to the office ... and must be restricted to something of a substantial nature directly affecting the rights and

interests of the public.

2005 WL 1609288, *3 (S.C.A.G. June 27, 2005) (*quoting* 63C Am.Jur.2d § 183 (1997)), 2008 WL 2614992 (S.C.A.G. June 13, 2008), 2007 WL 655619 (S.C.A.G. Feb. 16, 2007) *and* 2006 WL 2382449 (S.C.A.G. July 19, 2006).

Here, the Board contends Mrs. Murphy's lack of residency in Richland County would constitute incapacity to hold a seat on the Board for which residency in Richland County is mandated by statute, Act 326 of 2002. Consequently, legal cause for removal exists if she is not a resident of Richland County.

Mrs. Murphy's residence is 154 Old Laurel Lane, which is east-southeast of Chapin, SC, and west of Interstate 26. With Geographic Information System (GIS) tools a residence at that location can be located which corresponds to land transaction and assessor records referencing Lot 4 of "Final Subdivision Plat of Laurel Springs" dated April 4, 1997 (Exhibit 13), ("1997 Plat"). On the 1997 Plat there is an "Approx. County Line," which line also appears to have been incorporated into Richland County's own tax mapping computer database. Richland County has levied property taxes on the parcel containing Mrs. Murphy's residence, and Richland County has granted "elector" status to Mrs. Murphy. *See*, S.C. Const. Art. VII, § 9.

However, Lexington County, the United States Geological Service, and the U.S. Census Bureau all have *other* county boundary lines in the area that are meant to denote the boundary between the counties near Mrs. Murphy's residence (Exhibit 10).

In South Carolina, the General Assembly alone has the power to set or change a county boundary. S.C. Const. Art. VII, §§ 7, 12. S.C. Const. Art. VIII, § 2. However, counties also depend on self-generated or self-maintained maps or surveys for various county purposes. But,

> In the absence of statutory authority, a 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 (emphasis added). 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. Errors in an unauthorized map (there does not appear to have been a *survey* done by either county) cannot change a legislated boundary line.

The boundary of Lexington County is established by S.C. Code § 4-3-370 and that of Richland County by S.C. Code § 4-3-460. Both of these sections 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.* This plat, a true copy of which was submitted into evidence (Exhibit 8) is "[a]n ancient survey, [which] if made by competent authority, recorded or accepted as a public document, and produced from property custody is admissible in evidence without further verification to prove the location of a boundary line." 12 Am. Jur. Boundaries § 109. Not only is the survey proof of the boundary line itself, it has been adopted by the General Assembly itself as such. *C.f.*, *Marsha v. Richland County*, 62 S.E. 4, 6 (S.C. 1908). Interestingly, the 1997 Plat (Exhibit 13) itself shows Rocky Ford, but the "Approx. County Line" on the 1997 Plat does not run through Rocky Ford. Obviously, a map or survey that does not show the county line in this vicinity passing through a feature called Rocky Ford, particularly when there *is* a feature called Rocky Ford on the same plat, should not be considered competent proof of the *actual* county line. One or the other is out of place on the 1997 Plat.

Testifying before me were two witnesses, Mr. Bobby M. Bowers, Director of the Division of Research and Statistics of the South Carolina Budget and Control Board, and Sidney

C. Miller, former Chief of South Carolina Geodetic Survey. Mr. Miller also works on a part time basis for Mr. Bowers' agency and is a licensed professional surveyor.

South Carolina statues 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 S.C. Code Ann. §27-2-85, §27-2-9 and §27-2-10).

Both Mr. Bowers and Mr. Miller testified that there is "absolutely" no doubt that Mrs. Murphy's residence at 14 Old Laurel Lane is located in Lexington County. They arrive at these separate conclusions from three different sources. (1) The U.S. Census Block database, (2) official voting precinct maps maintained by the Division of Research and Statistics and (3) the South Carolina Code of laws which recites the statutory boundries for Richland and Lexington Counties. All three sources place Mrs. Murphy's residence in Lexington County. There is no survey matching the statutory description of the boundaries of Richland or Lexington Counties. Of the three sources relied upon by the witnesses, my decision relies most heavily on the statutory description of the boundaries of Lexington and Richland Counties. The fact that the South Carolina code sections 4-3-370 & 4-3-460 refer to a common geographic feature "a point in Slice Creek known as Rocky Ford" is conclusive to me (Exhibit 8 and 9). The fact that Mr. Miller was able to find Rocky Ford on the ground, exactly where it is described to be in the statute, (Exhibit 14) makes my decision even more conclusive.

In my opinion there is clear and convincing evidence that Mrs. Murphy's residence at 15 Old Laurel Lane, Chapin is in Lexington County. There has been no evidence submitted to me to the contrary.

The voter registration *cum* "elector" status of Mrs. Murphy is irrelevant, because the office of Trustee of the Board carries with it the express statutory requirement that, in addition to

being an elector, the Trustee must be *resident* "[n]otwithstanding another provision of law." S.C. Act 326 of 2002, § 9. The Act requires that "three trustees must reside in Richland County and four must reside in Lexington County." The phrase "must reside" is in the *present tense*.

"[A]s to offices established only by legislative acts, the General Assembly may prescribe other and additional qualifications which are reasonable in their requirements." *McLure v. McElroy*, 44 S.E.2d 101, 108 (S.C. 1947). Here the General Assembly created an express and continuing "must reside" requirement, which it was free to do with this statutory office.

Mrs. Murphy's status as an "elector" registered by the officials of Richland County is therefore irrelevant, as is Richland County's *ad valorem* taxation of the property on which the residence is situated. Both of these factors are matters of Richland County's administration of its internal duties, and not within the purview of this hearing or the Board's determination of "cause" for removal due to failing to meet the continuing "must reside" requirement.

The map or whatever other method that Richland County uses to allow elector registration and to impose *ad valorem* tax are both examples of the principle noted above, that "[i]n the absence of statutory authority, a 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. The Attorney General has observed that "the fact that an individual is registered to vote in a particular county strongly indicates *(but is not dispositive of the fact)* that he is a resident of that county." 2008 WL 903972 (S.C.A.G. Mar. 31, 2008) (emphasis added).

Not only does Mrs. Murphy's residence in Lexington County deprive her of the qualification for the office, but the disqualification of a Trustee under a mandatory statutory residency requirement specially imposed by the General Assembly is "something of a substantial

nature directly affecting the rights and interests of the public." 2005 WL 1609288, *3 (S.C.A.G. June 27, 2005). 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.

In addition to the concern that Mrs. Murphy apparently did not qualify to represent Richland County at the time of her election, there is now the *present* and *ongoing* concern that she is not answerable to the Richland County electors once it is established that she is not qualified by residency to be one of their three trustees. "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 the 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).

The Board has fiscal autonomy, *i.e.*, the power to set its own operating millage within the general law's limitations. Besides being a governmental power requiring compliance with one-

man-one-vote rules, the South Carolina Supreme Court has also noted that the "taxing power is one of the highest prerogatives of the General Assembly. Members of this body are chosen by the people to exercise the power in a conscientious and deliberate manner. If this power is abused, the people could, at least, prevent a recurrence of the wrong at the polls." *Crow v. McAlpine*, 285 S.E.2d 355, 358 (1981). Similarly, the exercise of the Board's taxing and other governmental powers and duties, *see, e.g.*, S.C. Code Ann. § 59-19-90 (*inter alia* to provide suitable schoolhouses, employ and discharge teachers, control educational interest of the school district, and transfer and assign pupils), must also be done in a conscientious and deliberate manner, and those who exercise it must be subject to the public's ability to have some supervisory control over their representatives through elections to the office of Trustee.

Should Mrs. Murphy remain a member of the Board of Trustees, numerous potential negative legal problems could arise for District Five. Bonding authorities may not be willing to issue bonds based on Mrs. Murphy's vote. Suspensions or dismissal of district personnel, or students may be questionable based on Mrs. Murphy's vote. Can her presence be counted for existence of a quorum? Could Mrs. Murphy represent the district at a public forum or at statewide meetings? Could she be elected Chairperson of the Board given the irrefutable evidence that she does not meet the "must reside" provision of the statute? These and any other issues should give District Five Board of Trustees grave concerns. In my opinion the only appropriate course of action is to recognize the existence of "cause" under S.C. Code § 59-19-60, thus granting the Board the power to proceed with the removal process as outlined in the statute.

March 14, 2013

Respectfully submitted,

G. Thomas Cooper, Jr.
Hearing Officer

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kim Murphy, Plaintiff, v. Richland Lexington School District No. 5, by and through its Board of Trustees by and through Counsel to the Board of Trustees, Defendants.	IN THE COURT OF COMMON PLEAS CASE NO. 2013-CP-40-1897 **APPELLANT'S APPEAL BRIEF**

RICHLAND COUNTY
FILED
2014 SEP 10 PM 4:55
JEANNETTE W. WALKER
CLERK OF COURT

INTRODUCTION AND PROCEDURAL HISTORY

Kim Murphy ("Appellant") through her undersigned attorney hereby submits her appeal brief in support of her Notice of Appeal, which was filed as a Verified Petition on March 28, 2013. In response, Richland Lexington School District No. 5 ("Respondent") filed its Answer and Counterclaims, asserting multiple causes of action against Appellant on April 24, 2014. Appellant filed her Reply to Respondent's Counterclaims on August 23, 2013, with the consent of Respondent.[1]

The grounds for this Appeal[2] are as follows:

I. Appellant is a resident of Richland County, so she was not removed for cause; and

II. Removal of Appellant by the Respondent was unlawful and in violation of numerous state laws and procedures.

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[1] Since these filings, the parties have exchanged written discovery, which is ongoing and continuous. Respondent has filed a Motion for Summary Judgment, but as the Appeal in question is the only action before the Court at this time, Appellant files her brief only in support of the original Appeal at present.

[2] Appellant craves reference to her Notice of Appeal and Verified Petition and incorporates the same into her brief in support of her Appeal, which includes further grounds for appeal and cites to particular statutes and supporting evidence from the record below.

RELEVANT FACTS

In November 2010, Appellant was elected to the Richland County seat on the Respondent Board.[3] In October 2012, the Chairman of the Board was informed by an unknown source that a fraction of the property upon which Appellant's residence is located allegedly falls within Lexington County. *See* Respondent's Appeal Brief, p. 1.

At that time and continuing into the present, Appellant was and is still considered a resident of Richland County, pays taxes to said county, and is currently still registered to vote in that county. *See* Appellant's Richland County Vehicle Tax Receipt, attached as Exhibit A. Before Appellant ran for and was elected to the Respondent Board, numerous government officials responsible for such matters assigned Appellant to Richland County. Notice of Appeal, "NOA", at ¶ 16. After Appellant's residency was drawn into question, Respondent Board's Chairman waited two months before contacting the South Carolina State Budget and Control Board ("SCB&CB") to request an "official" finding of the location of Appellant's residence. *See* Exhibit 1 to Respondent's Appeal Brief. SCB&CB employees visited Appellant's property and completed a general and rudimentary survey of Plaintiff's property.

On February 15 2013, a hearing was conducted before Judge Cooper, acting as hearing officer. *See* Hearing Officer's Findings and Recommendations. On March 19, 2013, the Respondent Board adopted Judge Cooper's findings and voted to remove Appellant from the

[3] It should be noted that Appellant, prior to be elected to the Respondent Board in 2010, previously ran for a Board seat years prior to her successful election in 2010. No challenges were made against Appellant's running during her initial attempt or during her most recent campaign.

Respondent Board. *See* Order of Removal. Currently, Appellant's constituents still remain unrepresented.[4]

ARGUMENT

For the following reasons, Appellant's Appeal should be GRANTED, and she should be reinstated to Respondent's Board immediately:

I. Appellant is a resident of Richland County and lawfully holds her Board seat; thus, Appellant was not removed for cause.

Because Appellant is a lawful resident and voter of Richland County, she was properly elected to represent the constituents of Richland County on the Respondent Board; thus, her removal based upon the grounds that she is not a Richland County resident was unlawful and improper.

Pursuant to S.C. Code Ann. § 59-19-60, removals from boards, like that of Respondent, may only be made on a for cause basis. In the instant case, Appellant was removed from the Respondent Board because it was determined that she was not a resident of Richland County, which was the constituent base she represented. *See* Order of Removal. Up and until the Respondent Board received information that Appellant's home may be perhaps located in Lexington County instead of Richland County, the appropriate governmental agencies determined that Appellant resides in Richland County for the purposes of voting, paying taxes, and running for the Respondent Board to represent Richland County constituents.

For example and in support of Appellant's residency in Richland County, Appellant offers the following: as recently as the election primary of 2014, Appellant voted in Richland County. Furthermore, Appellant continues to pay her vehicle taxes in Richland County. *See*

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[4] It is undisputed that no official was elected or appointed to replace Appellant's position on the Board.

Exhibit B. Moreover, when Appellant first secured approval for the subdivision layout corresponding to the property in question, Lexington County officials approved the proposed layout using approximate county lines, revealing Appellant's property to be affixed in Richland County. *See* Certification Letter, Exhibit B. More conclusively, Appellant's property has been shown to be located in Richland County by virtue of a certified plat. *See* Certified Plat, Exhibit C. Lastly, Appellant relied upon Richland County's determination that she was in fact a resident of that county when she applied for and successfully campaigned to run in the Respondent Board's election to represent those constituents.[5]

Respondent argues that "a detailed review" of Appellant's residence was conducted by the SCB&CB, concluding that Appellant's property falls within Lexington County lines. *See* Respondent's Appeal Brief at p. 1. Thereafter, an evidentiary hearing was conducted, and exhibits were introduced that purported to demonstrate that Appellant's residence is not located in Richland County. *Id.* at p. 2. Following this evidentiary hearing, the Respondent Board held a special meeting, received additional evidence, and came to the same conclusion that Appellant would be removed from the Board for cause because her residence was improperly located in Lexington County. *Id.*

However, evidence reveals that employees from the SCB&CB admit that as late as February of 2013, around the same time that evidence was being put forth regarding this very issue, a commission had not been formed for the purpose of hearing the disputed county line issues per Title 4 Chapter 5 of S.C. Code Ann. *See* E-mail Exchange Between SCB&CB and

[5] *See* the General Assembly's enactment of Act 287 of 1987, charging the Richland County Election Commission and Board of Voter Registration with the task of determining the qualifications of individuals seeking election for Richland County seats on Respondent's Board. The same entity qualified Appellant to hold the seat and run for the election on two separate occasions. As such, Respondent does not have the cause required to remove Appellant based on these grounds.

Lexington County Officials, Exhibit D. Furthermore, the SCB&CB concedes in that correspondence exchange that its suggestions regarding the boundary lines are not mandatory upon counties like that of Lexington in Richland.[6] *Id.* Moreover, evidence from the record below demonstrates that witnesses testified that no surveys of Appellant's property had been conducted. *See* February 15, 2013 Hearing Transcript at p. 20, line 16.

As an aside, even if Appellant is found to be a resident of Lexington County[7], which she has not been to date by the appropriate processes or authorities, general principals of equity would have Appellant reinstated because Appellant would appropriately serve the Board as a citizen of Lexington County since the Respondent Board is comprised of residents of both Lexington and Richland Counties. Respondent cannot claim to now argue that Appellant, as an alleged resident of Lexington County, does not properly represent the constituents who elected her because Respondent has failed to hold any sort of election or have a Richland County representative appointed to Appellant's former seat.

In light of the fact that Appellant is considered a resident of Richland County and has yet to be properly deemed a resident of Lexington County, Respondent's removal of Appellant on the grounds of her residency was unlawful and should not be upheld by this Court because it does not constitute the requisite cause required by statute.

---

[6] Rather, it is quite telling that the same exchange offers an example of a boundary dispute between two other South Carolina counties. In that case, the SCB&CB employee states that the counties did not accept the findings of the SCB&CB relative to the disputes; as such, the same applies in this case, and the recommendations of the SCB&CB are not dispositive of Appellant's resident location. Moreover, Richland County officials already found that Appellant resided in Richland County for the purposes of voting, paying taxes, and running for a Richland County seat on the Respondent Board.

[7] Respondent has failed to demonstrate that preclearance under Section 5 of the Voting Rights Act was sought and given prior to the Board's decision to remove Appellant. Per that requirement, preclearance must be obtained for any changes in the county designation of a residence or similar changes of precinct or electoral qualifications regarding residence location.

II. Respondent violated numerous statutes and procedures to effectuate Appellant's removal from the Board.

In making the decision to remove Appellant and finally ordering her removal from its Board, Respondent violated multiple local and state statutes and procedures.

First and foremost, Appellant argues that the Respondent Board lacked lawful authority to remove Appellant. Respondent removed Appellant from her seat by virtue of S.C. Code Ann. § 59-19-60. That statute invests the removal authority of trustee members to *county boards of education* – not boards of trustees. (emphasis added). S.C. Code Ann. § 59-19-10 states that "school districts shall be under management of boards of trustees . . . subject to the supervision and orders of the county board of education." The clear and plain reading of this code section reveals that a board of trustees is not substituted for a county board of education because the two are separate and apart from one another. S.C. Code Ann. § 59-19-90 goes on to list a variety of tasks and responsibilities entrusted to a board of trustees like the Respondent Board[8]; this list does not include removal of trustees.

Respondent argues that an opinion from the Attorney General's Office from June 27, 2005, tends to show that Respondent now possesses the authority to remove a board member since the Boards of Education of Lexington and Richland Counties were abolished following their formation of Respondent School District. *See* Respondent's Appeal Brief, p. 5. There is still a lingering question as to whether or not the Respondent Board possesses the power to remove its own trustees from elected office. Even still, Act 140 of 1969 and Act 601 of 1994

[8] Moreover, "vacancies occurring in the membership of any board of trustees for any cause shall be filled for the unexpired term by the county board of education in the same manner as provided for full-term appointments." Respondent Board has failed to fill Appellant's vacancy, which tends to indicate that Respondent Board (1) does not have the power to do so or (2) is estopped from continuing Appellant's removal on the grounds that she is an unlawful resident to hold her position.

established separate rules for the Lexington and Richland seat trustees on the Respondent Board. Under those acts and under *Vander Linden v. Hodges*, 193 F.3d 268 (4th Cir. 1999), members of the Respondent Board holding Lexington County seats had no right to vote on the matter concerning Appellant's removal because this deals singularly with a Richland County seat.

Secondly, Appellant takes issue with the hearing officer procedure. Namely, the procedures established by the Board were not properly promulgated under the South Carolina Administrative Procedures Act or the rules of the tribunal itself; the procedures that were established were in direct violation of the South Carolina Freedom of Information Act; a member of the Respondent Board was not appointed as the hearing officer; preclearance under Section 5 of the Voting Rights Act was not obtained; the procedures themselves were not formally adopted or acted on by the Respondent Board prior to their use; and the procedure for the selection of the hearing officer was unlawful because the hearing officer was selected by counsel for the Respondent.

Respondent further failed to exhaust its administrative remedies to wit: (1) per S.C. Code Ann. § 7-5-230, Respondent did not follow the administrative remedy to challenge Appellant's status as an elector of Richland County[9]; (2) per election protest statutes, Respondent failed to exhaust the administrative remedy for challenging Appellant's status as an individual qualified to hold the seat to which she was elected on Respondent Board. Both administrative remedies are heard by the Richland County Election Commission and the Board of Voter Registration. Respondent failed to exhaust such remedies.

As a final matter, Respondent should be estopped from removing Appellant from its Board because the removal is not timely, because Respondent failed to raise the issue when

[9] Appellant remains an elector of Richland County.

Appellant ran for election on more than one occasion, and since Respondent failed to fill Appellant's vacancy.

As a result of Respondent's statutory and procedural violations in removing Appellant from its Board, Appellant's appeal should be granted, and Respondent should be ordered to reinstate Appellant immediately to serve out the remainder of her lawful term.

CONCLUSION

For the foregoing reasons and for the reasons submitted by virtue of Appellant's Verified Complaint, Appellant's Appeal should be GRANTED; Appellant should be restored to the Respondent Board immediately to continue to carry out the remainder of her term in accordance with the law and to represent her constituents her duly elected her to the Respondent Board.

J. LEWIS CROMER & ASSOCIATES, L.L.C.

BY: _____

J. Lewis Cromer (#362)
Ashley Story (#11505)
1522 Lady Street
Post Office Box, 11675
Columbia, South Carolina 29211
Phone 803-700-9530
Fax 803-799-9533

Attorneys for Plaintiff

September 10, 2014

Certificate of Service

I hereby certify that on the date above, I served on Counsel of record a true and correct copy of this document by e-mail.

_____
Ashley C. Story

Exhibit A: Vehicle Tax Statement, 2014

RICHLAND COUNTY
PO BOX 11947
COLUMBIA, SC 29211

VEHICLE TAX

David A. Adams
County Treasurer
(803) 576-2250
treasurer@richlandonline.com

Batch Date: 9/03/2014 Time: 12:42:49
PostMark: 9/02/2014

YEAR 2005 CHRY Body VN
Tag BHC697
Vin 2C8GP54LX5R119777

Millage 412.30 # Months 12 Ins Ver Y

Tot-Asm	High-Asm	Net-Asm
300	150	150

Where LB Clerk SCW
Batch 67232 Tran No 933213
Other: 78.66

Tax Bill No: V-2014-09-888760

Dist-No
6UD

Current Payment	78.66
County Tax	61.84
County Sales Cr	3.18-
Reg Fee	.00
Road Fee	20.00
DMV Proc Fee	.00
City Tax	.00
City Sales-Cr	.00
Paid to Date 9/02/2014	78.66

PAID THRU LOCK BOX
This is a paid receipt

If you have not received your decal within 7 days take this receipt to any DMV branch

MURPHY KIM ALISON
154 OLD LAUREL LANE
CHAPIN SC 29036-7666

PLACE STAMP HERE

RICHLAND COUNTY
PO BOX 11947
COLUMBIA SC 29211-1947

Exhibit B: Certification Letter

COUNTY OF LEXINGTON, SOUTH CAROLINA

Department of Planning and Development
County Administration Building (803) 359-8121
212 South Lake Drive Lexington, South Carolina 29072
Lexington County Planning Commission

April 18, 1997

Messrs. D. Jay Murphy and
T. Moffatt Burriss, Jr.
2613 Pinelake Drive
West Columbia, South Carolina 29169

RE: Simultaneous Preliminary and Final Plat Approval - Laurel Springs (TMS#00800-01-003 = Lexington County) & (00600-01-001 = Richland County)

Dear Messrs. Murphy and Burriss:

Laurel Springs Private Road (7 residential lots = Lexington County = lots 1,2,3,5 and Richland County = portion of lots 4,6,& 7) is hereby given simultaneous Preliminary Plat and Final Plat approval by the Lexington County Planning Commission. Lots within this project may be conveyed after recording of the Final Plat with the Register of Mesne Conveyance for Lexington County. Also, Building Permits for lots in Lexington County can then be issued to third parties, upon presentation of the appropriate septic system permits from the Lexington County Health Department (LCHD). No final inspection or occupancy of buildings will be allowed until we have received the corresponding LCHD final inspection approvals for the septic systems.

Buildings located in Lexington County such that any portion of the foundation encroaches upon the designated 100-year floodplain of Wateree Creek must be elevated. The lowest floor(s) must be at least 2.0 feet above the 100-year floodplain elevation. In addition, all mechanical and utility equipment, air conditioner units, hot water heaters, washers, dryers and other similar equipment and their components must be elevated 1.0 foot above the 100-year floodplain elevation. The as-built elevations of the lowest floor(s) must be documented by a South Carolina registered land surveyor for approval by our office, as soon as the lowest floor(s) is constructed. No rough-in inspections may be scheduled without the corresponding documentation. Also, buildings within the 100-year floodplain may be subject to additional flood insurance requirements imposed by a lending institution.

The building setbacks for the proposed single residence dwelling units located in Lexington County, as required by the current Lexington County Zoning Ordinance, are as follows: 20 feet minimum

from the road rights-of-way; and 10 feet minimum from the adjoining lot lines (or as little as 5 feet from the other lot lines if all windows, doors, and other openings in the building facades are at least 10 feet away). If you have any questions regarding Lexington County setbacks, please call County Zoning Administrator Ruth Ann Blind at 359-8121.

Upon recording of the Final Plat with the Register of Mesne Conveyance, maintenance responsibility for the project road and storm drainage system will transfer from you, as the developer, to the Laurel Springs Homeowners Association. The project road and storm drainage system is considered to be all of Old Laurel Lane out to its intersection with Holly Oak Lane.

We will hold in our file your two copies of the Final Plat, as well as the approved and executed original of the Road Maintenance Agreement for Laurel Springs Subdivision. I will contact you to make arrangements to receive and subsequently record these documents.

You will need to contact the Richland County Planning Department at 256-0862 to obtain information requiring building permit requirements for any structures located in Richland County.

Sincerely,

Bert Macaulay

Bert Macaulay
Subdivision Administrator

Approved By:

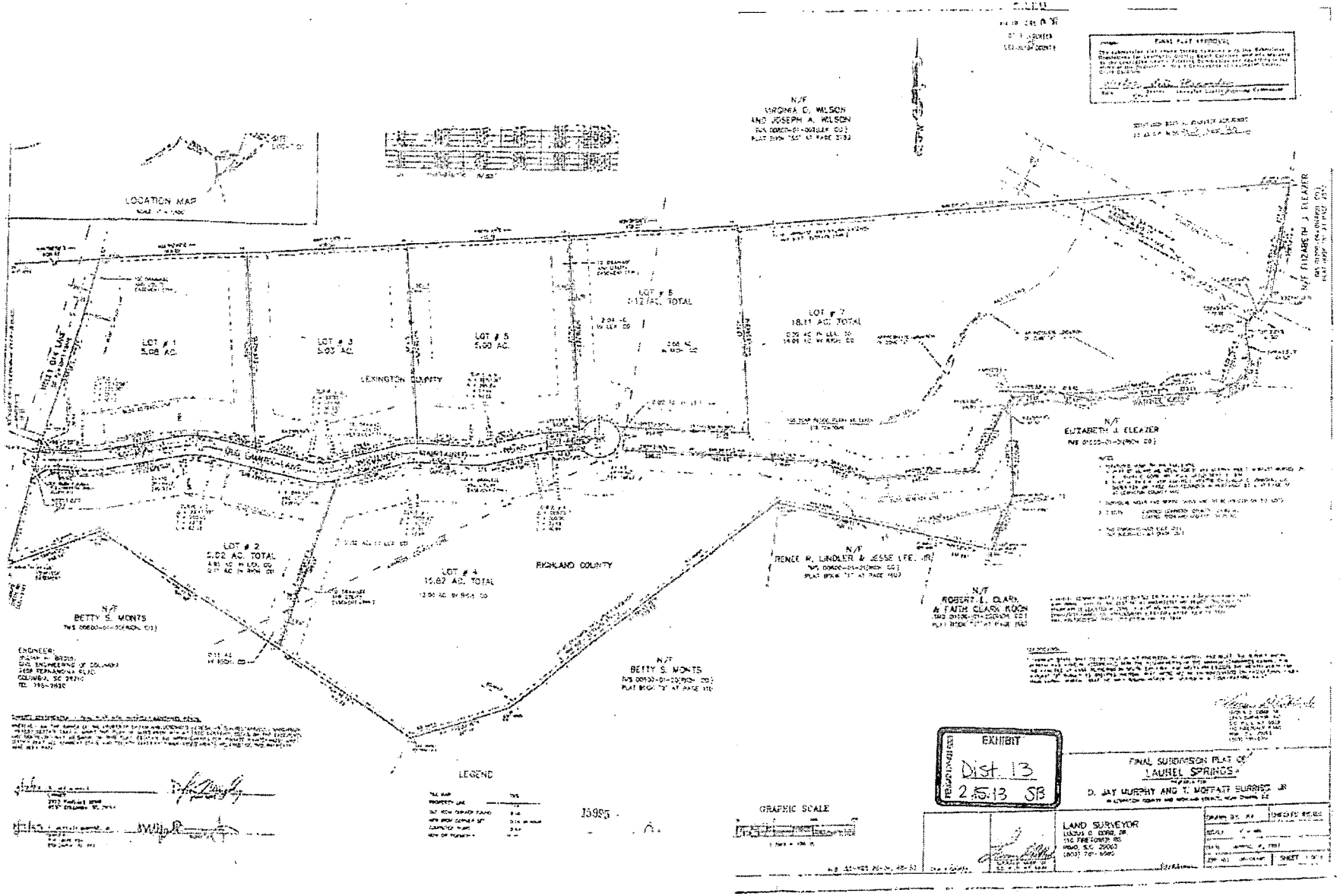
Bert Macaulay

for Charles M. Compton, Secretary
Planning Commission

bnm

cc: William H. Brown (PE)
Lucius D. Cobb, Sr. (SCPLS)
Gale Stanley, Richland County Planning Department
Lexington County Health Department (Wells & Septic Tanks)
LCJMW&SC
Lexington County Public Works
Lexington County Assessment & Equalization
Private Road File
Chronological File
Development Assistant

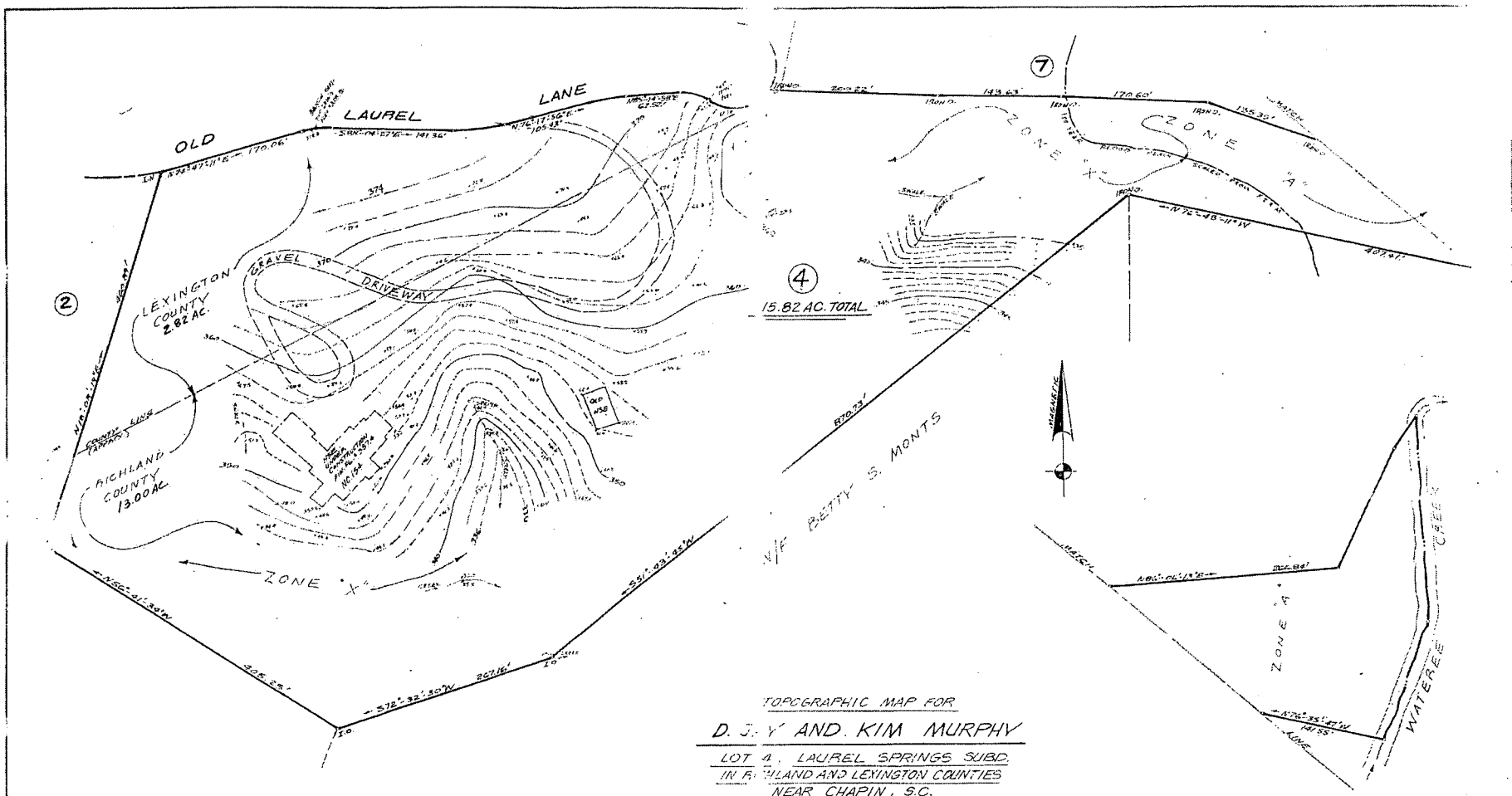
B:\DOCS\SUBDIV\PAL\FM\LAURELSP.PAL



15985

000043

Exhibit C: Certified Plat



TOPOGRAPHIC MAP FOR

D. J. V. AND KIM MURPHY

LOT 4, LAUREL SPRINGS SUBD.
IN RICHLAND AND LEXINGTON COUNTIES
NEAR CHAPIN, S.C.

NOTES:

1. CONTOURS BASED ON U.S.G.S. CONTOUR ELEV., MEAN SEA LEVEL
2. 2' CONTOUR INTERVALS.
3. REV. 6/21/1997 TO SHOW ADDITIONAL TOPO PER LETTER FROM DHEC DATED MAY 16, 1997, APPLICATION NO. 32-97-1382.
4. REV. 2/17/98 TO SHOW 100 YEAR FLOOD PLAIN
5. REV. 5/1/98 TO SHOW FOUNDATION.
6. REV. 2/1/98 TO SHOW ACREAGE

REV. MAY 19, 1998 (REVISIONS PER DHEC)
REV. FEB. 17, 1998
REV. AUG. 21, 1997
DATE: JUNE 4, 1997

SCALE: 1" = 50'

GRAPHIC SCALE

REF. D96-05-GO (M.B. 33-26-38, 40-123) N.B. 42-PGS. 38-39

97-88-GI

Exhibit D: E-mail Exchange

Compton, Charles

From: FORD, RALPH
Sent: Thursday, July 03, 2014 3:56 PM
To: Compton, Charles
Subject: FW: County lines, Irmo and Chapin areas

From: Maguire, Jack
Sent: Wednesday, February 20, 2013 2:14 PM
To: Roberts, Will; Crepes, Dean
Cc: FORD, RALPH
Subject: RE: County lines, Irmo and Chapin areas

Thanks Will and Dean,

Ralph has received a call from Alan-Jon asking whom to address. Ralph did say, call me. We are eager to get the file. We have citizens asking who are very concerned. We want to hear and see much more on this. of course when we get the file we will start to work it into our county boundary file.

Please ask Alan-Jon to keep us in the loop.

Jack

From: Roberts, Will
Sent: Wednesday, February 20, 2013 11:46 AM
To: Crepes, Dean
Cc: Maguire, Jack
Subject: RE: County lines, Irmo and Chapin areas

Dean,

Our Geodetic staff has been in contact with Ralph Ford in Lexington County. He will serve as the representative for Lexington on the boundary issue. The plan is to have our staff research and reconstruct the boundary and get input from both Lexington and Richland counties. Once the survey has been done, it is up to the counties to make the changes. This is where things get interesting. Thanks to Home Rule and the way the laws are written, we do not have the authority to make the counties accept what we find or make changes. Down in Dorchester and Berkeley counties we had to settle a boundary issue and neither county acted on what we gave them. It was just a waste of time on our end. I plan on getting with Sid to discuss having legislation introduced to establish a county boundary commission that will look into these issues, but I don't know if it will go anywhere. The project is going to take a lot of time to do and I think we may have a hard time getting the issue finished by November because both counties are going to have to agree and there will be many parcels that will need to be split and tax money swapping between the counties.

Will

From: Crepes, Dean
Sent: Wednesday, February 20, 2013 11:35 AM
To: Roberts, Will
Cc: Maguire, Jack
Subject: County lines, Irmo and Chapin areas

From what I gather form the hearing Friday concerning the school 5 trustee, Richland and Lexington needs to get the correct county lines, as to settle the boundary concern, and also the voters, but more for correct county of residence.....

Our GIS is ready to update any boundaries, can you send the correct boundaries to both counties as to get all our databases updated.....as this November there are municipal elections in Irmo and Chapin.....

Dean Crepes
Lexington County
Registration and Elections
605 West Main St Ste 105
Lexington, SC 29072
Phone 785-8361
Fax 785-8390

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BOARD OF TRUSTEES OF
LEXINGTON DISTRICT FIVE OF
LEXINGTON AND RICHLAND COUNTIES

IN RE:

KIM MURPHY RESIDENCY

H E A R I N G

BEFORE THE HONORABLE G. THOMAS COOPER,

HEARING OFFICER

DATE: Friday, February 15, 2013

TIME: 10:13 a.m.

LOCATION: School District Five of Lexington and Richland Counties Board Room
1020 Dutch Fork Road
Irmo, South Carolina

REPORTED BY: SHERI L. BYERS
Registered Professional Reporter

- -

COMPUSCRIPTS, INC.
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APPEARANCES:

ATTORNEYS FOR THE LEXINGTON RICHLAND SCHOOL DISTRICT FIVE:

CHILDS & HALLIGAN
BY: KENNETH L. CHILDS, ESQUIRE
JOHN M. REAGLE, ESQUIRE
KEITH R. POWELL, ESQUIRE
1301 Gervais Street, Suite 900
Columbia, South Carolina 29201
kchilds@childs-halligan.com
jreagle@childs-halligan.com
kpowell@childs-halligan.com

(EXHIBIT 1, Letter Dated December 20, 2012, was marked for identification.)

(EXHIBIT 2, Letter Dated January 11, 2013, was marked for identification.)

(EXHIBIT 3, Richland and Lexington County Census Blocks, was marked for identification.)

(EXHIBIT 4, South Carolina House Districts, was marked for identification.)

(EXHIBIT 5, South Carolina Senate Districts, was marked for identification.)

(EXHIBIT 6, Richland and Lexington County Voting Precincts, was marked for identification.)

(EXHIBIT 7, Code of Laws of South Carolina, Section 4-3-460, was marked for identification.)

(EXHIBIT 8, Survey Dated December 5, 1921, was marked for identification.)

(EXHIBIT 9, "On the Orthophotography" with Map, was marked for identification.)

(EXHIBIT 10, Photographic Map, was marked for identification.)

(EXHIBIT 11, Act 326, was marked for identification.)

(EXHIBIT 12, Kim Murphy On-the-Record Statement, was marked for identification.)

(EXHIBIT 13, Plat of Laurel Springs, was

marked for identification.)

THE HEARING OFFICER: Good morning, ladies and gentlemen. My name is Tom Cooper. I am a retired state court circuit judge previously of the Fifth Judicial Circuit, which includes Richland and Kershaw counties. I live in Camden in Kershaw County. Most of my work was in Columbia or Richland County -- or in Richland County.

Now, as of January 1st of this year, I retired. The state has a mandatory age limit on judges, which I may not agree with, but nevertheless, I was retired. I am now serving part-time for the judicial system in a capacity called a retired active, which means basically that I hold court two weeks a month and the other two weeks a month, I'm free to sleep late or do whatever else I might choose to do.

Several weeks ago, the District Five school board, through their attorneys, contacted me and asked if I would serve as a hearing officer in reference to the matter of Ms. Murphy's residence. And the questions had been raised about her residence and whether or not she is or was eligible to run for the school board as a candidate from Richland County, there being some indication that her residence may be in Lexington County.

The school board asked that I would conduct a hearing on this issue and make recommendations based on the law and the evidence as presented at this hearing, whether or not Ms. Murphy does, in fact, live in Lexington or Richland County and make recommendations to the board as to what remedies they have or would have.

The statute that authorizes this procedure says that whatever the recommendation may be, that Ms. Murphy would also have the opportunity to appear before the board, the board would have to have a separate hearing to determine this issue one way or the other.

So the purpose of this hearing this morning is to address the residency issue. After that, I will take what is provided by either side in terms of legal argument and take the testimony that's being -- will be recorded this morning and make a recommendation to the board.

I have no authority to do anything other than conduct this hearing as authorized by the board. I have no authority to do anything with regard to Ms. Murphy other than to take this testimony for the record and that will be the purpose of this hearing.

The press has been notified. The public has

been notified. Ms. Murphy has been notified of this hearing. And that's all I need to say about that.

All right. Mr. Childs, if you wish to proceed, you may do so.

MR. CHILDS: Your Honor, on behalf of the School District, I would like to make just a brief opening or public statement.

First of all, we appreciate your willingness to serve the School District in this matter, and we want to say to the public, the citizens of Lexington Five, that I'm sure all of the board members and superintendent, the District staff regret the necessity of this proceeding and the disruption that's associated with it. We have much more important things to do in the School District.

And it's an honor to represent this District. You have an excellent board. You have an excellent superintendent, wonderful students and teachers. And we regret that we're occupied with this issue.

However, it is an important issue. It's a very fundamental issue because the statute clearly provides, and I was involved when we made the agreement to -- it used to be Lexington Five board was composed of five representatives from Lexington County and two from Richland County. And that wasn't fair because of

the increased population of Richland County, so we passed a statute to change the composition of the board to four representatives in Lexington County and three who must be, the statute is clear, residents of Richland County.

When I first heard there was some question about Ms. Murphy's residence, I didn't believe it frankly. I just couldn't think that it was possible. But I suggested to the chair the way to resolve the matter was to write a letter to a gentleman who's popularly known as the state demographer at the Budget and Control Board, the Department of Research and Statistics, Mr. Bowers. The chair did that. I think the letter was sent sometime in December before Christmas. I believe on January the 11th, Mr. Bowers responded. And both of these letters are in the record, the public record.

Mr. Gantt, the board chair, received Mr. Bowers' letter actually on January the 12th, and he informed the board of both letters on January the 14th. And on January 15th, he wrote a polite letter to Ms. Murphy saying that here are the two letters that we have, please let us know how you would like to -- how you propose to proceed.

Ms. Murphy hired John Moylan with the Wyche

firm. He wrote us a letter on January the 18th. That's all in the record. Mr. Moylan is a part of one of the most respected law firms in South Carolina. It's basically a Greenville firm, but they have a Columbia office. Most of the members of that firm are Harvard and Yale graduates. It's an outstanding law firm.

Mr. Moylan began representing her. We got his letter on the 18th of January. I assume it was several days prior to that.

On the 28th of January, he informed me that all he could ethically say was that he no longer represented her. Nevertheless, on January the 22nd, the chair wrote a letter to Judge Cooper, which is also in the public record, asking -- and we've had -- there's precedent for this in South Carolina. Sometimes when there's a dispute that involves board members, it's useful to have an outside independent party look at the situation and make recommendations.

And that's what the board has done in this situation, although they have made it clear that the final decision is the board's. But this hearing, as you know, is being held publicly. Judge Cooper's recommendations and order, whatever it may be, will be public, and then the board will have to act on it.

Now, you may also wonder, well, I informed you that Mr. Moylan said he told us on the 28th, at least ten days after he had been hired, that he only could say ethically that he no longer represented Ms. Murphy. My partner and I heard from another attorney by the name of Todd Kincannon yesterday at 12:59. We got an e-mail from him raising all kinds of issues about the proceedings today.

We have elected to proceed today. They have elected not to participate. They nevertheless will be -- we have a court reporter here. Ms. Murphy or her representatives will have a copy of the transcript. They will have the opportunity to present any legal objections that they want to anything that's done here, to the board.

And once the board makes a decision, they have the opportunity, clearly under the statutes, to raise any questions or objections they have with the courts of South Carolina, a circuit court, Court of Appeals, Supreme Court. They also could try to enjoin the proceedings in federal court if they're not satisfied with it. We want to get this thing over with in an orderly, expeditious manner.

Most of what I've said is I didn't want to unduly review the procedure here, but Mr. Gantt wrote

Judge Cooper a letter on January the 22nd. It's part of the public record. Judge Cooper immediately notified both attorneys, Mr. Moylan, who was representing Ms. Murphy at the time, and us, that he would hold a conference on February 1st in the South Carolina Bar building. So Ms. Murphy was on record for that. She didn't show up at the February 1 meeting.

Following the February 1 meeting, Judge Cooper issued a two-page order, which is in the public domain. And one of the things he said to the parties is give me your evidence and your documents by Wednesday of -- what was Wednesday of this week -- February 13th, the day before Valentine's Day.

This is our submission. Mr. Bounds has copies of it. It's all available to the public. This was given to the judge. It's part of the record in this proceeding. And much of what I just referred to is set forth in these documents.

So without further ado, you can tell I'm not feeling too well today, Mr. Reagle will present the witnesses and evidence on behalf of the District.

THE HEARING OFFICER: Mr. Reagle.

MR. REAGLE: Thank you, Your Honor.

Before I start, I just want to introduce

briefly. There are five employees of the Budget and Control Board's Division of Research and Statistics here today: Mr. Bobby Bowers, Mr. Will Roberts, Mr. Alan-Jon Zupan, and Sid Miller, and Matt Wellslager. I hope I pronounced everyone's name correctly. But I wanted to recognize their being here.

We only anticipate calling two witnesses, Mr. Bowers and Mr. Miller. I have premarked 13 exhibits. If it's okay, I just put them on the witness table for convenience.

THE HEARING OFFICER: Yes, sir.

MR. REAGLE: At this time we would call Mr. Bobby Bowers and ask that he be sworn in.

BOBBY MERLE BOWERS, being first duly sworn, testified as follows:

THE HEARING OFFICER: It's good to see you again.

EXAMINATION

BY MR. REAGLE:

Q. Good morning, Mr. Bowers.

A. Good morning.

Q. Can you please state your full name for the record.

A. Bobby Merle Bowers.

Q. And, Mr. Bowers, you are the director of the

South Carolina Budget and Control Board's Division of Research and Statistics; is that correct?

A. That's correct.

Q. Okay. Can you please describe your responsibilities as director and the responsibilities of the Division of Research and Statistics?

A. I man a staff of approximately 80 persons with digital mapping, economic research, E911 statewide coordinations, demographics, health statistics, geodetic surveys, mapping coordination, and I'm on the South Carolina Boundary Commission.

Am I going too fast?

Okay. Do this if I go too fast.

Q. How long have you been the director of the Division of Research and Statistics?

A. Close to 30 years. I forget the exact day. I've got 54 years in the State system.

Q. Is 30 years --

A. I've been in the Division since 1967.

Q. And what are generally the responsibilities of the Division of Research and Statistics?

A. We do the geodetic mapping for the state. We have these disks all over the state for latitude and longitude mapping. As I said, I'm on the Boundary Commission. Mr. Miller, who is going to testifying, is

chairman of the South Carolina portion of the State Boundary Commission. We are negotiating the commissions between North Carolina and South Carolina to try to get amicable resolution to the North Carolina/South Carolina boundary.

We also are involved in many county disputes, many county boundaries where there's a resolution that needs to be brought to a county boundary. One of the most recent one -- well, not recent -- we did -- was the Greenville/Spartanburg boundary right before BMW located up there, and that was passed into law.

I also am over statewide 911, funding, training and mapping. I distribute the money for the 911 system.

The state's chief economist works for me. He is also my deputy director, and he is over economic research in my state. We do all of the precinct analysis for the legislature. We do all the 2,000 precincts for the legislature for them to introduce.

We work very closely with the U.S. Justice Department for making submissions to our South Carolina Attorney General's Office.

We also are now -- or we were involved in the county redistricting after the 2010 census. We did not do the redistricting for the House and Senate and

Congress after the census because my staff and I were appointed to the federal court to mediate with the federal court and advise them as technical adviser.

The redistricting we are doing now is for cities, school districts, and some public service issues within the counties. I've got the largest health data manpower system probably in the nation in my office. We do all the manpower records for health services.

Q. And have you testified, I think you mentioned working at the federal court in regard to census and mapping information, have you otherwise testified as an expert witness or a special --

A. I've been involved in some six federal court cases, assigned as a technical adviser to the federal bench. I have testified in Georgia, North Carolina, Florida, Texas, Alabama. And recently after the 2010 census, I was appointed to the New Hampshire Supreme Court as their technical adviser and drew a line for the New Hampshire Supreme Court.

Q. Is it common for the Division of Research and Statistics to determine county and other political boundary lines?

A. This is a too-often occurrence for us now. There are some 2,300 boundaries in South Carolina,

county boundaries that were established in the 1860s. Mark -- notch on the tree, stake in the ground, rock on the bank. Most of them are not there now.

We get involved -- any time there's a wreck close to a county boundary, we get involved trying to establish the county boundary so they'll know which county to bring a lawsuit in. We've got several others right now that we will be working with, so it's a common occurrence.

Q. Was the Division of Research and Statistics asked to determine the Richland/Lexington County boundary line in the area of 154 Old Laurel Lane in Chapin?

A. Yes, it was. I got a letter from the chairman.

Q. What was your understanding of why this request was being made to your office?

A. According to the letter we got, there was a question whether she lived in Richland County or Lexington County. And so I had my technical staff, before I actually responded to Mr. Gantt, to do the research, all the research we could do, and we did it in three different areas to verify our conclusion that we wrote in our letter.

Q. What determination did the Division of

Research and Statistics make regarding the Richland/Lexington County boundary line in the area of 154 Old Laurel Lane in Chapin?

A. That boundary was actually established back in the early 1900s, 1922, I believe. In 1995, my staff was pulled in when there was a lot of commercial activity going on in that area. And we verified the boundaries. So we were actually going back at the time to verify statistically and geographically where that boundary was at. And the conclusion in three different methods we used was that she was definitely and that whole address was in Lexington County.

Q. And by "she," who are you referring to?

A. Ms. Murphy's address.

Q. Okay.

A. There was another address there we found, too, to be in the same area.

Q. Is that address 154 Old Laurel Lane?

A. Yes.

Q. And can you -- you have a stack of exhibits in front of you. Can you please turn to Exhibit 1 -- Exhibit 1 and identify that.

MR. REAGLE: Your Honor, I'll give you a copy of that.

THE WITNESS: Yes, sir.

BY MR. REAGLE:

Q. What is that document marked as Exhibit 1?

A. This is a letter from Mr. Gantt, chairman of the Board of Trustees, to me requesting that we look at this address.

Q. Okay. In the second paragraph of this letter, what does Mr. Gantt say the purpose of his letter to you is?

A. He says, "The purpose of my letter is to request the South Carolina Budget and Control Board, Office of Research and Statistics make a determination as to whether or not Ms. Murphy resides in Richland County as required by law, and whether she is, in fact, a resident of Richland County legally qualified to represent Richland County on the School District Five Board."

Q. As director of the Division of Research and Statistics, in your view was it appropriate for Mr. Gantt to direct his question regarding Ms. Murphy's residence to your office?

A. Yes.

Q. And why is that?

A. Well, we've got all the records of -- geodetic records. We've got all of the 911 record addresses for the whole state. We are the coordinating

unit for the Census Bureau, and we do the precinct analysis for all legislature. So we've got a whole host of areas that we can research to make a determination where an address is at.

With the 911 address, I can tell any citizen that I've got which county they are in, which city they are in, which House District, Senate District, Congressional District, any of them just by that address.

Q. Is it unusual for your office to receive requests from public officials to determine legal boundaries?

A. No.

Q. And can you please turn to Exhibit 2 and identify that exhibit, please.

A. That's the letter I wrote back to Mr. Gantt explaining the reasons that we had determined that Ms. Murphy and that other address was in Lexington County. We used three different methodologies to do that.

Q. And if you please describe the process your office went through to determine the county location of residence of Ms. Murphy.

A. I asked staff -- first of all, we looked at the Census Bureau and that official file for all

redistricting nationwide. It's called PL94-171 Database. Shows that this address is in U.S. census block, and I even list the census block 45063, a long term, and that puts Ms. Murphy in the state of South Carolina, Lexington County, in Tract Number 21204, Block 2059 from the Census Bureau.

Based on that database, the entire street of Old Laurel Lane is located in Lexington County. They were counted in Lexington County when the census was taken. Back when the redistricting was done, that boundary was used for redistricting. That put that address technically in Lexington County instead of Richland County.

The second method we used was since we are the official precincts maps in our file, we looked at all the precincts. As established in 1-11-360, our office serves as the focal point for verifying official precinct information for the counties and serves as the official repository for all the maps on our files.

The map on file in this office is P -- it's actually P-64, I think it is, instead of 63. Showing that Ms. Murphy is a resident of Lexington County and should be voting in Lexington County, Chapin precinct, House District 85 instead of House District 71, and Senate District 18 instead of Senate District 20, and

the Lexington County Council District 6 instead of Richland County District 1.

In addition, as I said, Ms. Murphy's address had come to our attention, and another address located on Old Chapin Lane is also in the incorrect voting, incorrect precinct, incorrect district.

THE HEARING OFFICER: Chapin Lane?

THE WITNESS: Sir?

THE HEARING OFFICER: You say Old Chapin Lane or Old Laurel Lane?

THE WITNESS: Old Laurel Lane, excuse me.

The third method we used, since we have the geodetic file, I got my geodetic people out at my office, geodetic office, to look at all boundaries, establish the boundaries as was established in 1995 by code, in 1976 code, and reaffirm that boundary was the boundary that should be separating Richland and Lexington County.

And Mr. Miller will be the one that can verify that since I'm not a registered land surveyor like he is. But he was former chief of my geodetic survey. He now is chairman of the South Carolina portion of the State Boundary Commission negotiating with North Carolina.

And all three of those show that Ms. Murphy's

address is a resident of Lexington County.

BY MR. REAGLE:

Q. Now, referring to the first paragraph of your letter, can you please describe how you determined Ms. Murphy's residence at the address of 154 Old Laurel Lane, Chapin, 29036?

A. That address was given to me at the time we started the analysis, and then we followed from that into the address from our file, all three files.

Q. Okay. You reference the South Carolina Voter Registration Database. What is that?

A. That's the registered database which all of elections are conducted from. We have the election database for the entire state, working closely with the State Election Commission, and we use that when we do the precinct analysis. We give them a list of the registered voters by precinct with the address list that we've got.

We can actually tell them -- we can run it through our geocoded system and tell a county if they've got people in the wrong precinct or the wrong election district or not, which we do very frequently.

Q. Was 154 Old Laurel Lane the residence listed for Ms. Murphy on the registration database?

A. It is. It's on Richland County's database

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right now.

Q. Referring to the second paragraph of your letter, you indicate your office used three sources to determine the county location of Ms. Murphy's residence.

Can you describe again, and I want to go through with the documents with you, why you used these three sources. If you can start with Exhibit 3 in front of you and identify that document, please.

A. Exhibit 3 is the Richland/Lexington County census blocks that is published by the federal government, PL94-171 data file. That is where the census was conducted. That's the database that we use for all of restricting the County Council District, House District, Senate District. And if there had been a cut in the Congressional District, that would have also been used there. So that's the official file.

That file is the same file that the courts used in analyzing data. It's the same file that the Justice Department uses when they are submitting data from South Carolina.

Q. And what does this map show about where Ms. Murphy's residence is located?

A. Without any question, this map shows she's in Lexington County. There is a block number and a census

tract number denoted on there, too.

Q. If you can turn to Exhibit 4, please.

A. Exhibit 4 shows the House District line between House District 71 and House District 85. She presently is voting in 81. She should be voting -- she's voting in 71, she should be voting in 85, according to this map.

This is the official map that's on file with the Code of Laws of South Carolina that were submitted to the federal court that I was assigned to and submitted to the U.S. Justice Department for their review.

Q. And what does this official precinct map show about what House District Ms. Murphy resides in?

A. She resides according to the redistricting, House District 85.

Q. And what does this official precinct map show about what county Ms. Murphy resides in?

A. She resides in House District 85.

Q. What county is that in?

A. Lexington County.

Q. If you can turn to Exhibit 5, please, and identify that exhibit.

A. That's the South Carolina Senate Districts between Lexington and Richland County. And where they

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do not split counties, this is one area where they did not have to split this county, this shows House District 18 where she resides. She's voting in -- instead of 18, she resides -- she votes in Senate District 20. The line is definitely between the two of them.

Q. Okay. What does this official precinct map show about the county Ms. Murphy resides in?

A. Her residence shows, again, she's in Lexington County.

Q. Okay. Now, just going back to that exhibit, and some of the previous ones have indicated this as well, it is written on there "Kim Murphy residence" with an arrow pointing to aerial photo of the house.

A. Right.

Q. What's your understanding of what address that is?

A. That's that same address. That's 154 Old Laurel Lane. Shows every indication that's where it's at.

Q. Can you identify Exhibit 6, please.

A. Exhibit 6 is the original Lexington County voting precincts.

Q. What does this official precinct map show?

A. It shows Ms. Murphy lives in the Chapin

voting precinct, although she is registered in the Richland voting precinct.

Q. Is the Chapin voting precinct a Lexington or Richland County voting precinct?

A. It's in Lexington County.

Q. Turning back to Exhibit 2, which is your letter to Mr. Gantt, at the top of page 2 you describe the third source of information your office used in determining Ms. Murphy's -- that Ms. Murphy does not reside in Richland County; is that correct?

A. That's correct.

Q. And you described this source as research and fieldwork conducted by the South Carolina Geodetic Survey; is that correct?

A. That's correct.

Q. What is the South Carolina Geodetic Survey?

A. That is my group that sets the geodetic marks all over the state for surveyors and realtors to use. We put the little disks in the ground. We do all the survey work. We now have a VRN system, which is Virtual Reference Network system, with 35 receivers that bounce off of satellites. We can give business and industries. We've got a lot of farmers using the VRN system to do their planting, do their plowing on the equipment.

We've established that with the Department of Transportation so that when they're ready in building roads, they can cut down a lot on costs. They said we saved them money the first year they did that.

But that unit, all the geodetic mapping, which is vertical latitude, longitude. We get called in when there's a system -- a problem at the coast with a flood plain. We get called in when there's a hurricane. In fact, in Hugo, it erased a number of our disks. We had to have the federal government come in put the disk back down. And we do a lot of work with the counties in trying to resolve some of the county issues. We've got several of them right now that's still pending.

Q. Okay. Can you just generally please describe the research and fieldwork that was done here in determining Ms. Murphy's residence.

A. Well, I called my staff and they went out, Sid Miller and Alan-Jon Zupan, they both worked with Matt Wellslager, who is my chief of geodetic mapping. And they went out and did the fieldwork to verify that that boundary was the boundary that was established and verified in 1995, the same boundary. They did all the latitude and longitude that they needed to do with survey instruments to be sure it was correct.

Q. Okay. And you reference here that at the top of page 2 of your letter, Section 4-3-460 of the Code of Laws of South Carolina, defining the Richland County boundary.

Can you turn to Exhibit 7, please, and identify whether that's the statutory provision.

A. That is the -- currently the Richland County boundary with Lexington County that my staff concluded where she was at. That gives all the boundaries, latitude, longitude, number of feet, describing the distances and everything.

Q. Is that the legal definition of the boundary between Richland County and Lexington County in that area?

A. That's correct. Yes.

Q. And if you could please turn to Exhibit 8.

A. 8?

Q. 8.

A. Okay.

Q. And let me back up and read from Section 4-3-460. It references at the bottom there a survey of plat of said property completed on November 25th, 1921, by W.A. Counts and J.C. Wessinger, surveyors. The plat being filed in the Office of the Secretary of State.

A. Correct.

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Q. Is the document Exhibit 8 a copy of that plat filed with the Secretary of State?

A. That's correct.

Q. Does it indicate -- I think it's two-sided -- on the other side it was filed with the Secretary of State's office?

A. Yes. A copy of the survey right there.

Q. In 1921?

A. Yes. May 25, 1921.

Q. Okay. Is the Rocky Ford referenced in the statute, 4-3-460, clearly indicated on this plat?

A. Yes.

Q. Okay. Just generally --

A. Yes.

Q. -- identify -- it's right in the middle of the document.

A. The Rocky Ford, yes.

Q. Okay. Can you identify Exhibit 9, please. Titled "On the Orthophotography," and that includes, for the hearing officer's reference, it's consolidated with Exhibit 10. So it will be the document "On The Orthophotography" and then a photographic map.

A. This goes all the way back to February 13th of 1913 in terms of it states the Richland County line. And it lists the number of feet north of a stake

marking the point and gives a legal description of that boundary. And it was incorporated in the Code of Laws of South Carolina in 1922.

Q. Okay. Does this, on the orthophotography, describe what is being pictured by the lines on --

A. Yes.

Q. -- the map?

A. It does. Rocky Ford is right there, and you see the lines going in two directions. Yes.

Q. Is this a blow-up of --

A. That's a --

Q. -- that map?

A. -- blow-up of Exhibit Number 9, yes.

MR. REAGLE: I'll put this up.

BY MR. REAGLE:

Q. Can you describe what these red lines show on here?

A. Those are the red lines that are described in the statute from Rocky Ford that show exactly where the boundaries are.

Q. Okay. And this is Rocky Ford, which is identified in the statute?

A. Right.

Q. And it's also identified on the plat prepared by Counts and Wessinger and filed with the Secretary of

State?

A. Yes, it is.

Q. And where does this document show Ms. Murphy resides?

A. Lexington County.

Q. In your letter, you state, "Plotting this information on orthophotography demonstrates that Ms. Murphy's house is in Lexington County about .1 mile northwest of the boundary."

Does Exhibit 9 reflect this?

A. Yes, it does.

Q. The red lines are not -- I'm having a hard time seeing it. So this is the red line coming south as described in the statute?

A. Her residence is identified.

Q. And this is her residence right there?

A. Correct.

Q. This is about 500 feet down there. So is it correct, this is --

A. Right.

Q. -- more than 500 feet?

A. A little bit more than 500 feet.

Q. Can you please identify Exhibit 10.

A. Exhibit 10 shows the Lexington/Richland County boundary as defined in the Code of Laws of South

Carolina. Defined by USGS county boundary from topographic map. Shows the Lexington County GIS boundary, Richland County GIS boundary, and the U.S. Census Bureau boundary. There's a whole host of boundaries on the same map.

Q. Okay. And is this an orthographic map prepared by your office?

A. It is, yes.

Q. Can you describe generally what orthophotography is.

A. Orthophotography is photography taken from an airplane that we use or counties use for tax purposes with a certain grid, certain number of feet per grid. That's what this is, but we imposed the boundaries on that showing the residence.

Q. Okay. Is this a blow-up of Exhibit 10?

A. It is, yes, sir. You can see the hot spot and boundaries on there.

Q. Can you describe these various colored lines on here?

A. Orange line that you see in there is the Lexington/Richland County boundary as defined by the Code of Law.

Q. This one?

A. That's it from Rocky Ford. The blue dash

line is USGS county boundary from topographic map. This is Rocky Ford. The green dash line is Lexington County GIS boundary.

Q. This is Lexington's line here, this green dash line?

A. Right. The yellow, or whatever that color is, is Richland County line.

Q. Orange?

A. Richland County, yeah, orange. Lighter orange than the other one. And then the yellow one is U.S. Census Bureau boundary. Five colors on there.

Q. Is this some question of color, this solid line here --

A. That's the one in the statute.

Q. That's the statutory -- the line like in the statutory?

A. Statutory boundary.

Q. And so of all of these lines, the boundary lines, USGS, Lexington County, U.S. Census, and the statutory line plotted by your office, they all reflect Kim Murphy's residence to be in what county?

A. Lexington County.

Q. Okay. And the only one that reflects Kim Murphy's residence in Richland County is arguably the Richland County --

A. Like it goes through the residence actually.

Q. Okay. And again, that shows her residence to be within at least one-tenth of a mile into Lexington County?

A. That's correct.

Q. What conclusions do you draw from the map on Exhibit 10 as director of the Division of Research and Statistics about what county Ms. Murphy resides in?

A. Except for the boundaries established by Richland County, all the other four show she is definitely in Lexington County.

Q. Finally, you conclude in your letter, going back to Exhibit 2, that all three sources show that Ms. Murphy is a resident of Lexington County. Act Number 326 of 2002 requires that four members be elected from Lexington County portion of the School District, and three members are to be elected from the Richland County portion of the District; is that correct?

A. That's correct. We actually participated in drafting of that legislation from the data we had from the Census Bureau.

Q. Is that for purposes of preclearance --

A. Yes.

Q. -- from the federal government?

A. Preclearance, yes.

Q. If you could turn to Exhibit 11.

A. Okay.

Q. You've mentioned in that final paragraph, Act Number 326. Can you identify Exhibit 11?

A. That is Act 326, Code of Laws of South Carolina.

Q. And if you turn to page -- it says 6 of 8 at the very top. Under section 9.

A. Okay.

Q. It states, "Notwithstanding, another provision of law, in Richland-Lexington School District Five: Three trustees must reside in Richland County and four must reside in Lexington County."

A. That's correct.

Q. Referring back to your letter in the final paragraph, what did you, as director of the Division of Research and Statistics, conclude based on this statute in your determination of Ms. Murphy's residence is it, in fact, in Lexington County?

A. As Ms. Murphy was elected in 2010 for a seat in Richland County while residing in Lexington County, she was definitely not qualified to hold that position from Richland County. She lives in Lexington County.

Q. Is that still your conclusion, position

today?

A. Yes, it is. All three methodologies we use shows her to be in Lexington County.

Q. So you testified today that your position is she's not qualified to hold her position for which she has been elected?

A. That's based on the statute that gave Richland County three and Lexington County four. As you said, it used to be five and two. And we were the ones that provided the population data when they drafted the bill that put three in Richland County and four in Lexington County.

Q. Are the sources of information you rely upon in reaching these conclusions in your letter the type of data the Division of Research and Statistics commonly relies upon or customarily relies upon about making determinations about boundary lines?

A. Yes.

Q. As the director of the Division of Research and Statistics, is there any doubt in your mind that based on the statutory boundary of Richland and Lexington County, Ms. Murphy's residence is located in Lexington County?

A. Absolutely. All we've got shows she's in Lexington County.

Q. Who prepared the geodetic survey discussed in your January 11, 2013, letter?

A. Sid Miller and myself.

Q. Does Sid Miller have experience resolving boundary disputes?

A. He is the chairman of the South Carolina portion of the South Carolina/North Carolina Boundary Commission. He was chief of my geodetic survey a year before he retired. I kind of pressed him back into service to help me with some North Carolina boundary since he helped with the South Carolina/Georgia boundary. And he works part-time for me as chairman of the Boundary Commission.

Q. So Sid Miller has been involved in resolving state boundary disputes between Georgia and South Carolina?

A. Yes. He was the one at the time working with the South Carolina/Georgia boundary that we were told by Attorney General's Office lasted 16 years and $20 million. We are trying to amicably serve the citizens and solve the North Carolina/South Carolina boundary now without going to court. I think we've got a small piece we've got to meet on in May, and hopefully, we'll have that resolved by the end of this next year.

He is chairman of that commission and all the

negotiations with the North Carolina Geodetic Survey.

Q. And why did you ask Sid Miller to head up this survey?

A. Mr. Miller used to be chief of my geodetic survey, he is a registered land surveyor, and he worked in Washington. He has experience in all the capacities I needed him in.

Q. And did your office provide information and maps to Ms. Murphy at her request after you had issued your letter?

A. Yes, we did.

Q. If you can turn to Exhibit 12, please.

A. Okay.

MR. REAGLE: This is a new exhibit, Your Honor. It's included in our material, but I just --

BY MR. REAGLE:

Q. This is, I'll represent to you, is a public statement that Ms. Murphy put on the record at the board meeting on January 28, 2013. And I would just ask you if you could turn to the second page of the document entitled Richland County Map.

A. This is a map that's 2009 from the Richland County GIS system. Why they did not pick up on the 1995 correction verification of the boundary, I do not know.

Q. Okay. Is this map showing the boundary line to Richland County reflect -- is that consistent with this orange line showing Richland County GIS boundaries?

A. Yes, it does.

Q. Can you read the disclaimer at the bottom of this map?

A. This is common a lot of times in some of the surveys. "Disclaimer: This is a product of Richland County GIS Department. The data depicted here have been developed with extensive cooperation from other county departments, as well as other federal, state, and local government agencies. Richland County expressly disclaims responsibility for damages or liability that may arise from the use of this map."

Q. Okay. Now, it says that it's been developed with extensive cooperation from other county departments, but does it align with any of these other county or governmental boundary lines?

A. No, it does not.

Q. If you can turn to the last page of Exhibit 12 and identify that document, please.

A. These are the residential taxes for that property.

Q. Okay. There should be one page following

that.

A. And that is the registration certificate for Ms. Murphy --

Q. Okay.

A. -- signed by Lillian McBride.

Q. Okay. What does that show her address to be?

A. She votes at Lake Murray Elementary. Shows her address as 154 Old Laurel Lane.

Q. Okay. And so in terms of this registration -- voter registration, is the Senate District correct, District 20?

A. No.

Q. Is the House District, House 71 correct?

A. No. The only one that's correct is the congressional district and the school district. Congressional District 2.

Q. Is the precinct listed as Springville precinct, is that correct?

A. She should be listed in Chapin precinct.

MR. REAGLE: Thank you very much.

If the judge has any questions, please answer them.

THE HEARING OFFICER: Do you know how the Richland County GIS boundary was established?

THE WITNESS: No, sir, I do not. I know

each -- a lot of counties have their own GIS department. And, of course, we did not have any cooperation when that line was drawn. We said with the federal, but I don't remember us having any input into Richland County GIS system when drawing that line.

THE HEARING OFFICER: That's all I have.

MR. REAGLE: Thank you, Mr. Bowers.

We would call Sid Miller.

THE HEARING OFFICER: Come around, Mr. Miller.

MR. REAGLE: Let's reorganize the exhibits.

SIDNEY MILLER, being first duly sworn, testified as follows:

THE HEARING OFFICER: State your full name for the record.

THE WITNESS: Sidney Crafton Miller.

EXAMINATION

BY MR. REAGLE:

Q. Mr. Miller, can you please describe your employment relationship with the Division of Research and Statistics.

A. Yes. I was a former chief of the South Carolina Geodetic Survey. I retired late 1990s. And at the time we were working, just had begun work on the North Carolina/South Carolina boundary and

incorporation of North Carolina to reestablish the boundary that had been originally established in the 1700s and the very early 1800s. And I was asked if I would stay as a part-time employee until we brought that to conclusion. I had no idea it was going to take this long.

But it's a 334-mile boundary between South Carolina and North Carolina. We're finished now with the exception of 31 miles. I primarily work on the state line. That's my primary job right now. I only work a couple of days a week doing that. As a secondary mission, if there's a boundary that comes up that's on the county boundary or local boundary, I assist in that as well.

Q. Can you please describe your background and professional expertise in mapping and surveying.

A. Yes. I graduated from civil engineering at Clemson College, back then. And in '57, I started to work with the U.S. Coast and Geodetic Survey. At that time, I did geodetic surveys and nautical charting surveys all over the United States, Alaska, and Puerto Rico, Virgin Islands, and all of the waters of the United States.

And towards the end of that career, South Carolina asked for a representative to come down

and help South Carolina start their own geodetic survey, and I lobbied for that job and was able to come down and do that.

And then there was a break there, and I did private land surveying practice for about four years. And then I was asked to come back and be the chief of South Carolina Geodetic Survey, which I did for a few years. And then I retired in late 1990s. Since then, I've been involved on a part-time basis. I have about 55 years, a little bit over 55 years surveying and mapping experience at various -- of various types.

Q. Are you a licensed surveyor?

A. Yes. I'm licensed in the state of South Carolina.

Q. What agency issued the license?

A. LLR.

Q. Now, you mentioned geodetic survey, Mr. Bowers mentioned that. What is a geodetic survey?

A. A geodetic survey basically takes into consideration the fact that we live on a spheroid rather than a flat surface. So plain surveyors primarily do property surveys and most any size tract of land that's just an ordinary property survey, you know, 500 acres. You can do that and assume that the surface you're working on is flat, and the corrections

that you have to make are so small that it -- you never notice it on that plat.

But once you start working on areas the size of a county or certainly a state, then those distortions, you try to force it into a flat plain, the distortions that come up will be reflected in the maps that you produce and the maps won't fit together. And currently, we have -- by using the geodetic survey in South Carolina, we have about 10,000 control monuments around the state that are based on geodetic control.

In other words, you use spherical geometry instead of plain geometry and put everything on the actual surface of the earth. All the mapping -- all the county mapping systems that we have now are based on geodetic surveying as opposed to plain surveying, so it's seamless. Every county has an accurate mapping system now based on a seamless system, based on geodesy, based on a coordinate system. That's a North American coordinate system that we've adopted.

And so all the maps that we have in South Carolina, for instance, Lexington County, Richland County, you put them together, butt them up, they fit exactly. You can't tell there's a seam in there at all. And so that's what geodesy is. It enables you to put together large scale maps.

Also, it's the global positioning system is based on geodesy. So with a GPS receiver, you can get -- you can take a coordinate and plot that coordinate on any of these maps that we have, county maps we have in South Carolina. And they plot exactly on the ground where they're physically located.

Q. Okay. Another term that's come up, if you could describe what it is, is orthophotography.

A. If you're doing aerial photograph, a single aerial photograph, the surface that you get on that image has all kind of distortions in it because the point directly below that photograph, the ground point is directly below that center of that photograph, will be at one scale because you're closer to that.

Out to the extremities of that will be at another scale because you're further away. Also many hills, valleys that are in there show up at a different scale. And other reasons you have a lot of distortions, distortions in a single area of the photograph.

What orthophotography does, it uses a system called differential rectification. I won't go into that, but it takes all the distortions out of what looks like an aerial photograph. And what you end up with with these orthophotos is a very accurate map.

It's accurate to the one-thirty -- one-fortieth of an inch in scale of that map, which is basically like a pencil line. If you draw a pencil line within the scale of that map, that photographic will be that accurate. You can hardly tell there's any -- there's inaccuracy in orthophotography.

Q. Okay. Can you could look at Exhibit 9, the photograph on the left, is that an orthophotograhic map?

A. It's a orthophoto.

Q. And the red line that is drawn on there, can you describe what that red line is that goes through Rocky Ford?

A. Yes, I can.

Q. Please continue. If you want -- if it's easier for you to look at a smaller version of this.

A. I can see this. The point that you see that says it's Rocky Ford. Back in '95, when we were asked to do a project at Highway 26 where there had been an accident and to establish the county line at that point. And when we were doing that project, we realized that there was a survey done in that area. This is a different area. I'm just giving you a little background. In a different area where from the Saluda River in an arc up to Irmo that they set concrete

monuments, and those concrete monuments were in danger of all being destroyed because of so much development in that area.

So at that time we went ahead and did that part of the Richland/Lexington County line and positioned those points and positioned the points that were missing, as well, off the data we had.

And while we were working on the Richland/Lexington County line at that point, we had the whole statutes. We pulled the statutes for the entire county line in that area. And so we spent a little bit of time doing a reconnaissance survey on the rest of the Richland/Lexington County line in that area. And the reconnaissance was for the purpose of let's see if we can find other geographical features that -- on the ground that are called for in the statutes.

And it's very common that it's very difficult to find points on the ground that are called for in the statutes. A lot of times it's a stake. You don't the stake -- could be a wooden stake that's long since rotted, or it could be a wagon axle that's buried -- that's like this there, and you get it from a metal detector.

We went around a good bit of the line in this

area looking for geographical features that were still in place. We didn't have very much success, but we found Rocky Ford. And it's very visible ford. It has a road coming into it, road going out of it. The local residents remembered it being named Rocky Ford.

We positioned that point and that -- the designation there, Rocky Ford, is the middle of that ford. And we positioned it with GPS, plotted it on that map. And it's the center of that Rocky Ford, which is very much visible at this point.

Then the bearing -- the line going up on that sheet is the bearing that comes from the state statutes. And it's also on that -- on what is the 1921 plat. And that's -- and that bearing also fits very well geographically. There's a creek on there at the very end of it. If you extend that line all the way up to that creek, it graphically fits that bearing. So we've got Rocky Ford, we positioned with GPS, it fits that map.

We've got the bearing that's from the statute that goes north. It fits geographically the creek, Wateree Creek. And then the bearing going out this way is the bearing -- is the statute bearing, the bearing from the 1776 statutes. And if you carry that -- if you put all of those calls in, bearing the distances,

all the way around to the next arc that comes off of Lake Murray, it fits that point graphically. Now, there's not -- I'm not saying it's accurately, but it fits graphically.

So we verified that the bearings going off of that point are graphically accurate, and that's what the two lines represent. At that particular area on the Richland/Lexington County line, we can say with confidence, assurety, really, that that's where the county line is in that particular area.

Q. By "that particular area," you mean the area of Kim Murphy's residence?

A. Anything that's on that map right there.

And I will say in 1995, we didn't -- all we did was locate that ford. We did not put a -- we did not do anything else on the county boundary for the simple reason that we couldn't. With the little amount of time that we had to do that, this would take -- this is a big project that we established that entire county line. And we didn't have -- we were involved with some time critical work on the state line. We didn't have time to put a lot of effort into it.

But I can say that Rocky Ford is Rocky Ford as is plotted on that map, and the bearings coming off, those first two calls off in each direction are very

active.

Q. Rocky Ford is --

A. Yeah.

Q. -- described in the statute --

A. Right.

Q. -- as a feature in the boundary line?

A. So that boundary right there is what is called for in the 17 -- in the 1976 state statute. That's the statute boundary.

Q. Okay. You're referring to the red line drawn on what's Exhibit 9?

A. Yes. Yes.

Q. In determining the county line in this area, did you also determine which county the residents at 154 Old Laurel Lane is located?

A. Well, not until about two weeks ago. We were asked -- when we were asked to do this a couple of weeks ago, we went back and pulled the 1995 coordinate back out. And it has since been verified again in the field.

And so we did that over, and then we drew this map. That's a couple of weeks ago. And with the address that we were given, there's two addresses. What is it? One of them is 145 and the other one is 154 or something like that. There's two addresses

associated with that one house, but the address associated with the house plots right on top of that house.

Q. Okay.

A. It's noted on the map.

Q. Where it says "Kim Murphy residence"?

A. Yes.

Q. Now, which county did you determine the Kim Murphy residence at 154 Old Laurel Lane to be located?

A. That house is in Lexington County.

Q. And you spent some time describing the procedure you went through. Is that identifying the statutory boundary line between Richland/Lexington County, is that procedure generally accepted in the field of surveying and mapping?

A. Yes. That's generally the procedure that we -- you know, this is not what you would call a traditional survey where you get on the ground and run traverse around. But it's generally accepted -- the procedure we did with GPS is standard accepted GPS procedure for that -- positioning that point. And then the research and the preliminary work we did on putting those two red lines up there would be generally accepted procedure for doing that kind of project.

Q. Now, are you certain of your finding that 154

Old Laurel Lane identifies Kim Murphy's residence on that map --

A. Yes.

Q. -- is located in Lexington County and not in Richland County?

A. Oh, yes. Absolutely. This is not -- this is really not a very difficult call, this particular -- we get asked to do a lot of different locations like this, and this is -- most of them require a lot more effort and research and fieldwork. But, you know, but this particular location right here, because of Rocky Ford, because of those two calls coming off, the absolute geographic position of that ford, it's not -- wasn't real difficult for us. And the house is 500 feet from that line.

Q. You referenced a couple of times the calls coming off it. Can you refer to Exhibit 9.

A. 9.

Q. I think I got it in numerical order.

A. Yes. I got it.

Q. Okay. There's a document that's part of Exhibit 9 called "On the Orthophotography."

A. Uh-huh.

Q. And there's a couple of highlighted portions that your office had highlighted.

A. Okay.

Q. Are those -- it says like on the first page, "Advance north 56 degrees, 35 feet east, 3,920 feet to a point of Rocky Ford on Wateree Creek." And then the other one says, "Thence turning and running south 23 east 142.5 chains."

Are those the calls?

A. Yes.

Q. Which one -- the one on the first page -- which one of the calls on this document describes the line going north and west from Rocky Ford?

A. Well, let me see. You're going to have to -- Okay. Good. Okay.

THE HEARING OFFICER: What exhibit is this?

MR. REAGLE: This is Exhibit 9, the document that says "On the Orthophotography." Quoting from the statute.

THE WITNESS: Okay. This is coming up from the south. This one right here.

BY MR. REAGLE:

Q. So on the first page --

A. Yeah.

Q. -- you got a quote from the statute.

A. Uh-huh.

Q. Where it says, "Beginning with advance north

56 degrees," that's this bottom --

A. No, no. Yeah. That -- the second page right here, thence turning and running south 23 -- I'm not sure.

That's right, what I said before. This one is the one that's running south, coming down, and this is coming -- okay. This one right here is coming up.

Q. Okay. Like I said, that's the one on the first page --

A. Yeah.

Q. -- of the document --

A. Yeah.

Q. -- north 56 degrees southeast.

A. That's going out from there.

Q. That's the south --

A. Yeah, right.

Q. -- southeastern line?

A. Right. The other one is coming up here.

Q. And the other one, the second page, quoting from the statute, that's running -- turning and running 23 degrees east?

A. Southeast.

Q. Is that turning from Rocky Ford and running?

A. Running down to Slice Creek, uh-huh. That's the one --

Q. But it starts from up here, the description, and runs down to Rocky Ford?

A. Right.

Q. Southeast?

A. Right.

Q. If you can turn to Exhibit 2, the top of the second page.

A. Okay.

Q. In that paragraph sort of towards the bottom, it talks about the northwestern trending line from Rocky Ford and the southwest trending line segment from Rocky Ford. Do you see that?

A. Which paragraph?

Q. It's Exhibit 2 on the second page.

A. Okay. All right.

Q. Take your time to read it.

A. Okay. Which part am I supposed to read?

Q. Just the top paragraph where he's describing the geodetic survey.

A. Okay. Yeah, okay.

Q. References an azimuth of 343 degrees, and the azimuth of 243 degrees. Can you describe that and show how it's illustrated on the map up there, Exhibit 9.

A. Okay. Now, this is the first time I've seen this particular letter. Okay. An azimuth is 360

degrees in a circle. That's what an azimuth -- and you take that particular point on the circle. So 343 would be -- like west is 270, it would be a little bit more to the west. And typically surveyors would call that a north certain number of degrees west.

Geodetic surveyors use a 360-degree circle, and they don't get confused with northwest, southeast, and all that. So that's just a geodetic way of describing that bearing going up that way.

Q. Okay. That's going up to the north and west of Rocky Ford?

A. Uh-huh. And the 243 is just a way of describing you're not west but you're southwest. The 243 is coming around on circle 180, and you go up about halfway between there and you got 243. That lets -- that's narrowing that line.

Q. And this is --

A. Beg your pardon?

Q. J-- strange terminology to most people, so that's why I'm trying to make sure it's clear.

A. Yeah.

Q. So this line here, running from Rocky Ford north and west, is the azimuth of 343 degrees of distance?

A. Yes, right.

Q. 9,405 feet?

A. Right.

Q. And this line right from Rocky Ford down towards the southeast --

A. Yes.

Q. -- is the azimuth of --

A. Right, 243.

Q. -- 243?

A. Right.

Q. And those are the statutory --

A. That's the statutory, yes.

Q. -- definition of the boundary?

A. Yes.

Q. Okay. Can you turn to Exhibit 13, and I pulled that out. It's the oversized -- it's right there.

A. Yes. Okay.

Q. Can you describe what the two documents at Exhibit 13, can you describe what those are.

A. Yes. 13 is a boundary survey that was done of a tract, and it's described as Laurel Springs. It's the subdivision survey of a large -- subdivision of a larger tract, and it's described as a subdivision plat for Laurel Springs.

Q. Okay. And who is this plat done by and when?

A. That was Mr. Lucius Cobb.

Q. Okay. And who was it done for?

A. It was done for Mr. Jay Murphy and Mr. Moffatt Burris, Jr.

Q. And when was this done?

A. It was done in 199--- let's see. April 1997.

Q. Okay. And what's the -- does this include that area that -- if you look at Exhibit 9, does this plat include that area where Kim Murphy's residence is identified on --

A. Yes, it does.

Q. -- Exhibit 9?

A. Yes.

THE HEARING OFFICER: I don't think I have that.

THE WITNESS: This one. Well, you have --

MR. REAGLE: I think I have a large copy.

THE WITNESS: You have that. This right here is overlaid on that orthophotography.

MR. REAGLE: Those two documents together make Exhibit 13.

THE WITNESS: That document in your right hand is overlaid on the photograph.

THE HEARING OFFICER: I see.

THE WITNESS: It's shrunk down a good bit.

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THE HEARING OFFICER: This is what, 13?

MR. REAGLE: Both of them together I have as 13.

BY MR. REAGLE:

Q. Now, on this survey done by -- okay. So the second document, Exhibit 13, is an orthophotographic map of Exhibit 9 with that survey done by Lucius Cobb overlaid on it?

A. Yes.

Q. Now, looking at the survey, there is identified on there, somebody says "approximate county line."

A. Right.

Q. And what does the designation "approximate" signify to you as a licensed surveyor?

A. He doesn't know where the county line is. He he's not -- might I also add, he's not required to know where the county line is.

I'm a former member of the State Board of Examiners for Engineering and Land Surveyors, and that is not one of the requirements on the land survey to establish a political boundary. A lot of these political boundaries are so indefinite, the surveyor would spend more trying to do the political boundary than he would the survey.

The counties don't -- unfortunately, don't really have the resources, I guess, but they don't maintain their county boundaries. And if you go to the county and ask them where the county boundary is, a good percentage of the time they don't know exactly where it is.

We have an awful lot of county lines that are overlapping, and there are gaps between county lines. And so a surveyor is really at a dilemma when he has a project that's right on the county line.

So what -- when they call our office, we advise them if you don't know where the county line is or if you're not really sure of it, if it's not well documented, not well-monumented, to put a disclaimer on there to say it's approximate. And because you don't want to accept liability that you don't have to accept.

And so this is exactly what I would do on a situation when I didn't -- I couldn't be told where the county boundary is, I would put "approximately" on there.

Q. So this survey is not purporting to identify where the county boundary is?

A. No. No. Not by any means.

Q. Now, the dotted line that Mr. Cobb identifies as the approximate county line, is that -- the line he

draws, is that consistent with the GIS line drawn on Exhibit 10 here for Richland County, this orange line here?

A. Yes. I've looked at that before and that's very -- that's consistent with what Mr. Cobb has on his map here.

Q. And that's what was showing the line going right through the Kim Murphy residence?

A. Yes.

Q. Okay. Now, does Mr. Cobb on his survey identify Rocky Ford?

A. Yes, he does.

Q. Where does he identify Rocky Ford?

A. It's over on the -- it would be on the extreme -- well, not extreme, but it's the right -- lower right-hand point. You can see he has old road -- there's a little thing, little dog-eared down there that has a road. And then Rocky Ford is over on the right-hand side.

You see that, Your Honor?

THE HEARING OFFICER: Yes, sir.

THE WITNESS: Okay.

BY MR. REAGLE:

Q. It's actually written in on the survey, isn't it?

A. Yes.

Q. Rocky Ford?

A. Yes.

Q. And looking at the overlay map that the Office of Research and Statistics prepared, does Mr. Cobb identify Rocky Ford to be in the same place that you did?

A. Yes. Yes.

Q. So there's no question between Mr. Cobb's survey and your fieldwork and survey as to the location of Rocky Ford?

A. That's right.

Q. And why is the location of Rocky Ford significant to the location of the county boundary lines?

A. It's called for in the statutes. Those statutes, you know, there's been some -- there's been, like, three annexations since 1900 in that area. And these -- if you read these statutes, published 1776 statutes, it's very confusing. It's not a straight -- you don't get the whole county line in one -- if you read Lexington's description, you don't get the entire county line. And if you read Lexington, you don't get the entire county line. You have to go to the other one to read that. And so it's very complex reading

that. That particular description along there is not straight forward at all in the statutes.

But, I mean, if you pore through it, put it together, Rocky Ford is the statute point there.

Q. And from there it's just a question of determining the degrees of azimuth --

A. Yeah.

Q. -- coming off of Rocky Ford?

A. But, now, when we -- when we positioned that in 1995, we didn't do any more work except position that one point. And we didn't -- you know, we didn't fix -- go back and fix the line all around where it goes to Broad River, for instance, or back the other way towards Irmo. So we did a minimal effort when we did that, and then we went back recently and redid it.

So it wasn't enough that we could actually publish anything that would be useful to a surveyor who would normally come to us and ask us where is the county line. That was not available.

Q. Back in 1995?

A. Yeah. In '95, it wasn't. It was just reconnaissance project that we did back then.

Q. Now, if you can turn back to Exhibit 2, which is the letter that Mr. Bowers wrote. Look at the second page.

A. Okay.

Q. The last sentence of -- can you read the last sentence of that top paragraph?

A. The last sentence of the top paragraph?

Q. Yes, please.

A. Okay. Okay. "Plotting this information on the orthophotography demonstrates that Ms. Murphy's house is in Lexington County, about one-tenth of a mile northwest of the boundary."

Q. Okay. And do you agree with that conclusion?

A. Yes.

Q. And is that what Exhibit 9 reflects?

A. Yes.

Q. Now, have you personally been to this area located at Rocky Ford?

A. Yes, I have.

Q. Have you stood on -- in the ford or in the river on a rock?

A. Sit on the rock, wading in the creek. Positioned it with a GPS accurately. I mean, the other thing, the GPS that we use is not like, you know, something that you have in your car that tells you where to get to McDonald's. This GPS is accurate to like centimeters. Less than a tenth of a foot. So we position that point very accurately in the middle of

Rocky Ford.

Q. So based on the statutory definition of the boundary between Lexington County and Richland County, is there any doubt in your mind that Kim Murphy's residence is in Lexington County?

A. There's no doubt.

MR. REAGLE: Okay. Out of a abundance of caution, in case the issue comes up, we would move for Sid Miller's testimony to be accepted as an expert --

THE HEARING OFFICER: All right.

MR. REAGLE: -- in the area of mapping and surveying.

THE HEARING OFFICER: Based on his qualifications, I'll accept it.

MR. REAGLE: And we would move to accept the exhibits in evidence.

THE HEARING OFFICER: Granted.

MR. REAGLE: Can we take a brief break?

THE HEARING OFFICER: Mr. Miller?

THE WITNESS: Yes, sir.

THE HEARING OFFICER: Would you look at what I have as Exhibit 7, which are the statutes.

Mr. Reagle, these --

MR. REAGLE: This is --

THE WITNESS: Okay.

MR. REAGLE: This back page is a clearer, printed out version of the same.

THE HEARING OFFICER: But I want him to look at the original statute, if you will.

THE WITNESS: Okay.

THE HEARING OFFICER: You got it?

THE WITNESS: Got it.

THE HEARING OFFICER: If you look at the Section 4-3-370, have you got that Lexington County description of the property -- of the boundary?

THE WITNESS: Yes, sir, I have.

THE HEARING OFFICER: All right. Over on the second page of that, it looks like 119, about the middle of the page, it refers to Rocky Ford. Do you see that?

THE WITNESS: Yes.

THE HEARING OFFICER: You do?

THE WITNESS: Yes, sir.

THE HEARING OFFICER: All right. Then if you will turn over to 460, 43460, and look on page 127, the second page of that description, about the middle of the page, you also see Rocky Ford.

THE WITNESS: Yes, sir.

THE HEARING OFFICER: Is that correct?

THE WITNESS: Right.

THE HEARING OFFICER: Am I correct in assuming, then, that both Lexington County and Richland County property -- boundary lines establish Rocky Ford as a common reference point?

THE WITNESS: They do. Yes, sir.

THE HEARING OFFICER: That's correct?

THE WITNESS: That's correct.

THE HEARING OFFICER: Does that reinforce your opinion that you've given here today?

THE WITNESS: Does it reinforce my opinion?

THE HEARING OFFICER: Yes, sir.

THE WITNESS: Yes. You mean --

THE HEARING OFFICER: As to the location of this residence.

THE WITNESS: Well, of course, I was -- you mean was I not aware of this?

THE HEARING OFFICER: No. I assumed you were aware of it.

THE WITNESS: I just misunderstood your question.

Yes, I was -- that did -- that's -- basically that is the strong point that we have, that Rocky Ford is the point there that --

THE HEARING OFFICER: Common point?

THE WITNESS: Common point.

THE HEARING OFFICER: Both counties?

THE WITNESS: Both counties.

THE HEARING OFFICER: Both counties identify it in the statutes?

THE WITNESS: Yes, that's right. That's correct.

THE HEARING OFFICER: I just wanted to --

THE WITNESS: Yes, sir.

THE HEARING OFFICER: -- make that clear for the record. That's all I have.

MR. REAGLE: I think we're close to being able to wrap up. Can we just have a brief break for counsel?

THE HEARING OFFICER: Certainly. Let's take a ten-minute break. Thank you.

(A recess transpired.)

(EXHIBIT 14, Photographs, was marked for identification.)

(EXHIBIT 15, Procedural and Notice Records of Murphy Residency Issue, was marked for identification.)

THE HEARING OFFICER: All right. Ladies and gentlemen, come to order, please. We are now ready to continue with the hearing.

Mr. Reagle.

BY MR. REAGLE:

Q. Mr. Miller, I want to show you what's been marked as Exhibit 14 and ask if you can identify those photographs.

A. This is Rocky Ford, and it's -- then one of them shows the old road coming and going -- or two of them, one on one side and one on the other. The old road that crossed Rocky Ford.

Q. Okay. Are these true and accurate photographs of Rocky Ford?

A. Yes. I didn't take these particular pictures. They were taken yesterday afternoon by Mr. Zupan. But I was here and I recognize -- this morning he showed them to me, and I recognize them as being where we did the GPS project there.

Q. Okay. And if you can turn -- just one final question here. I'll show you what's been marked as Exhibit 8 and ask if you can identify Exhibit 8.

A. Yes. That's the survey Mr. Wessinger and Mr. Counts did in 1921. I think they did it in '21 and the in '22.

Q. And this survey is referenced in the statutory definitions for Lexington and Richland County boundary lines?

A. Yes.

Q. And does this survey, as well, identify Rocky

Ford?

A. Yes, it does.

Q. And does it identify Rocky Ford in the same place where you identified Rocky Ford on your survey maps?

A. Yes.

Q. And does it identify Rocky Ford in the same place that Mr. Cobb identified Rocky Ford on his survey maps?

A. Yes, it does.

MR. REAGLE: That's all I have. Thank you very much.

MR. CHILDS: Your Honor, if I may, just to sort of bring things to a conclusion. I think that that's all the testimony that we feel that we need to present today. And we feel that the two issues that are identified in the prehearing order you issued on February the 1st are for your determination as to whether or not Ms. Murphy's residence is in Richland County. And if her residence is not in Richland County, then whether the board may remove her for cause under this particular statute. Those are the two issues.

Now, just a couple of things of clarification. At the outset of the hearing, I made

reference to the first attorney that Ms. Murphy employed was John Moylan of the Wyche firm, and that he informed us on the 28th of January he longer represented her. And yesterday at 12:59, Mr. Todd Kincannon identified himself as representing Ms. Murphy. He did come today. He objected to these proceedings. He contended that they violated the Voting Rights Act.

We've made clear to him that he could make those objections to the School Board. After the School Board rules on those objections, he can raise them in the South Carolina Court -- circuit court and up through the court system.

Also, of course, we have a court reporter here and even though she told me she'd work all weekend and have this transcript ready Monday, I'm not sure that's necessary. But we would like for it to be available as soon as possible. Of course, a copy of the transcript will be made available to the judge. We will make one available to Ms. Murphy. Make one available to Mr. Bounds that will here at the District office if anybody wants to examine it.

And then, Your Honor, you had indicated a little bit about your schedule, and you might just want to say to the public what your schedule is. Because

it's not really obvious to me that you've retired. You appear to still be working, and I don't know what all your responsibilities are.

THE HEARING OFFICER: Well, I just -- I informed counsel and Mr. Kincannon that next week is my wife's birthday, and we have a trip planned. So I will be unavailable next week. And then as I mentioned at the beginning of the proceedings, I'm required to hold court for two weeks a month, and it just so happens that my two weeks holding court in Richland County will be the week we return and the following week, even though it spans a month there.

So I will not be able to put any time in on this matter other than at home, and I may be able to devote some time to it, but as far as any other proceedings, until the 11th of March. I made that clear to both you and Mr. Kincannon. So that's pretty much my schedule.

I'm not sure it was made clear from this record that Mr. Kincannon and Ms. Murphy came and left and have not been a part of this proceeding. I don't know if that's been made clear on the record. But I thought I would just state it for the record.

That's all I have.

Anything further?

MR. REAGLE: Just as a housekeeping matter. If we could move -- just make sure we move to introduce Exhibit 14 into evidence as well.

THE HEARING OFFICER: Granted.

MR. REAGLE: Because Mr. Kincannon did raise some procedural and notice concerns, we would also move to be introduced into the record what's collected as Attachment B to our hearing memorandum, which has the title of Procedural and Notice Records.

THE HEARING OFFICER: Yes.

MR. REAGLE: Which reflect correspondence and notice. And for clarify, if I could have these marked as Exhibit 15 and entered.

THE HEARING OFFICER: Certainly.

MR. REAGLE: Thank you, Your Honor. That's all.

THE HEARING OFFICER: Anything further?

MR. CHILDS: No, Your Honor.

THE HEARING OFFICER: This hearing is concluded. Thank you very much for your attendance today, ladies and gentlemen. I'm sure you will hear something as this matter progresses.

(The hearing concluded at 12:00 p.m.)

CERTIFICATE OF REPORTER

I, Sheri L. Byers, Registered Professional Reporter and Notary Public of the State of South Carolina at Large, do hereby certify:

That the foregoing proceedings were taken before me on the date and at the time mentioned on page 1 and the proceedings were recorded stenographically by me and were thereafter transcribed under my direction; that the foregoing transcript as typed is a true, accurate and complete record of the proceedings to the best of my ability.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 20th day of February, 2013, at Columbia, Richland County, South Carolina.

Sheri L. Byers,
Registered Professional Reporter,
Notary Public
State of South Carolina at Large
My Commission expires:
January 5, 2014

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JLC&A - K. MURPHY 012073

000134

Exhibit 1

district five
OF LEXINGTON & RICHLAND COUNTIES

December 20, 2012

Mr. Bobby Bowers
Office of Research & Statistics
South Carolina State Budget & Control Board
1201 Main Street, Suite 715
Columbia, SC 29201

Re: School District Five of Lexington and Richland Counties

Dear Mr. Bowers:

I am writing to you as Chairman of the Board of Trustees of School District Five of Lexington and Richland Counties. It has come to my attention, from sources which I deem reliable, that Board member Kim Murphy, who currently represents Richland County on the Board of Trustees of School District Five, is not in fact a resident of Richland County as specifically required by Act No. 326 of 2002. As you may be aware, such rumors have been around for some time.

The purpose of my letter is to request that the South Carolina State Budget and Control Board Office of Research and Statistics make a determination as to whether or not Ms. Murphy resides in Richland County, as required by law, and whether she is, in fact, a resident of Richland County legally qualified to represent Richland County on the School District Five Board.

Thank you for your assistance with this matter.

Respectfully submitted,

Robert W. Gantt
Chairman, Board of Trustees

www.lex5.k12.sc.us
1020 Dutch Fork Road • Irmo, South Carolina 29063 • (803) 476-8000

EXHIBIT
PENGAD 800-631-6989
Dist. 1
2.15.13 DR

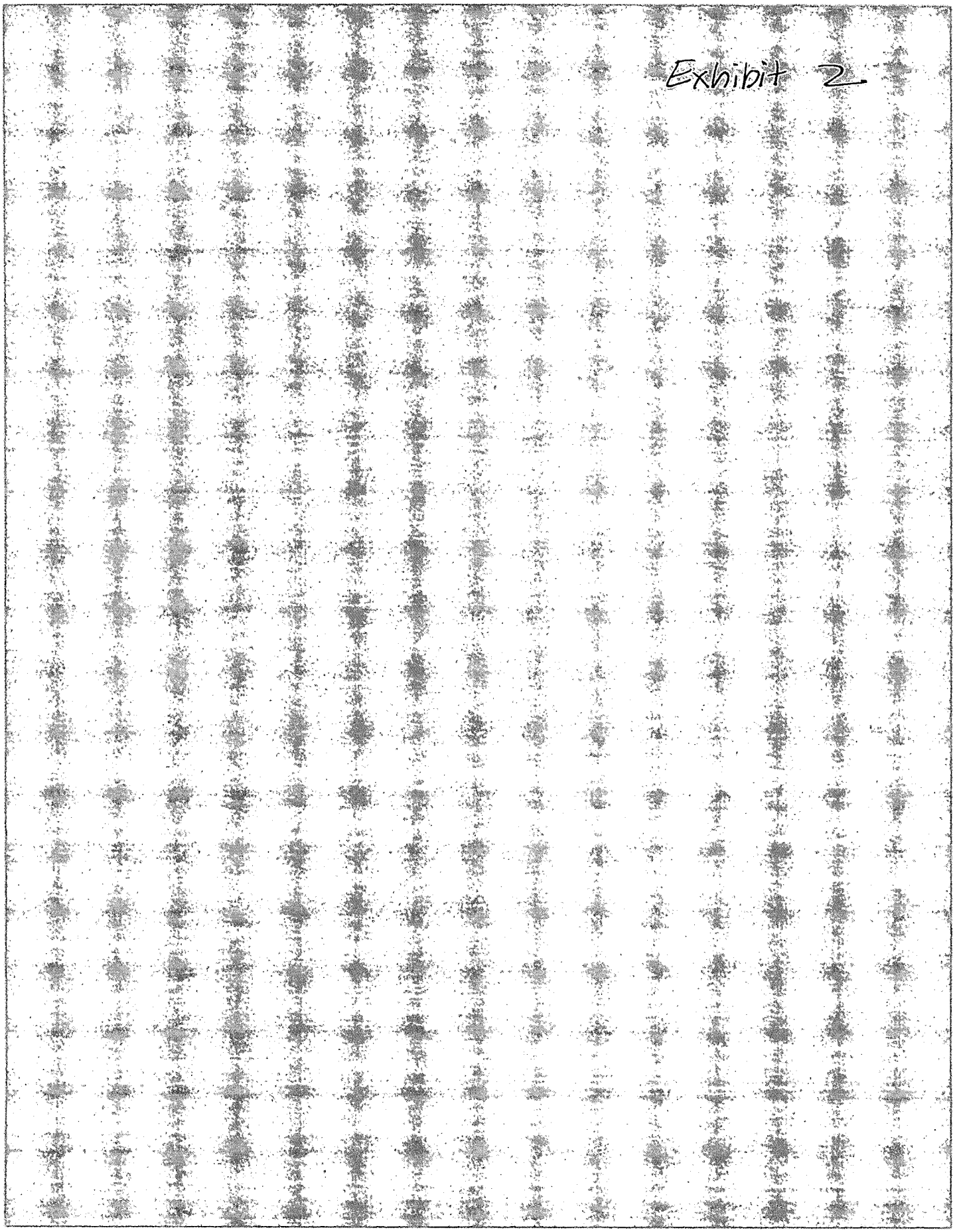
Exhibit 2

NIKKI HALEY, CHAIRMAN
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

SC BUDGET AND CONTROL BOARD

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W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

MARCIA ADAMS
EXECUTIVE DIRECTOR

Division of Research and Statistics
Bobby M. Bowers
DIRECTOR

803-734-3793

January 11, 2013

Mr. Robert W. Gantt
Chairman, Board of Trustees
Richland Lexington School District 5
1020 Dutch Fork Rd.
Irmo, SC 29063

Dear Mr. Gantt,

Per your request we have reviewed the county location of the residence of Ms. Kim Murphy, who currently represents Richland County on the Board of Trustees of School District Five of Richland and Lexington Counties. Our review was based on the address of 154 Old Laurel Ln., Chapin, SC 29036. This information was obtained through the South Carolina State Election Commission voter registration database.

We used three sources to determine the county location of Ms. Murphy's residence: 1. the U.S. Census Bureau, 2. Precinct maps on file with this office based on codified law, and 3. Research and field work conducted by the South Carolina Geodetic Survey.

The U.S. Census Bureau PL94-171 database shows Ms. Murphy's address as being located in U.S. Census Block 450630212042059. This puts Ms. Murphy in the State of South Carolina in Lexington County in Tract 021204 in Block 2059. Based on the database, the entire street of Old Laurel Ln. is located in Lexington County.

The next analysis we conducted was based on the official precinct maps on file with our office. As established in §1-11-360 our office serves as the focal point for verifying official precinct information for the counties and serves as the official repository for precinct maps. The map on file with this office (P-63-10) show Ms. Murphy is a resident of Lexington County and should be voting in the Lexington County Chapin precinct for House District 85, Senate District 18, and Lexington County Council District 6. In addition to Ms. Murphy's address it has come to our attention that another address located on Old Laurel Ln. is also located in the incorrect county, voting in the incorrect precinct and election districts.

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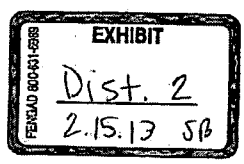

The third source is research and field work conducted by the South Carolina Geodetic Survey. Section 4-3-460 of the Code of Laws of South Carolina 1976 defining the Richland County boundary states that Rocky Ford on Wateree Creek is a point on the Richland-Lexington county boundary. GPS was used to determine the coordinates for Rocky Ford. From Rocky Ford, one boundary line segment bears northwest and another bears southwest. The northwest-trending line segment from Rocky Ford to its intersection with Risters Creek has an azimuth of 343° for a distance of 9405 feet. The southwest-trending line segment from Rocky Ford has an azimuth of 243° for a distance of 3920 feet. Plotting this information on orthophotography demonstrates that Ms. Murphy's house is in Lexington County – about 0.1 mile northwest of the boundary.

All three sources show that Ms. Murphy is a resident of Lexington County. Act No. 326 of 2002 requires that four members be elected from the Lexington County portion of the school district and three members are to be elected from the Richland County portion of the district. As Ms. Murphy was elected in 2010 for a seat in Richland County while residing in Lexington County she is and was not qualified to hold her position for which she has been elected. If Ms. Murphy desires, she may run for a seat for the Lexington County portion of School District Five at the next general election.

Sincerely,

Bobby M. Bowers

BMB:wfr

Exhibit 3

Richland and Lexington County Census Blocks
EXHIBIT
Dist. 3
2.15.13 SB
Kim Murphy Residence
450630212042059
450630212042060
450630212042073
Source: U.S. Census Bureau PL94-171 Database
0 280 560 1,120 1,680 2,240
Feet

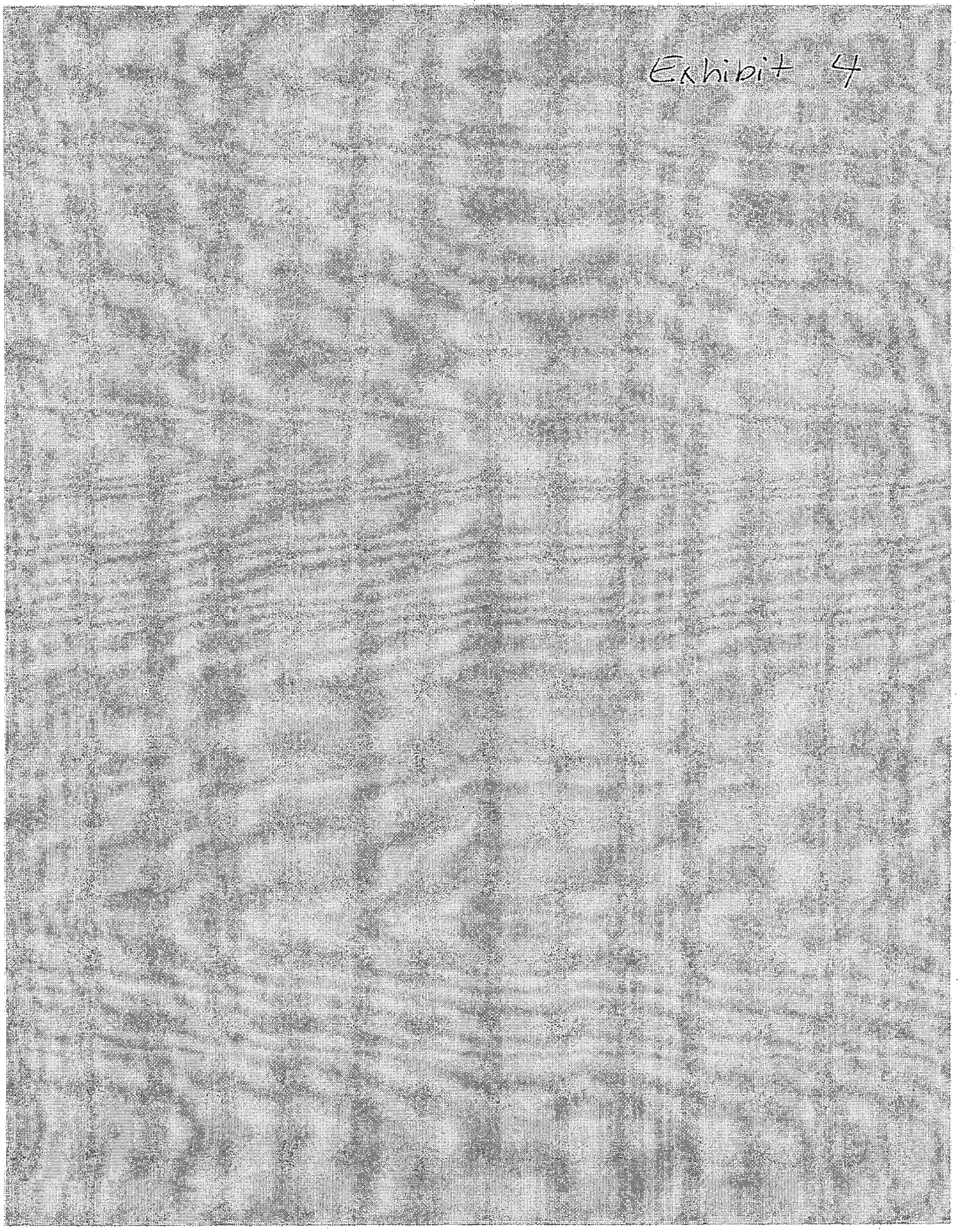
Exhibit 4

EXHIBIT
Dist. 4
2.15.13 SB
PENGAD 800-631-6989

South Carolina House Districts

Exhibit 5

EXHIBIT
Dist. 5
2.15.13 SB

South Carolina Senate Districts

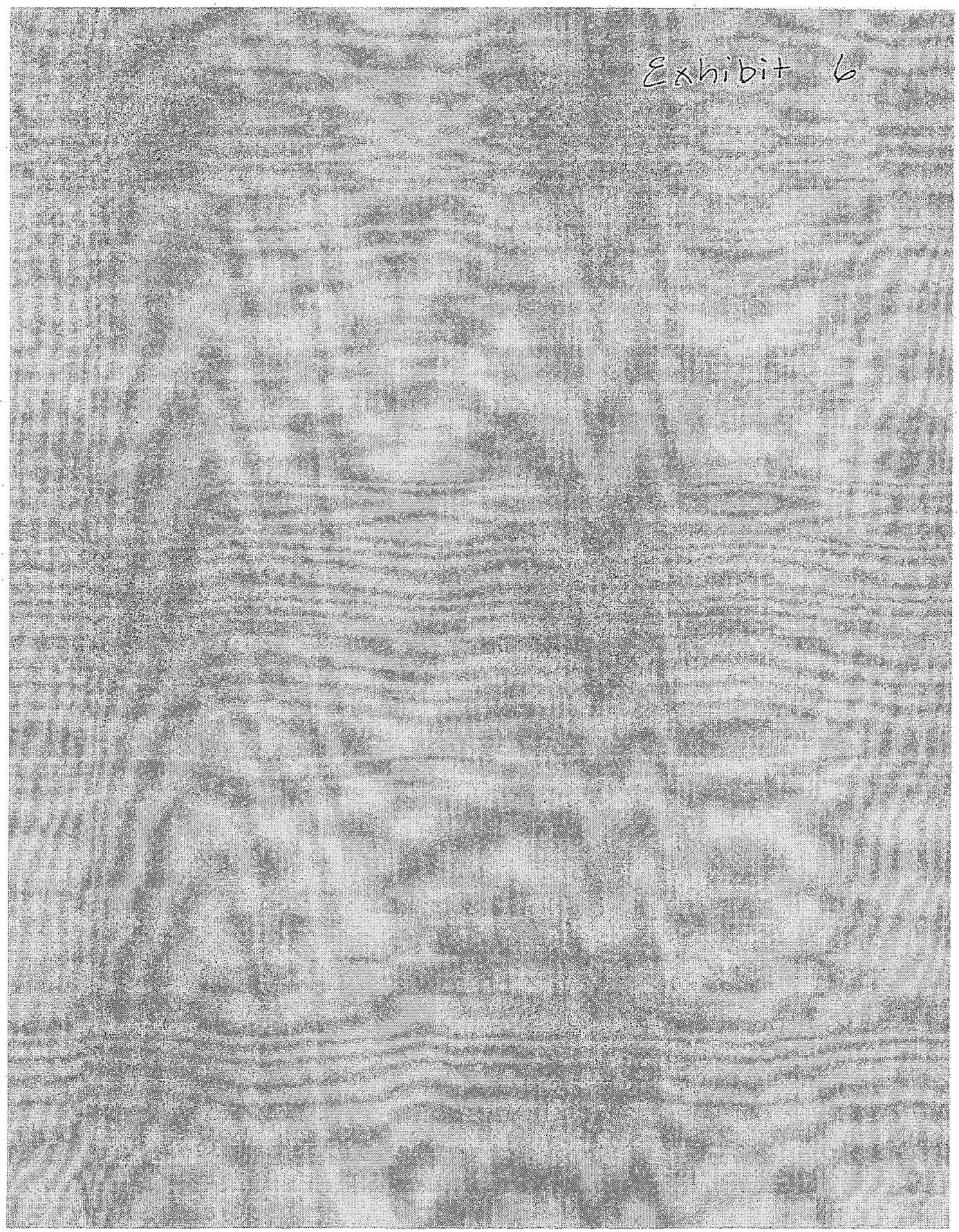
Exhibit 6

EXHIBIT
PENGAD 800-631-6989
Dist. 6
2.15.13 SB
Richland and Lexington County Voting Precincts
Kim Murphy Residence
Source: Maps P-63-12 and P-79-07
0 280 560 1,120 1,680 2,240
Feet

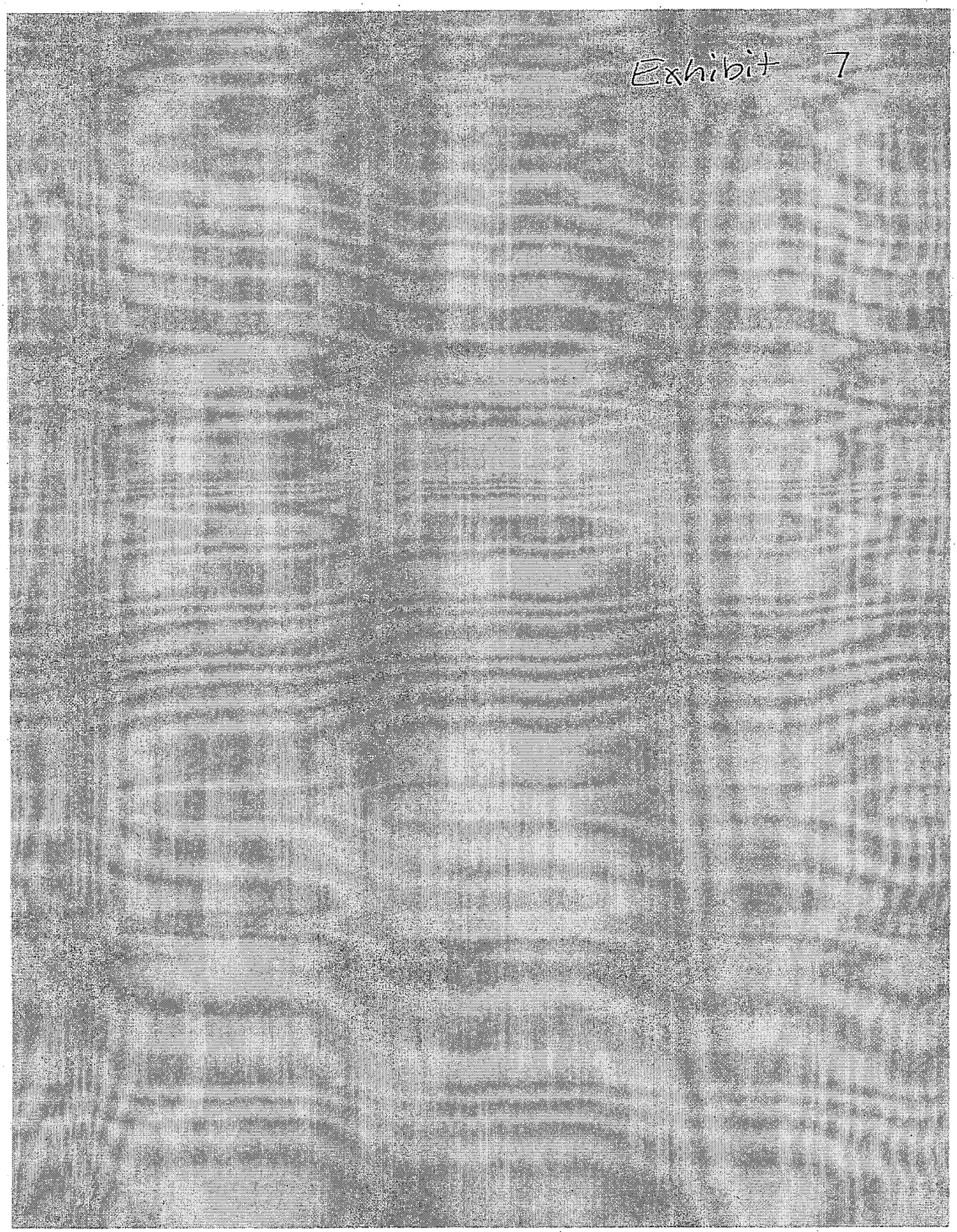
Exhibit 7

Code of Laws of South Carolina 1976 Annotated
Title 4. Counties
Chapter 3. Boundaries of Existing Counties

Code 1976 § 4-3-460

§ 4-3-460. Richland County.

Currentness

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° 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° 30' W. 878 feet; thence west 5,000 feet to a stake; thence S. 85° W. 5,000 feet to a stake; thence S. 80° W. 5,541 feet to a stake; thence N. 37° 28' W. 10,618 feet to a stake; thence S. 85° W. 750 feet to a pine; thence N. 34° 45' W. 10,491 feet to a stake; thence N. 22° E. 914 feet to a stake; thence N. 37° 5' W. 1,313 feet to a stake; thence N. 13° 45' E. 2,597 feet to a stake; thence N. 56° 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° W. 82.51 chains to a stake; thence turning and running S. 32.5° 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° 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.

Credits

HISTORY: 1962 Code § 14-90; 1952 Code § 14-90; 1942 Code § 3015; 1932 Code § 3015; Civ. C. '22 § 707; Civ. C. '12 § 624; Civ. C. '02 § 563; G. S. 432; R. S. 491; (4) 662; (5) 219, 317; (7) 290; 1913 (28) 107, 117; 1922 (32) 977; 1969 (56) 819.

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Code 1976 § 4-3-460, SC ST § 4-3-460
Current through End of 2011 Reg. Sess.

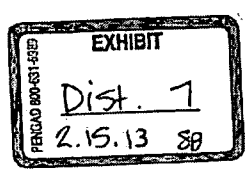
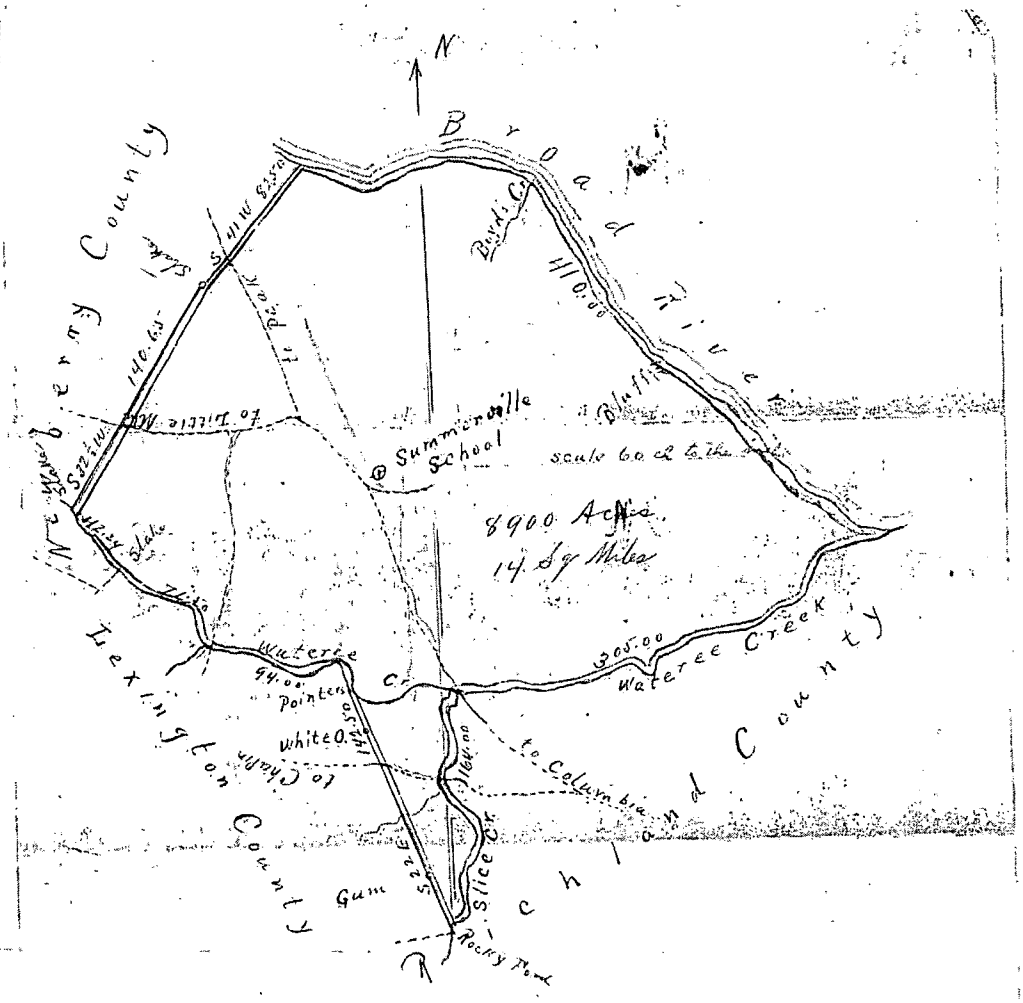


Exhibit 8



At the request of Geo. H. Keon and others, legally authorized to direct this work, we have made a survey of that portion of Lexington County which it is proposed to annex to Richland County; this being the extreme northern end of Lexington County, and having such shape, bounds, and area as shown on the above Plat. This survey was completed November 25. 1921.

W. A. Counts

J. C. Wessinger

Surveyors.

Certificate.

We W. A. Counts and J. C. Wessinger, commissioners duly appointed under the law and in accordance with law, hereby certify that the above is a correct mark of the line of the land proposed to be annexed from Lexington County to Richland County, and that the same has been made with due regard to all legal provisions and limitations which have been complied with and that this plat does contain a true and correct plat of said property to be annexed from Lexington County to Richland County as is shown by a careful and correct legal survey thereof.

W. A. Counts

J. C. Wessinger

EXHIBIT
Dist. 8
2.15.13 SB

City of Albany

Municipal Court

Town of Guilderland

County of Albany

State of New York

Albany, N.Y. Nov 5, 1921

To Fred Brandt Dr.

Register

JLC&A - K. MURPHY 012092
000153

CODE OF LAWS OF SOUTH CAROLINA 1976

Annotated

Containing permanent public statutes of general application to the end of the 1985 Legislative Session

Prepared under the supervision of the Legislative Council and Code Commissioner and adopted as the Official Code of the State by the 1986 Session of the General Assembly

VOLUME 1A

UNITED STATES GOVERNMENT, AGREEMENTS AND RELATIONS WITH

COUNTIES

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APR 8 1986
STATE DOCUMENTS

Prepared by the Editorial Staff of the Publisher

THE LAWYERS CO-OPERATIVE PUBLISHING CO.
Aqueduct Building
Rochester, New York 14694

LCP

the subject of an election held November 8 1966, by the commissioners of election of Oconee County, the results of which election were favorable to the annexation, and the General Assembly having found that all provisions of the Constitution of South Carolina, 1895, governing the alteration of county lines having been satisfactorily complied with, is hereby transferred to Pickens County and annexed to that county. The proper proportion of the existing county indebtedness of the area so transferred shall be assumed by the county to which the area is transferred.

HISTORY: 1962 Code § 14-89.1; 1967 (55) 46.

§ 4-3-460. Richland County.

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° 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° 30′ W. 878 feet; thence west 5,000 feet to a stake; thence S. 85° W. 5,000 feet to a stake; thence S. 80° W. 5,541 feet to a stake; thence N. 37° 28′ W. 10,618 feet to a stake; thence S. 85° W. 750 feet to a pine; thence N. 34° 45′ W. 10,491 feet to a stake; thence N. 22° E. 914 feet to a stake; thence N. 37° 5′ W. 1,313 feet to a stake; thence N. 13° 45′ E. 2,597 feet to a stake; thence N. 56° 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 north-

eastern 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° W. 82.51 chains to a stake; thence turning and running S. 32.5° 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° 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.

HISTORY: 1962 Code § 14-90; 1952 Code § 14-90; 1942 Code § 3015; 1932 Code § 3015; Civ. C. '22 § 707; Civ. C. '12 § 624; Civ. C. '02 § 563; G. S. 432; R. S. 491; (4) 662; (5) 219, 317; (7) 290; 1913 (28) 107, 117; 1922 (32) 977; 1969 (56) 819.

Cross references—

As to constitutional provisions regarding county boundaries, see SC Const, Art 7, § 12; Art 8, § 2.

As to constitutional provision regarding number of counties, see SC Const, Art 8, § 3.

§ 4-3-470. Saluda County.

Saluda County is bounded by a line beginning at the center of Big Saluda River at a point opposite the corner of Edgefield and Lexington Counties; thence the old Edgefield and Lexington line to the corner of Lexington and Aiken Counties; thence the old Edgefield and Aiken line to a point three miles north of where the public road crosses said line near Lybrand's old mill; thence a straight line to ten-mile post on public highway leading from Edgefield to Columbia, near the present or former residence of J. W. L. Bartley; thence a straight line to the junction of the public road leading from Pleasant Cross with the Long Cane road near the present or former residence of William Lott; thence by the Long Cane road to Matt Mathis' crossroads; thence a straight line to Owdom's Postoffice; thence a straight line to Little Red Hill schoolhouse near Dr. Landrum's old place; thence a straight line to a point on the northwestern line of Pine Grove township, one

JLC&A - K. MURPHY 012093
000154

by H. W. Shaw and A. B. Boykin, surveyors, dated June 25 and 26 1924, that is to say, that body of land which lies between the lines heretofore dividing said two counties, and the line represented on said plat as beginning at Harbord Branch where the line between the said two counties crosses said branch running thence S. 41° E. 3319 feet; thence 27° 30' E. 1025 feet; thence S. 79° W. 2530 feet; thence S. 1° W. 5147.09 feet; thence S. 8° 15' E. 3288 feet; thence S. 33° W. 8225 feet; thence N. 78° 30' W. to the Three Notch Road, be and the same is hereby annexed to Kershaw County, and the lines heretofore dividing the said two counties are altered accordingly.

HISTORY: 1962 Code § 14-81; 1952 Code § 14-81; 1942 Code § 3006; 1932 Code § 3006; Civ. C. '22 § 698; Civ. C. '12 § 616; 1902 (23) 1194; 1914 (28) 647; 1921 (32) 239; 1925 (34) 12.

Cross references—

As to constitutional provisions regarding county boundaries, see SC Const. Art. 7, § 12; Art 8, § 2.

As to constitutional provision regarding number of counties, see SC Const. Art 8, § 3.

§ 4-3-370. Lexington County.

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° W. to a point on the west bank of Broad River; thence S. 40° W. 1956 feet to an oak; thence S. 46° 40' W. 2410 feet to a stone on the public road; thence S. 41° W. 1143 feet to a stake; thence S. 32° 30' W. 9568 feet to a stake on a branch; thence down the run of the branch to a stake; thence S. 45° W. 575 feet to a stake; thence N. 86° 30' W. 3782 feet to a pine; thence S. 26° 30' W. 3650 feet to a stake; thence S. 53° 30' W. 4990 feet to a point on the Columbia, Newberry and Laurens Railroad; thence S. 73° 30' W. 2613 feet to a maple in a branch; thence S. 68° 30' W. 2180 feet to a stake near a negro church; thence N. 77° 30' W. 5577 feet to a stake just west of the public road, near Little Mountain; thence S. 28° 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 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° W. 82.51 chains to a stake, thence turning and running S. 32.5° 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° 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° 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.

HISTORY: 1962 Code § 14-82; 1952 Code § 14-82; 1942 Code § 3007; 1932 Code § 3007; Civ. C. '22 § 699; Civ. C. '12 § 617; Civ. C. '02 § 556; G. S. 125; R. S. 484; (5) 478, 506; (6) 463, 664; (7) 248; 1870 (14) 695; 1896 (22) 249; 1901 (23) 662; 1912 (27) 821; 1913 (28) 107; 1920 (31) 976; 1922 (32) 977; 1953 (48) 416.

Cross references—

As to constitutional provisions regarding county boundaries, see SC Const. Art 7, § 12; Art 8, § 2.

JLC&A - K. MURPHY 012094
000155

Code of Laws of South Carolina 1976 Annotated
Title 4. Counties
Chapter 3. Boundaries of Existing Counties

Code 1976 § 4-3-460

§ 4-3-460. Richland County.

Currentness

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° 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° 30' W. 878 feet; thence west 5,000 feet to a stake; thence S. 85° W. 5,000 feet to a stake; thence S. 80° W. 5,541 feet to a stake; thence N. 37° 28' W. 10,618 feet to a stake; thence S. 85° W. 750 feet to a pine; thence N. 34° 45' W. 10,491 feet to a stake; thence N. 22° E. 914 feet to a stake; thence N. 37° 5' W. 1,313 feet to a stake; thence N. 13° 45' E. 2,597 feet to a stake; thence N. 56° 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° W. 82.51 chains to a stake; thence turning and running S. 32.5° 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° 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.

Credits

HISTORY: 1962 Code § 14-90; 1952 Code § 14-90; 1942 Code § 3015; 1932 Code § 3015; Civ. C. '22 § 707; Civ. C. '12 § 624; Civ. C. '02 § 563; G. S. 432; R. S. 491; (4) 662; (5) 219, 317; (7) 290; 1913 (28) 107, 117; 1922 (32) 977; 1969 (56) 819.

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Code 1976 § 4-3-460, SC ST § 4-3-460
Current through End of 2011 Reg. Sess.

On the orthophotography:

Based on fieldwork in 1995, the coordinate for the point determined to be Rocky Ford is N1908571.158, E847532.742 (SC State Plane Coordinate, NAD 83-86)

The two lines trending northwestward and southwestward from Rocky Ford are based on acts from 1913 and 1921.

Southwestward line:

1913 February 13: Act No. 68--An Act to Provide for the Transfer and Annexation of a Certain Portion of Lexington County to Richland County, and to Alter the County Lines of Said Counties to Conform Thereto (Acts and Joint Resolutions of the General Assembly of the State of South Carolina Passed at the Regular Session of 1913, Vol.28, p.107-111).

"Beginning at a stake on the Richland-Lexington county line, 878 feet north of a stake marking the point where the arc of a circle with an eight-mile radius from Lexington Court House as a center intersects a line bearing N. 42°30' W. and running as follows: West 5,000 feet to a stake; thence S. 85° W. 5,000 feet to a stake; thence S. 80° W. 5,541 feet to a stake; thence N. 37° 28' W. 10,618 feet to a stake; thence S. 85° W. 750 feet to a pine; thence N. 34° 45' W. 10,491 feet to a stake; thence N. 22° E. 914 feet to a stake; thence N. 37° 5' W. 1,313 feet to a stake; thence N. 13°45' E. 2,597 feet to a stake; thence N 56°35' E. 3,920 feet to a point at Rocky Ford, on Wateree Creek; thence the Richland-Lexington county line to the beginning point."

This description was incorporated into §42 of The Code of Laws of South Carolina 1922, Volume III, p.286 and subsequent Codes of Laws defining the Richland County boundary.

It was included in the boundary description for Lexington County in §34 in the 1922 Code of Laws and subsequent Codes of Law.

Northwestward line:

1921 March 11: Act No. 551--An Act to Provide for the Transfer and Annexation of a Portion of Lexington County to Richland County and to alter the County Lines so as to Conform Thereto (Acts and Joint Resolutions of the General Assembly of the State of South Carolina Passed at the Regular Session of 1921, Vol.32, p.977-981)

"All that certain piece of land containing 8,900 acres, or fourteen 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 south 41 W. 82.51 chains to a stake; thence turning and running S. 32 1/2 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 a point where said creek joins Wateree Creek 71.51 chains, thence running along said Wateree Creek 94 chains, thence turning and running S. 23 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, ..."

The plat of the property described above was completed on November 25, 1921, by W.A. Counts and J.C. Wessinger, Surveyors, and was filed in the Secretary of State's office. On the plat Wateree Creek is apparently mislabeled as Slice Creek.

This description was incorporated into §3015 in the Code of Laws of South Carolina 1932, Volume II, pp. 475-476 and subsequent Codes of Laws defining the Richland County boundary.

It was included in the boundary description for Lexington County in §3007 in the 1932 Code of Laws and subsequent Codes of Law.

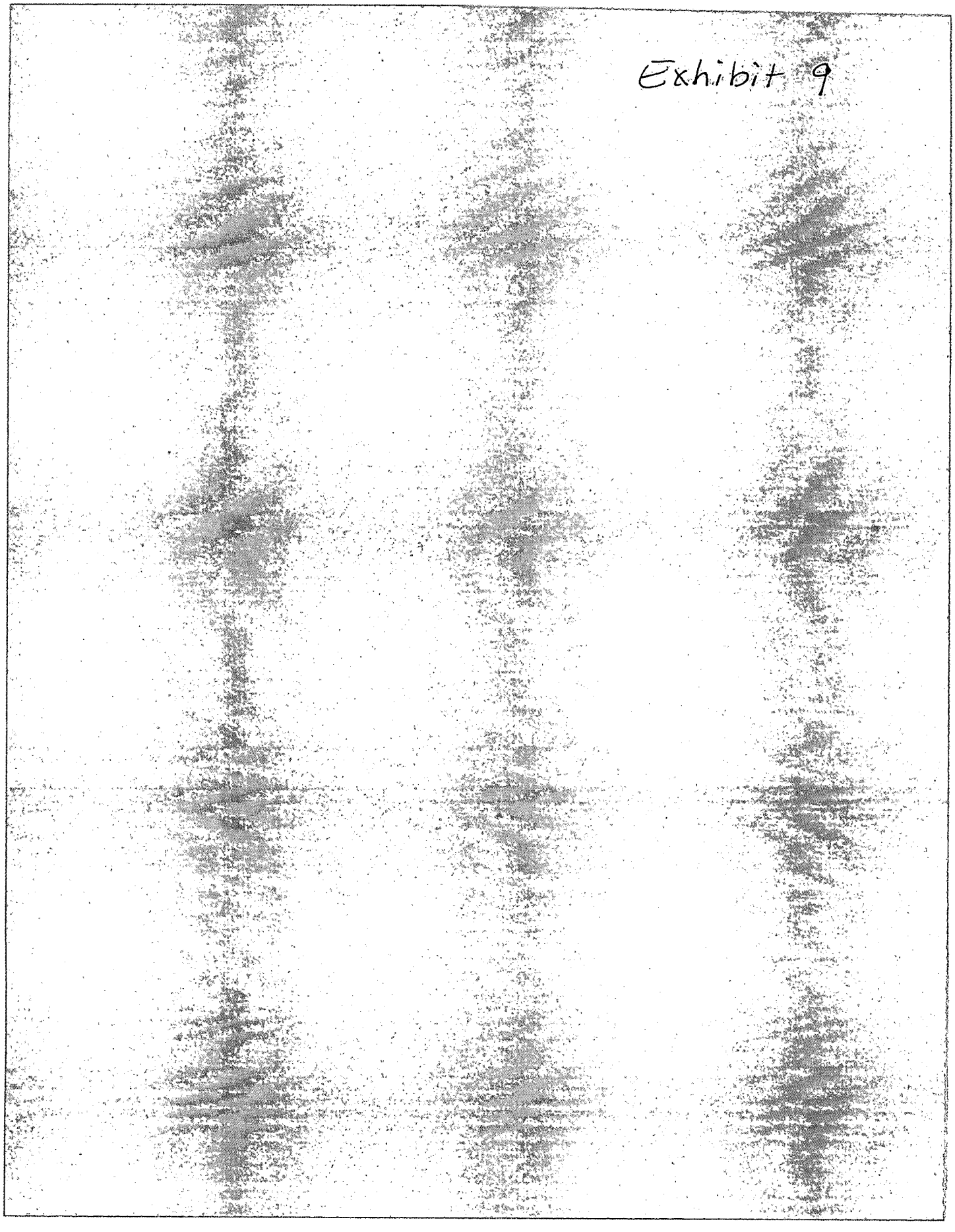
Exhibit 9

On the orthophotography:

Based on fieldwork in 1995, the coordinate for the point determined to be Rocky Ford is N1908571.158, E847532.742 (SC State Plane Coordinate, NAD 83-86)

The two lines trending northwestward and southwestward from Rocky Ford are based on acts from 1913 and 1921.

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"Beginning at a stake on the Richland-Lexington county line, 878 feet north of a stake marking the point where the arc of a circle with an eight-mile radius from Lexington Court House as a center intersects a line bearing N. 42°30' W. and running as follows: West 5,000 feet to a stake; thence S. 85° W. 5,000 feet to a stake; thence S. 80° W. 5,541 feet to a stake; thence N. 37° 28' W. 10,618 feet to a stake; thence S. 85° W. 750 feet to a pine; thence N. 34° 45' W. 10,491 feet to a stake; thence N. 22° E. 914 feet to a stake; thence N. 37° 5' W. 1,313 feet to a stake; thence N. 13°45' E. 2,597 feet to a stake; thence N 56°35' E. 3,920 feet to a point at Rocky Ford, on Wateree Creek; thence the Richland-Lexington county line to the beginning point."

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It was included in the boundary description for Lexington County in §34 in the 1922 Code of Laws and subsequent Codes of Law.

Northwestward line:

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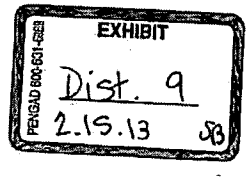
"All that certain piece of land containing 8,900 acres, or fourteen square miles, situate in the northeastern part of Lexington County on the Broad



River, and being bounded and delineated as follows, to wit: Beginning at a point on said Broad River, and running south 41 W. 82.51 chains to a stake; thence turning and running S. 32 1/2 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 a point where said creek joins Wateree Creek 71.51 chains, thence running along said Wateree Creek 94 chains, thence turning and running S. 23 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, ..."

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It was included in the boundary description for Lexington County in §3007 in the 1932 Code of Laws and subsequent Codes of Law.

JLC&A - K. MURPHY 012101

000162

Exhibit 10

EXHIBIT
Dist. 10
2.15.13 SB
Legend
Lexington - Richland County Boundary as defined in the Code of Laws of South Carolina
USGS County Boundary from Topographic Map
Lexington County GIS Boundary
Richland County GIS Boundary
US Census County Boundary
Kim Murphy Residence
0 500 1,000 2,000 3,000 4,000
Feet

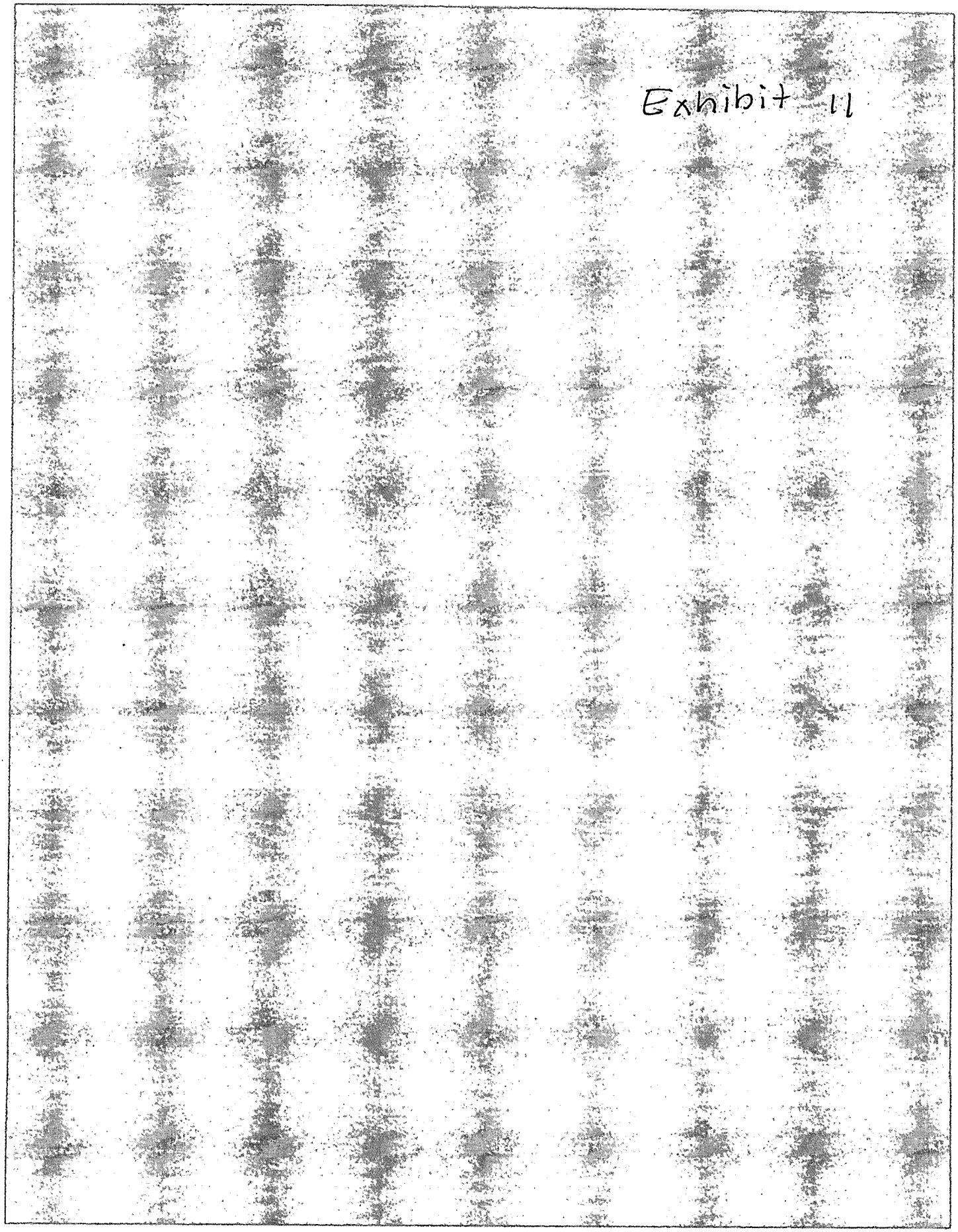
Exhibit 11

South Carolina General Assembly
114th Session, 2001-2002

Scroll to History Page
Scroll to Previous Versions Links List
Scroll to Full Text
Download This Bill in Microsoft Word format

Bill 1131

Current Status

Bill Number:	1131
Ratification Number:	448
Act Number:	326
Type of Legislation:	General Bill GB
Introducing Body:	Senate
Introduced Date:	20020320
Primary Sponsor:	Patterson
All Sponsors:	Patterson, Giese, Courson and Jackson
Drafted Document Number:	l:\council\bills\bbm\10917htc02.doc
Date Bill Passed both Bodies:	20020605
Date of Last Amendment:	20020530
Governor's Action:	S
Date of Governor's Action:	20020618
Subject:	Richland County School Districts Property Tax Relief Act, to provide for special one percent sales tax; election of trustees for Richland-Lexington School District 5; Richland-Lexington Airport District Commission, appointment of additional member; Midlands Technical College Commission, appointment of members

History

Body	Date	Action Description	Com	Leg Involved
------	20020708	Act No. A326		
------	20020618	Signed by Governor		
------	20020606	Ratified R448		
House	20020605	Concurred in Senate amendment, enrolled for ratification		
Senate	20020530	House amendments amended, returned to House with amendment		
House	20020529	Returned the Bill to the Senate		
Senate	20020529	Recalled from House		
Senate	20020528	House amendments amended, returned to House with amendment		
House	20020523	Read third time, returned to Senate with amendment		
House	20020522	Amended, read second time		
House	20020521	Request for debate withdrawn by Representative		Rhoad

EXHIBIT
Dist. 11
2.15.13 SB
PENGAD 800-631-6989

House	20020515	Debate adjourned until Thursday, 20020516		
House	20020508	Debate adjourned until Tuesday, 20020514		
House	20020501	Debate adjourned until Tuesday, 20020507		
House	20020501	Request for debate by Representative		Harrison Rhoad J. Brown
House	20020501	Objection by Representative		Knotts Whatley Quinn Riser Frye
House	20020430	Debate adjourned until Wednesday, 20020501		
House	20020424	Recalled from Committee	30 HWM	
House	20020423	Introduced, read first time, referred to Committee	30 HWM	
Senate	20020418	Read third time, sent to House		
------	20020418	Scrivener's error corrected		
Senate	20020417	Read second time, unanimous consent for third reading on the next Legislative day		
Senate	20020417	Recalled from Committee	06 SF	
Senate	20020320	Introduced, read first time, referred to Committee	06 SF	

Versions of This Bill

Revised on April 17, 2002 - Word format
Revised on April 18, 2002 - Word format
Revised on April 24, 2002 - Word format
Revised on May 22, 2002 - Word format
Revised on May 28, 2002 - Word format
Revised on May 30, 2002 - Word format

View additional legislative information at the LPITS web site.

(Text matches printed bills. Document has been reformatted to meet World Wide Web specifications.)

(A326, R448, S1131)

AN ACT TO ENACT THE "RICHLAND COUNTY SCHOOL DISTRICTS PROPERTY TAX RELIEF ACT" BY PROVIDING FOR THE IMPOSITION OF A SPECIAL ONE PERCENT SALES AND USE TAX IN RICHLAND COUNTY FOR NOT MORE THAN TWENTY YEARS WITH THE REVENUE OF THE TAX USED TO DEFRAY GENERAL OBLIGATION DEBT SERVICE OR OTHERWISE DEFRAY THE COSTS OF CAPITAL IMPROVEMENTS OF THE SCHOOL DISTRICTS OF RICHLAND COUNTY, TO PROVIDE THAT THE TAX MAY BE IMPOSED ONLY AFTER ITS APPROVAL IN A REFERENDUM HELD IN THE COUNTY, TO PROVIDE FOR THE REFERENDUM, AND TO PROVIDE THAT, IF IMPOSED, THE TAX MUST BE COLLECTED BY THE SOUTH CAROLINA DEPARTMENT OF REVENUE AND REMITTED TO THE RICHLAND COUNTY TREASURER FOR THE RICHLAND COUNTY SCHOOL DISTRICTS, TO PROVIDE THAT THE TAX IS IMPOSED AND IS

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SUBJECT TO THE SAME EXEMPTIONS AND MAXIMUM TAXES AS PROVIDED IN THE SOUTH CAROLINA SALES TAX ACT EXCEPT FOR AN ADDITIONAL EXEMPTION FOR FOOD ITEMS WHICH LAWFULLY MAY BE PURCHASED WITH UNITED STATES DEPARTMENT OF AGRICULTURE FOOD COUPONS, TO PROVIDE FOR THE METHOD OF APPLYING THE REVENUES OF THE TAX TO SCHOOL DISTRICT GENERAL OBLIGATION DEBT SERVICE, AND TO PROVIDE FOR THE ELECTION OF TRUSTEES FOR RICHLAND-LEXINGTON SCHOOL DISTRICT 5; TO AMEND SECTION 55-11-320, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE ESTABLISHMENT OF THE RICHLAND-LEXINGTON AIRPORT DISTRICT, SO AS TO INCREASE THE MEMBERSHIP OF THE COMMISSION FROM TEN TO TWELVE MEMBERS AND PROVIDE FOR THE METHOD OF APPOINTMENT OF THE ADDITIONAL MEMBERS; AND TO AMEND SECTION 59-53-1710, AS AMENDED, RELATING TO THE ESTABLISHMENT OF THE MIDLANDS TECHNICAL COLLEGE COMMISSION, SO AS TO REDUCE FROM EIGHT TO SEVEN THE COMMISSION MEMBERS APPOINTED BY THE GOVERNOR ON THE RECOMMENDATION OF THE RICHLAND COUNTY LEGISLATIVE DELEGATION AND CONCOMITANTLY INCREASE FROM FOUR TO FIVE THE COMMISSION MEMBERS APPOINTED BY THE GOVERNOR ON THE RECOMMENDATION OF THE LEXINGTON COUNTY DELEGATION.

Be it enacted by the General Assembly of the State of South Carolina:

Citation; Richland County School Districts Property Tax Relief Act

SECTION 1. This act may be cited as the "Richland County School Districts Property Tax Relief Act".

Use of sales and use tax revenues

SECTION 2. Subject to the requirements of this act, there may be imposed a one percent sales and use tax within Richland County. The proceeds of the tax must be distributed to the three school districts in Richland County as provided in this act. The boards of trustees of each of the school districts, before the expenditure of the proceeds of the tax authorized by this act, by resolution, must determine the specific purposes for which the proceeds of the tax as distributed must be expended. However, in any case the proceeds only must be applied to (a) reduce ad valorem property taxes imposed to pay debt service on general obligation bonds or (b) otherwise defray the cost of capital improvements within each school district, as determined by resolution of the boards of trustees of the respective school districts.

Referendum to impose tax

SECTION 3. (A) The tax authorized by this act may be imposed upon (1) the adoption of an approving resolution by each of the boards of trustees of the three school districts in Richland County and (2) the subsequent approval of the imposition of the tax by referendum open to all qualified electors residing in Richland County. The approving resolutions must specify the maximum time, stated in calendar years, not to exceed twenty years, for which the tax must be imposed; the date upon which the referendum is held, the precincts and polling places for the referendum, and the question to appear on the referendum ballot. The approving resolutions, upon adoption, must be forwarded to the Richland County Registration and Elections Commission.

(B) Upon receipt of approving resolutions from all boards of trustees of Richland County school districts, the commission shall conduct a referendum on the question of imposing the tax in Richland County. Notice of the election must be provided in the manner provided by the general election law and include the question to be voted upon in the referendum. Expenses of the referendum must be paid by the three Richland County school districts, proportionally according to number of persons residing in each school district who are registered to vote in Richland County.

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(C) The question to be voted upon in the referendum must read substantially as follows:

"Must a special one percent sales and use tax be imposed in Richland County for not more than ____ years with the revenue of the tax used to pay debt service on general obligation bonds of, or directly to defray the cost of capital improvements for, or both of these purposes, the three school districts in Richland County?

Yes []

No []"

The ballot may contain a short explanation of the question to be voted upon in this referendum.

(D) Upon receipt and certification of the returns of the referendum, the Richland County Registration and Election Commission, by resolution, shall certify the results of the referendum by resolution and within ten days thereafter file the resolution with the Richland County Clerk of Court and with the South Carolina Department of Revenue. The results of the referendum, as declared by resolution of the Richland County Registration and Election Commission and as filed with the clerk of court, is not open to question except by a civil action instituted within twenty days of the filing of the resolution. If a majority of the total votes cast is in favor of imposing the tax, then the tax is imposed as provided in this act; otherwise the tax is not imposed. A referendum on imposition of the tax authorized in this act may not be held more than once in a period of twelve consecutive months.

Date of imposition

SECTION 4. (A) If the tax is approved in the referendum, the tax must be imposed beginning upon the first day of the sixth full month following the filing of the declaration of results of the referendum with the Department of Revenue.

(B) The tax terminates upon the earlier of:

(1) the final day of the maximum time specified for the imposition; or

(2) sixty days following the filing with the Department of Revenue of certified copies of resolutions adopted by the boards of trustees of each of the three Richland County school Districts each requesting termination of the tax.

Administration of the tax; exemption

SECTION 5. (A) The tax levied pursuant to this act must be administered and collected by the Department of Revenue in the same manner that other sales and use taxes are collected. The department may prescribe the amounts which may be added to the sales price because of the tax.

(B) The tax authorized by this act is in addition to all other local sales and use taxes and applies to the gross proceeds of the sales in Richland County which are subject to the tax imposed by Chapter 36, Title 12 of the 1976 Code and the enforcement provisions of Chapter 54, Title 12 of the 1976 Code. The gross proceeds of the sale of items subject to a maximum tax in Chapter 36 of Title 12 of the 1976 Code are exempt from the tax imposed by this act. The gross proceeds of the sale of food which may lawfully be purchased with United States Department of Agriculture food coupons are exempt from the tax imposed by this act. The tax imposed by this act also applies to tangible personal property subject to the use tax in Article 13, Chapter 36 of Title 12 of the 1976 Code.

(C) Taxpayers required to remit taxes under Article 13, Chapter 36, Title 12 of the 1976 Code shall identify the county in which the tangible personal property purchased at retail is stored, used, or

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consumed in this State.

(D) Utilities are required to report sales in the county in which consumption of the tangible personal property occurs.

(E) A taxpayer subject to the tax imposed by Section 12-36-920 of the 1976 Code, who owns or manages rental units in more than one county shall separately report in his sales tax return the total gross proceeds from business done in each county.

(F) The gross proceeds of sales of tangible personal property delivered after the imposition date of the tax levied under this act in Richland County, either under the terms of a construction contract executed before the imposition date, or a written bid submitted before the imposition date, culminating in a construction contract entered into before or after the imposition date, are exempt from the special local sales and use tax provided in this section if a verified copy of the contract is filed with the Department of Revenue within six months after the imposition of the special local sales and use tax.

(G) Notwithstanding the imposition date of the special local sales and use tax authorized pursuant to this act, with respect to services that are regularly billed on a monthly basis, the special local sales and use tax is imposed beginning on the first day of the billing period beginning on or after the imposition date.

Crediting of revenues

SECTION 6. (A) The revenues of the sales and use tax collected under this act must be remitted to the State Treasurer and credited to a fund separate and distinct from the general fund of the State. After deducting the amount of refunds made and costs to the Department of Revenue of administering the tax, not to exceed one percent of the revenues, the State Treasurer shall distribute the revenues monthly to the Richland County Treasurer for the benefit of the Richland County school districts in the amounts established in accordance with subsection (b) of this section. The State Treasurer may correct misallocation costs or refunds by adjusting subsequent distributions, but these adjustments must be made in the same fiscal year as the misallocation.

(B) The State Treasurer shall distribute proceeds of the tax, less amounts attributable to refunds and administration as provided in subsection (A) of this section, to the Richland County Treasurer and thereafter by the Richland County Treasurer to the school districts of Richland County in direct proportion to the one hundred thirty-five day average daily membership of each of the three school districts for the fiscal year before the year in which a distribution is made, as certified by the State Treasurer upon advice of the State Department of Education. For purposes of this subsection, the one hundred thirty-five day average daily membership excludes any student not residing in Richland County.

(C) Except as provided in Section 7 of this act, withdrawals by the school districts of tax proceeds from the Richland County Treasurer must be made in the same manner as are funds appropriated to the school districts by the State. Pending these withdrawals, taxes must be deposited in accounts for each school district, separate and distinct from accounts established for any other purpose, and investment earnings derived from monies in such an account must be credited to the account. Each school district shall maintain records which demonstrate that tax proceeds are spent only for the purposes as approved by its board of trustees and in accordance with this act.

Use of revenues

SECTION 7. If a school district elects that all or a portion of its share of the proceeds of the sales and use tax imposed and collected may be applied to the reduction of property taxes imposed in a given fiscal year to pay debt service on general obligation bonds of that school district, the school district shall notify the Richland County Treasurer in writing no later than July first of that fiscal year of its election

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and shall specify in the writing the amount of sales and use taxes to be applied to its general obligation bond debt service. The amount specified must not exceed the amount of sales and use tax proceeds held by the Richland County Treasurer for the school district as of July first of the fiscal year. The election is effective only for and applies only to debt service payments to be made in the eighteen-month period following that July first. Elections may be renewed from year to year.

Upon notification by a school district of its election under this section, the Richland County Treasurer shall certify to the Richland County Auditor by August first of that fiscal year the amount of sales and use taxes then held by the Richland County Treasurer for the benefit of the school district and designated by the school district for application to general obligation bond debt service payments. The Richland County Auditor shall reduce the levy of property taxes for the fiscal year required to pay debt service on general obligation bonds of the school district by the amount of sales and use tax revenues certified as held by the Richland County Treasurer and designated by the school district for the purpose. This amount of sales and use taxes thereafter must not be released to the school district but must be held by the Richland County Treasurer to pay debt service on general obligation bonds. However, any sales and use taxes held by the Richland County Treasurer in excess of the amounts designated by the school district for payment of debt service on general obligation bonds in the eighteen months following the July first of the fiscal year must be expended as directed by the school district in accordance with this act. Any investment earnings derived from the sales and use tax must be expended as directed by the school district in accordance with this act. With respect to a school district situated in more than one county, the requirements of this Section 7 apply with respect to the auditor and treasurer of both counties.

Data furnished

SECTION 8. The Department of Revenue, the State Department of Education, and the Richland County Auditor shall furnish data to the State Treasurer and to the school districts receiving tax revenues pursuant to this act for the purpose of calculating distributions and estimating revenues. The information that must be supplied to Richland County school districts upon request includes, but is not limited to, gross receipts, net taxable sales, and tax liability by taxpayers. Information about a specific taxpayer is considered confidential and is governed by the provisions of Section 12-54-240 of the 1976 Code. A person violating this section is subject to the penalties provided in Section 12-54-240 of the 1976 Code.

Trustees in Richland-Lexington School District 5

SECTION 9. (a) Notwithstanding 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; and

(2) the results of the election for trustees must be determined in accordance with the nonpartisan election and run-off election method prescribed in Section 5-15-62 of the 1976 Code.

(b) Beginning with the election of 2002, the seats for Trustees of Richland-Lexington School District 5 must be numbered as follows with each candidate running for a particular seat:

(1) the seats presently held by trustees residing in Lexington County whose terms expire in 2004 are seats 1, 2, and 3, respectively;

(2) the seat presently held by a trustee residing in Lexington County whose term expires in 2002 is seat 4;

(3) the seat presently held by a trustee residing in Richland County whose term expires in 2004 is seat 5;

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(4) the seat presently held by a trustee residing in Richland County whose term expires in 2002 is seat 6; and

(5) the seat presently held by a trustee residing in Lexington County whose term expires in 2002 must be filled in the election of 2002, and thereafter, by a resident of Richland County, is seat 7. This trustee must be elected for a four-year term to expire in 2006.

(c) This section takes effect upon approval by the Governor and applies to the election of Trustees of the Richland-Lexington School District 5 conducted in November 2002.

Richland-Lexington Airport District Commission; members

SECTION 10. Section 55-11-320 of the 1976 Code is amended to read:

"Section 55-11-320. The corporate powers and duties of the Richland-Lexington Airport District must be exercised and performed by a commission to be known as Richland-Lexington Airport Commission. The commission must be composed of twelve members to be appointed by the Governor as follows: five members must be appointed upon the recommendation of a majority of the Lexington County Legislative Delegation, five members must be appointed upon the recommendation of a majority of the Richland County Legislative Delegation, and two members must be appointed upon the recommendation of the City Council of the City of Columbia. The members of the commission shall serve for terms of four years and until their successors are appointed and qualify. Members may not serve more than two consecutive terms. A member serving on July 1, 1994, may serve until the expiration of the term for which he was elected and may serve two additional terms. In the event of a vacancy for any reason, other than the expiration of a term, a successor must be appointed in the same manner of the original appointment for the balance of the unexpired term. Any member may be removed by the appointing authority for neglect of duty, misconduct, or malfeasance in office after being given a written statement of reasons and an opportunity to be heard. Notwithstanding the expiration of the term of office of any member, he shall continue to serve until his successor shall have been recommended, appointed, and qualified, but any delay in appointing a successor shall not extend the term of such successor. The members of the commission shall serve without compensation, except for their actual and necessary expenses while in performance of duties prescribed under this article."

Midlands Technical College Commission; members

SECTION 11. Section 59-53-1710 of the 1976 Code is amended to read:

"Section 59-53-1710. There is created, as an administrative agency of Richland and Lexington Counties, the Midlands Technical College Commission. The commission is composed of twelve members who must be appointed by the Governor for a term of four years as follows: seven members must be appointed upon the recommendation of a majority of the legislative delegation representing Richland County, and five members must be appointed upon the recommendation of a majority of the legislative delegation representing Lexington County. Members may not serve more than two consecutive terms. A member serving on July 1, 2002, may serve until the expiration of the term for which he was elected and may serve two additional terms. If a vacancy occurs a successor must be appointed in the same manner as the original appointment for the unexpired portion of the term. Any member may be removed by the appointing authority for neglect of duty, misconduct, or malfeasance in office after being given a written statement of reasons and an opportunity to be heard. Members serve until their successors are appointed and qualify, but any delay in appointing a successor does not extend the term of the succession. The members of the commission shall receive per diem as provided for members of boards, commissions, and committees and actual expenses incurred in the performance of their duties. As soon as the initial appointments have been made, the commission shall elect from its membership a chairman, a vice chairman, a treasurer, and a secretary to serve for terms of two years and until their successors are

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elected and qualify. The office of chairman must be rotated among the representatives of the two counties. If the office of chairman becomes vacant, a successor must be elected for the remainder of the term and must be from the members representing the same county as the former chairman. The same rotation must be applied to the office of vice chairman, but the practice of rotating the office of vice chairman may be dispensed with if, by three-fourths vote, the commission finds that the rotation is impracticable."

Severability

SECTION 12. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

Time effective

SECTION 13. Except as otherwise provided in this act, this act takes effect upon approval by the Governor.

Ratified the 6th day of June, 2002.

Approved the 18th day of June, 2002.

This web page was last updated on Tuesday, December 8, 2009 at 11:16 A.M.

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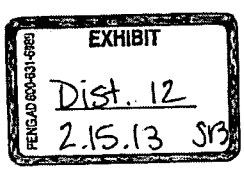
Exhibit 12

Kim Murphy
On the record statement
January 28, 2013

Since learning for the first time at the last board meeting that my residency, and subsequently my eligibility to serve on this board to which I was duly elected is being questioned, I have taken every measure and step possible to verify and validate that I am indeed a citizen of Richland County. I have supporting documents available that do just that. Attached to this statement is a copy of a map showing my home clearly located within Richland County line. I have also attached a printout summarizing the property taxes my husband and I have paid in Richland County as well as a copy of my voter registration card just reissued last week. Hopefully, this documentation puts to rest any lingering questions or concerns regarding my residency and eligibility to continue serving the thousands of Richland County voters who elected me.

I do not desire to spend any more time or energy on this issue. I am confident in my position and I do not feel that their claim(s) have any merit. However, if our board chair decides to pursue it further in spite of the evidence I have presented this evening, then I will certainly respond. In the meantime, we have much more pressing issues to address and our students, teachers, parents and taxpayers cannot afford for us to waste any more of their time and money engaging in this back and forth bickering and pursuing our own personal agendas.



Richland County Map

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DISCLAIMER : THIS IS A PRODUCT OF THE RICHLAND COUNTY GIS DEPARTMENT. THE DATA DEPICTED HERE HAVE BEEN DEVELOPED WITH EXTENSIVE COOPERATION FROM OTHER COUNTY DEPARTMENTS, AS WELL AS OTHER FEDERAL, STATE AND LOCAL GOVERNMENTS AGENCIES.RICHLAND COUNTY EXPRESSLY DISCLAIMS RESPONSIBILITY FOR DAMAGES OR LIABILITY THAT MAY ARISE FROM THE USE OF THIS MAP.

Residential Taxes

RICHLAND COUNTY
POST OFFICE BOX 11947
COLUMBIA, SC 29211

David A. Adams
Treasurer
803-576-2[illegible]
treasurer@rcgov.us

PRINTED: 1/17/2013 ****** REAL ESTATE TAXES ******
CLERK:
TY-YEAR-RECEIPT MAP-BLOCK-PARCEL LEVY-YEAR 2012
R-2012-117883 00600-01-36 401.50

LOC: 154 OLD LAUREL LN
RMKS:
DIGEST 21,700
CHANGE 0
NET-ASSM 21,700

R-2012-117883
MURPHY D JAY

DIST-NO:
6UD

154 OLD LAUREL LANE
CHAPIN SC 29036

Current Year

CNTY-TAX	8,712.55
CNTY-SALES	699.83-
RESID-CR	4,801.92-
PEN/COST	.00
CNTY-TOT	3,210.80
CITY-TAX	.00
CITY-PEN	.00
GARB	249.00
PYMTS-TO-DATE	.00
ADJ-TO-DATE	.00

RICHLAND COUNTY
POST OFFICE BOX 11947
COLUMBIA, SC 29211

David A. Adams
Treasurer
803-576-2250
treasurer@rcgov.us

PRINTED: 1/17/2013 ****** REAL ESTATE TAXES ******
CLERK:
TY-YEAR-RECEIPT MAP-BLOCK-PARCEL LEVY-YEAR 2010
R-2010-116775 -D 00600-01-36 387.20

LOC: 154 OLD LAUREL LN
RMKS:
DIGEST 21,700
CHANGE 0
NET-ASSM 21,700

R-2010-116775 D
MURPHY D JAY

DIST-NO:
6UD

154 OLD LAUREL LANE
CHAPIN SC 29036

Election Year

CNTY-TAX	8,402.24
CNTY-SALES	575.05-
RESID-CR	4,626.63-
PEN/COST	517.43
CNTY-TOT	3,717.99
CITY-TAX	.00
CITY-PEN	.00
GARB	249.00
2011/04/01 PYMTS-TO-DATE	3,966.99
ADJ-TO-DATE	.00
BALANCE-DUE	.00

THIS IS NOT A TAX BILL, (DO NOT PAY) FOR YOUR INFORMATION ONLY. (PAID RECEIPT)

RICHLAND COUNTY
POST OFFICE BOX 11947
COLUMBIA, SC 29211

David A. Adams
Treasurer
803-576-2250
treasurer@rcgov.us

PRINTED: 1/17/2013 ****** REAL ESTATE TAXES ******
CLERK: SUSAN
TY-YEAR-RECEIPT MAP-BLOCK-PARCEL LEVY-YEAR 2001
R-2001-089030 -D 00600-01-36 312.60

LOC: 154 OLD HILTON RD
RMKS:
DIGEST 26,440
CHANGE 8,790-
NET-ASSM 17,650

R-2001-089030 D
MURPHY D JAY

DIST-NO:
6UD

154 OLD LAUREL LA
CHAPIN SC 29036

First Year

CNTY-TAX	8,265.14
CNTY-SALES	.00
RESID-CR	.00
PEN/COST	498.26
CNTY-TOT	8,763.40
CITY-TAX	.00
CITY-PEN	.00
GARB	.00
2002/04/24 PYMTS-TO-DATE	4,943.39
ADJ-TO-DATE	3,820.01-
WASTE-DUE	.00

THIS IS NOT A TAX BILL, (DO NOT PAY) FOR YOUR INFORMATION ONLY. (PAID RECEIPT)

RICHLAND COUNTY
POST OFFICE BOX 11947

David A. Adams
Treasurer

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You are now registered to vote in the state of South Carolina. Your official notification of registration is attached. To vote at your polling place, you must present one of the following types of photo identification:

- S.C. Driver's License
- ID Card issued by S.C. Department of Motor Vehicles
- S.C. Voter Registration Card with Photo
- Federal Military ID
- U.S. Passport

Congr	Senate	House	County Council	School
02	20	071	01	05

This stub along with the attached notification may be used as a VOTER REGISTRATION CARD with PHOTO
To use as a photo ID, DO NOT DETACH STUB.

STATE OF S.C. VOTER REGISTRATION NOTIFICATION

COUNTY: RICHLAND
PRECINCT: Springville

REG. NO: 406724091 REG. DATE: 9/26/2000

Murphy, Kim A
154 Old Laurel Ln
Chapin, SC 29036

SIGNATURE OF ELECTOR

FOLD HERE

SEX: Female RACE: White DOB: 6/27/1957

VOTE AT:
Lake Murray Elementary
1531 Three Dog Rd

Lillian A. McBride

COUNTY / STATE ELECTION OFFICIAL

RKH
1-17-13

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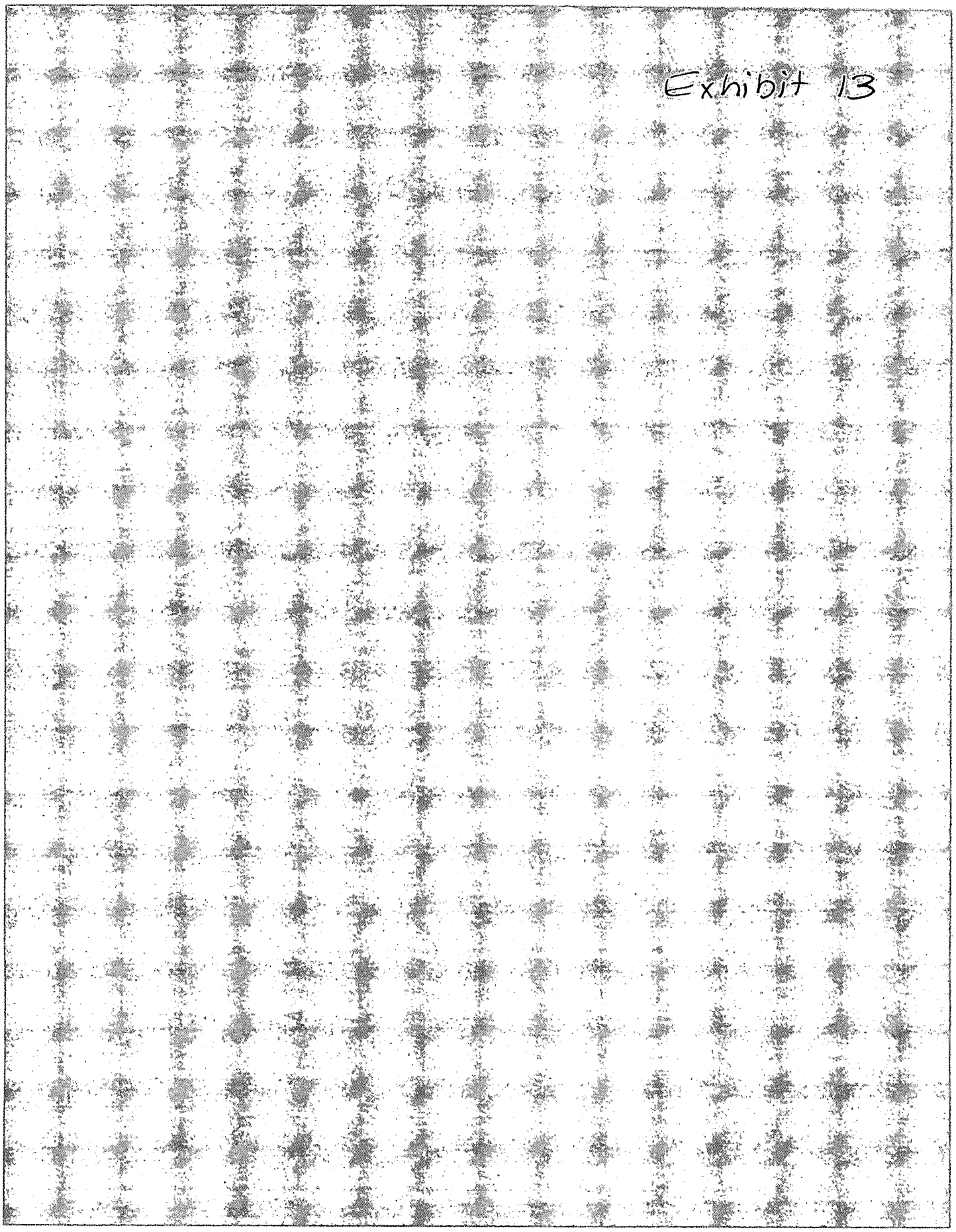
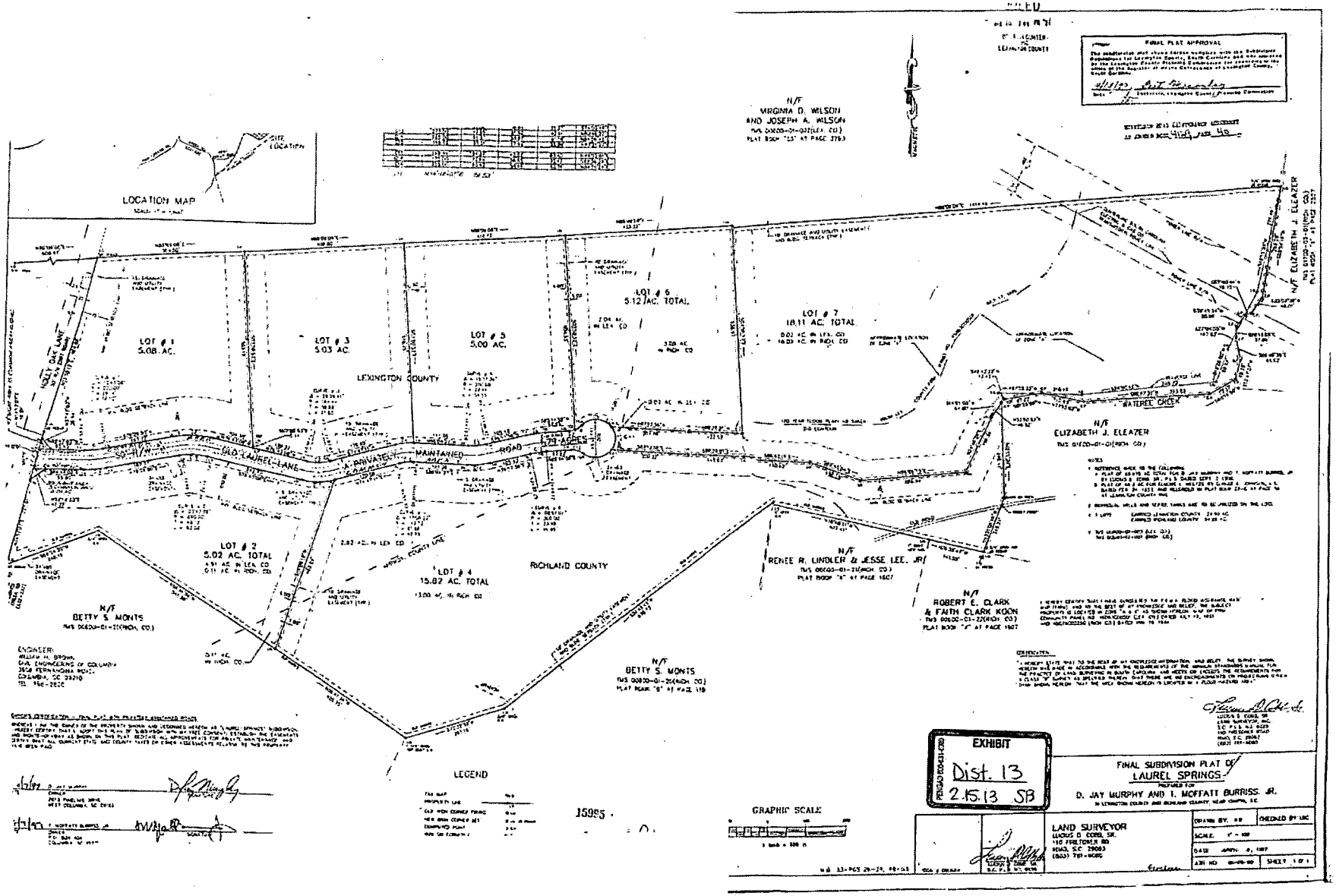


Exhibit 13



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Legend
Lexington - Richland County Boundary as defined in the Code of Laws of South Carolina
Richland County GIS Boundary
Richland County Parcels
Lexington County Parcels
LEXINGTON COUNTY
RICH
0
500
1,000
Feet

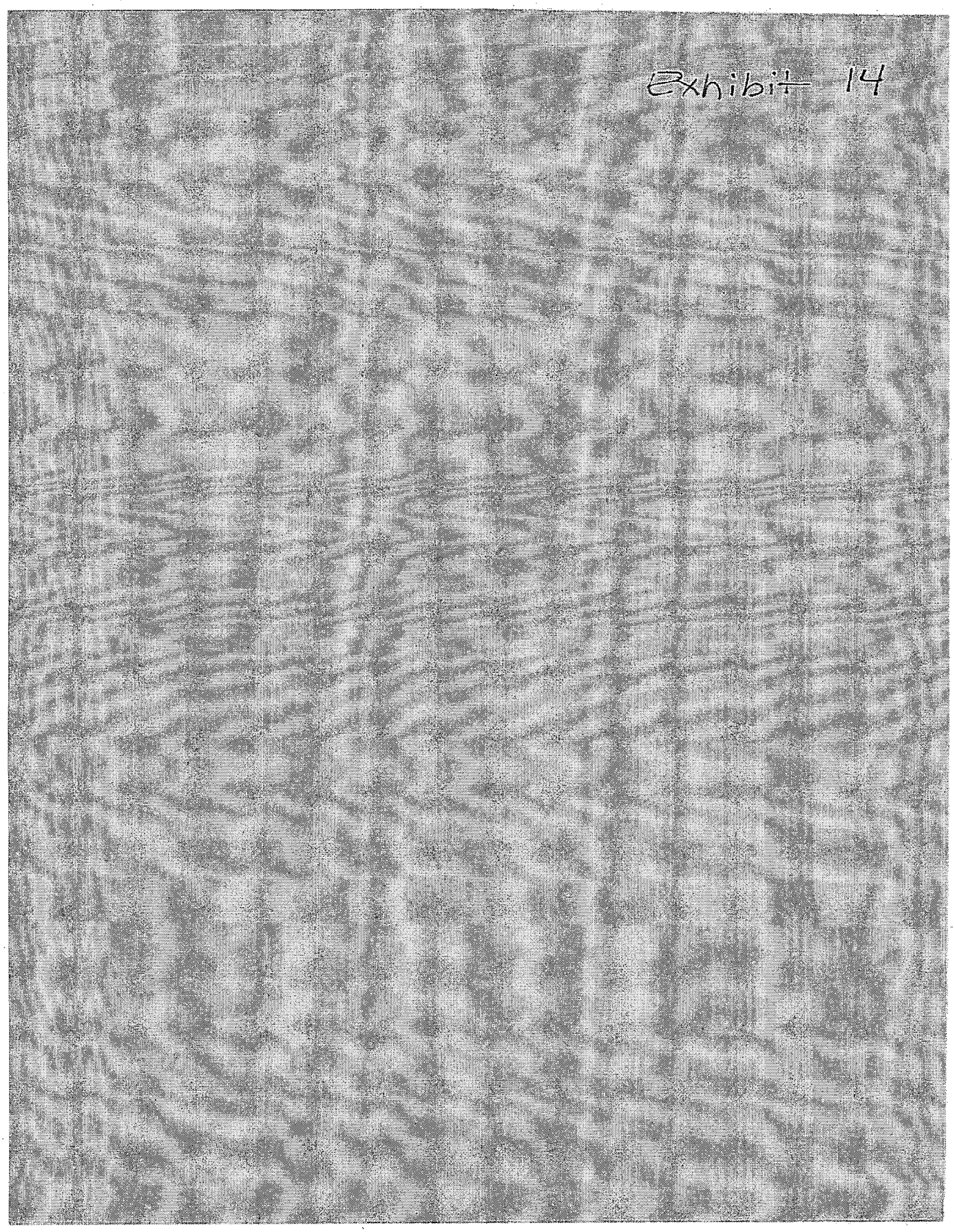
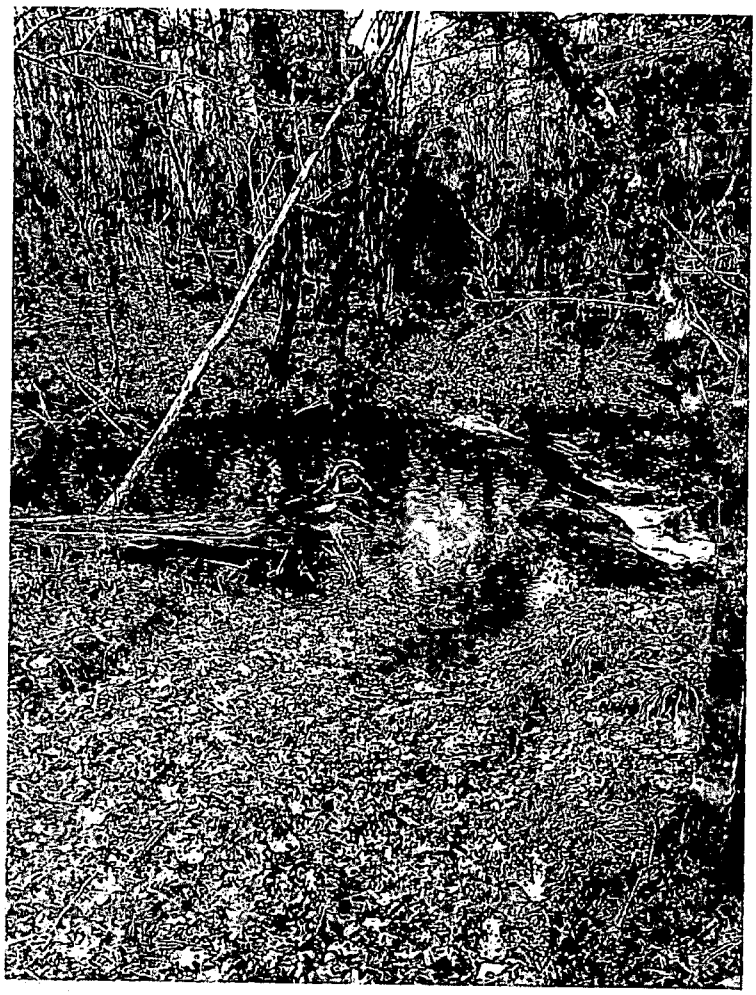
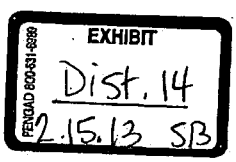


Exhibit 14



ROCKY FORD – VIEW FROM RICHLAND COUNTY ACROSS WATEREE CREEK TO LEXINGTON COUNTY



ROCKY FORD – VIEW UPSTREAM ON WATEREE CREEK

ROCKY FORD – VIEW FROM LEXINGTON COUNTY ACROSS WATEREE CREEK TO RICHLAND COUNTY

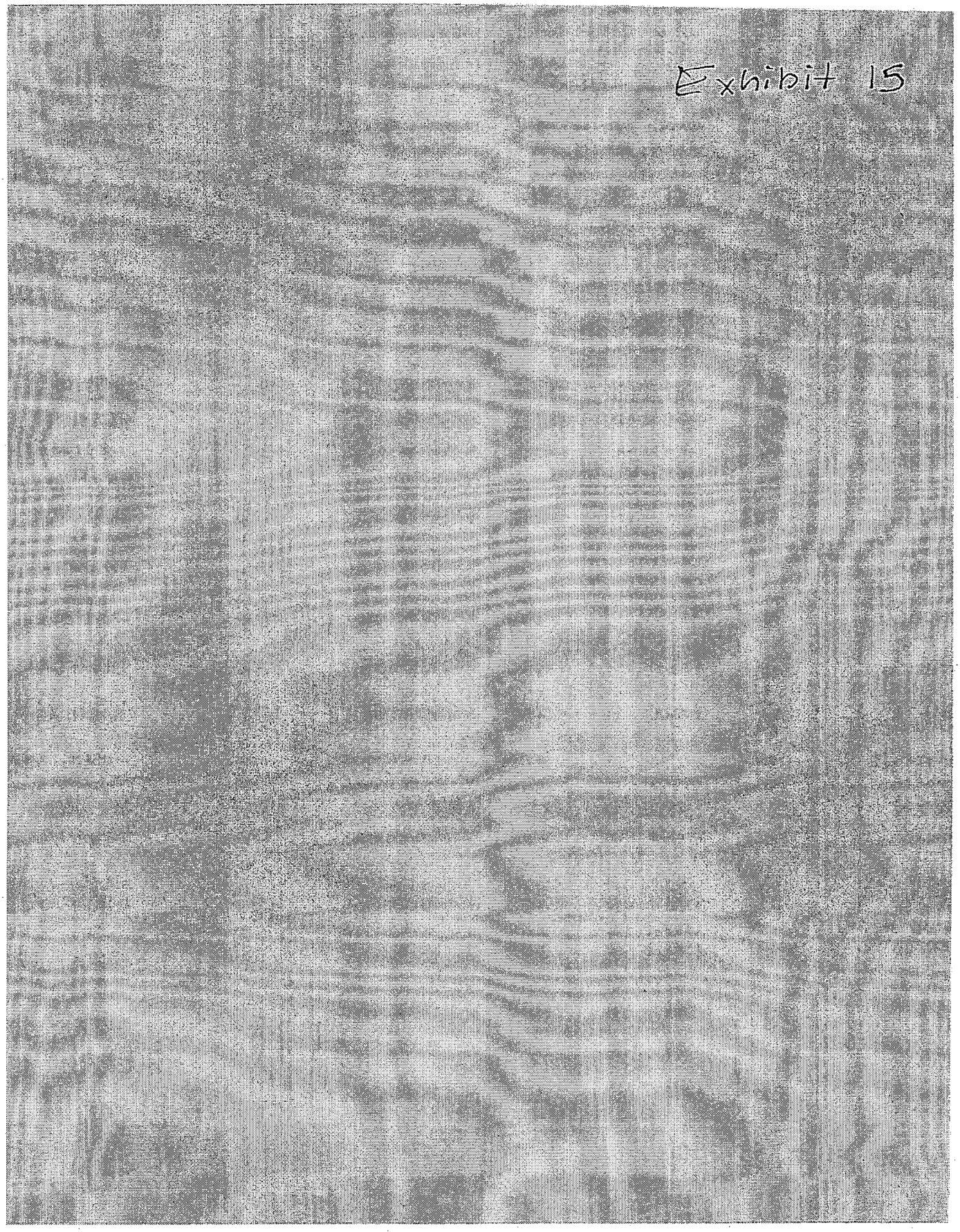
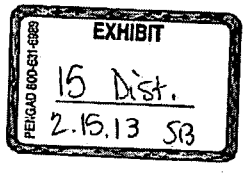


Exhibit 15

PROCEDURAL AND NOTICE RECORDS OF MURPHY RESIDENCY ISSUE

1. Mr. Gantt's letter of December 20, 2012 to Mr. Bowers
2. Mr. Bowers' January 11, 2013 Response
3. Mr. Gantt's public statement of January 14, 2013
4. Mr. Gantt's letter to Ms. Murphy of January 15, 2013
5. Ms. Murphy's attorney's response of January 18, 2013
6. Mr. Gantt's letter of January 22, 2013, to Judge Cooper
7. Mr. Gantt's public statement of January 28, 2013
8. Mr. Gantt's public statement amendment #1 of January 28, 2013
9. Ms. Murphy's on the record statement January 28, 2013
10. Ms. Murphy's Email to Voters in Lexington-Richland 5 of January 28, 2013
11. Mr. Childs' letter of January 29, 2013, to Ms. Murphy (via e-mail and hand delivery)
12. Mr. Childs' letter of January 30, 2013, to Judge Cooper
13. Judge Cooper's e-mail of January 31, 2013, to Ms. Murphy
14. Judge Cooper's Pre-hearing Order of January 31, 2013
15. Mr. Childs' letter of February 4, 2013 to Ms. Murphy
16. The State news article re: Murphy Residency February 6, 2013
17. The Free Times news article re: Murphy Residency February 6-12, 2013
18. Affidavit of Debbie Childs dated February 7, 2013



district five
OF LEXINGTON & RICHLAND COUNTIES

December 20, 2012

Mr. Bobby Bowers
Office of Research & Statistics
South Carolina State Budget & Control Board
1201 Main Street, Suite 715
Columbia, SC 29201

Re: School District Five of Lexington and Richland Counties

Dear Mr. Bowers:

I am writing to you as Chairman of the Board of Trustees of School District Five of Lexington and Richland Counties. It has come to my attention, from sources which I deem reliable, that Board member Kim Murphy, who currently represents Richland County on the Board of Trustees of School District Five, is not in fact a resident of Richland County as specifically required by Act No. 326 of 2002. As you may be aware, such rumors have been around for some time.

The purpose of my letter is to request that the South Carolina State Budget and Control Board Office of Research and Statistics make a determination as to whether or not Ms. Murphy resides in Richland County, as required by law, and whether she is, in fact, a resident of Richland County legally qualified to represent Richland County on the School District Five Board.

Thank you for your assistance with this matter.

Respectfully submitted,

Robert W. Gantt
Chairman, Board of Trustees

NIKKI HALEY, CHAIRMAN
GOVERNOR

CURTIS M. LOFTIS, JR.
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL

SC BUDGET AND CONTROL BOARD

HUGH K. LEATHERMAN, SR.
CHAIRMAN, SENATE FINANCE COMMITTEE

W. BRIAN WHITE
CHAIRMAN, HOUSE WAYS AND MEANS COMMITTEE

MARCIA ADAMS
EXECUTIVE DIRECTOR

Division of Research and Statistics
Bobby M. Bowers
DIRECTOR

803-734-3793

January 11, 2013

Mr. Robert W. Gantt
Chairman, Board of Trustees
Richland Lexington School District 5
1020 Dutch Fork Rd.
Irmo, SC 29063

Dear Mr. Gantt,

Per your request we have reviewed the county location of the residence of Ms. Kim Murphy, who currently represents Richland County on the Board of Trustees of School District Five of Richland and Lexington Counties. Our review was based on the address of 154 Old Laurel Ln., Chapin, SC 29036. This information was obtained through the South Carolina State Election Commission voter registration database.

We used three sources to determine the county location of Ms. Murphy's residence: 1. the U.S. Census Bureau, 2. Precinct maps on file with this office based on codified law, and 3. Research and field work conducted by the South Carolina Geodetic Survey.

The U.S. Census Bureau PL94-171 database shows Ms. Murphy's address as being located in U.S. Census Block 450630212042059. This puts Ms. Murphy in the State of South Carolina in Lexington County in Tract 021204 in Block 2059. Based on the database, the entire street of Old Laurel Ln. is located in Lexington County.

The next analysis we conducted was based on the official precinct maps on file with our office. As established in §1-11-360 our office serves as the focal point for verifying official precinct information for the counties and serves as the official repository for precinct maps. The map on file with this office (P-63-10) show Ms. Murphy is a resident of Lexington County and should be voting in the Lexington County Chapin precinct for House District 85, Senate District 18, and Lexington County Council District 6. In addition to Ms. Murphy's address it has come to our attention that another address located on Old Laurel Ln. is also located in the incorrect county, voting in the incorrect precinct and election districts.

The third source is research and field work conducted by the South Carolina Geodetic Survey. Section 4-3-460 of the Code of Laws of South Carolina 1976 defining the Richland County boundary states that Rocky Ford on Wateree Creek is a point on the Richland-Lexington county boundary. GPS was used to determine the coordinates for Rocky Ford. From Rocky Ford, one boundary line segment bears northwest and another bears southwest. The northwest-trending line segment from Rocky Ford to its intersection with Risters Creek has an azimuth of 343° for a distance of 9405 feet. The southwest-trending line segment from Rocky Ford has an azimuth of 243° for a distance of 3920 feet. Plotting this information on orthophotography demonstrates that Ms. Murphy's house is in Lexington County – about 0.1 mile northwest of the boundary.

All three sources show that Ms. Murphy is a resident of Lexington County. Act No. 326 of 2002 requires that four members be elected from the Lexington County portion of the school district and three members are to be elected from the Richland County portion of the district. As Ms. Murphy was elected in 2010 for a seat in Richland County while residing in Lexington County she is and was not qualified to hold her position for which she has been elected. If Ms. Murphy desires, she may run for a seat for the Lexington County portion of School District Five at the next general election.

Sincerely,

Bobby M. Bowers

BMB:wfr

district five
OF LEXINGTON & RICHLAND COUNTIES

PUBLIC STATEMENT
JANUARY 14, 2013

In late October, it came to my attention that Board Member Kim Murphy might not be, in fact, a resident of Richland County, as specifically required by Act No. 326 of 2002 of the South Carolina General Assembly.

Act No. 326 of 2002 addresses the composition of the Board of Trustees of School District Five of Lexington and Richland Counties, specifically providing that three of the Board Members shall be residents of Richland County and four of the Board Members shall be residents of Lexington County. Ms. Murphy is one of three representatives from Richland County, the other two being Robert Gantt (myself) and Edward White.

Based on the information I received, I made a formal inquiry of Bobby Bowers, Director of the Office of Research and Statistics of the South Carolina State Budget and Control Board, whose office has statewide responsibility for election district maps. A copy of my December 20, 2012, letter to Mr. Bowers is attached. I also informed other officers of the Board of my inquiry, along with legal counsel for the District.

On January 12, 2013, I received a formal response to my inquiry from Mr. Bowers. A copy of his response is attached.

Tonight, in Executive Session, I informed the entire Board of Mr. Bowers' response, along with the District Superintendent and legal counsel for the District. Tomorrow, I will send a letter to Ms. Murphy confirming tonight's discussion. I assume that Ms. Murphy will evaluate the information and, if Mr. Bowers' position is correct, will resign her position as a member of the Board, as she was apparently not qualified to represent Richland County at the time of her election.

If there is a dispute about her qualifications to serve, the District, through legal counsel, will make arrangements to refer the matter to an independent, impartial person with extensive judicial experience to publicly hear the facts and law and make a recommendation to the Board. Individual Board members shall make no further comments on this situation but I, as Board Chair, will keep the public informed as events develop.

The Board and District are focused on the well-being of students and moving the District forward, and we look forward to a prompt and efficient resolution of this issue.

Copies of my letter to Ms. Murphy will be made public tomorrow. Any further inquiries should be directed to Mark Bounds, the District's Public Information Officer. Thank you.

Robert Gantt, Board Chairman

www.lex5.k12.sc.us
1020 Dutch Fork Road • Irmo, South Carolina 29063 • (803) 476-8000

district five
OF LEXINGTON & RICHLAND COUNTIES

Stephen W. Hefner, Ed.D.
Superintendent

January 15, 2013

Mrs. Kim Murphy
154 Old Laurel Lane
Chapin, SC 29036

Re: Residency Issue

Dear Mrs. Murphy:

Following up on our discussion at last evening's Board meeting, I have enclosed a copy of my letter of December 20, 2012, to Bobby Bowers, and his response, which I received on January 12, 2013. I think that it is important for you to advise me in writing of your position on these matters as promptly as circumstances permit. If I do not receive a definitive written response by the end of the day on Monday, January 21, 2013, I will act pursuant to the direction of the Board to refer the matter to an independent, impartial person with extensive judicial experience to publicly hear the facts and law and make a recommendation to the Board as to how it should proceed.

You or your attorney may contact Kenneth E. Childs, Attorney for the District in this matter, should you need additional information. Thank you.

Respectfully submitted,

Robert W. Gantt
Chairman, Board of Trustees

Enclosure

c: Board of Trustees
Dr. Stephen W. Hefner
Mr. Mark Bounds

W Y C H E

Attorneys at Law

January 18, 2013

Kenneth L. Childs, Esquire
Childs & Halligan, P.A.
1301 Gervais Street, Suite 900
PO Box 11367
Columbia, SC 29211-1367

Dear Ken:

I hope this letter finds you well. I write in response to Robert Gantt's January 15 letter to Kim Murphy.

There can be no factual dispute that Ms. Murphy has been a resident of Richland County for the past 12 years and that she has not moved. For each of those years, she has been billed residential property taxes by Richland County and has paid residential property taxes to Richland County. I am aware of no effort on the part of Richland County to refund those taxes. In addition, I enclose a copy of Ms. Murphy's voter registration card that contains her current address and specifies that she is a resident of Richland County and a qualified elector in the Springville Precinct in Richland County. There are, of course, legislative processes for changing county or precinct lines. To date, however, I am aware of no legislative effort to change either line.

As you know, a School Board has absolutely no authority to change a precinct or a county line or to otherwise remove an elected member of the Board. I would like to think that we could resolve this matter without spending tax dollars on litigation. Please let me know, however, if the Board plans to treat Ms. Murphy differently than any other member.

Thank you very much for your time and consideration.

Sincerely,

John C. Moylan, III
jmoylan@wyche.com

JCM,III/cbr

W Y C H E
PROFESSIONAL ASSOCIATION
801 Gervais Street, Suite B, Columbia, SC 29201-3155
p: 803.254.6542 | f: 803.254.6544
www.wyche.com

You are now registered to vote in the state of South Carolina. Your official notification of registration is attached. To vote at your polling place, you must present one of the following types of photo identification:

- S.C. Driver's License
- ID Card issued by S.C. Department of Motor Vehicles
- S.C. Voter Registration Card with Photo
- Federal Military ID
- U.S. Passport

Congr	Senate	House	County Council	School
02	20	071	01	05

This stub along with the attached notification may be used as a VOTER REGISTRATION CARD with PHOTO
To use as a photo ID, DO NOT DETACH STUB.

STATE OF S.C. VOTER REGISTRATION NOTIFICATION

COUNTY: RICHLAND
PRECINCT: Springville

REG. NO: 406724091 REG. DATE: 9/26/2000

Murphy, Kim A
154 Old Laurel Ln
Chapin, SC 29036

SIGNATURE OF ELECTOR

FOLD HERE

SEX: Female RACE: White DOB: 6/27/1957

VOTE AT:
Lake Murray Elementary
1531 Three Dog Rd

Lillian A. McBride

COUNTY / STATE ELECTION OFFICIAL

JLC&A - K. MURPHY 012133
000194

district five
OF LEXINGTON & RICHLAND COUNTIES

January 22, 2013

The Honorable G. Thomas Cooper, Jr.
P.O. Box 192
Columbia, SC 29202

Re: School District Five of Lexington and Richland Counties
Kim Murphy Residency Issue

Dear Judge Cooper:

I have been informed by Kenneth L. Childs, of Childs & Halligan, attorneys for the School District, that you had indicated you were willing, if necessary, to act as a "hearing officer" for the Board of Trustees of School District Five of Lexington and Richland Counties ("Board") and to review the issues of Board Member Kim Murphy's qualifications to serve on our Board as a representative of Richland County. Please see attached correspondence.

This Board exercises the duties of the county board of education with regard to its own school district, and thus the Board has the duty to make the decision required by South Carolina Code § 59-19-60, whereby "[s]chool district trustees shall be subject to removal from office for cause ... upon notice and after being given an opportunity to be heard ... " S.C. Code § 59-19-60. Specifically, we anticipate that you would conduct a hearing with due notice and an opportunity for both Mrs. Murphy and the District to be heard, in order to consider the evidence and legal issues involved and then make a report and recommendation to the Board on this question, as an aid to the Board's exercise of its duty under § 59-19-60.

By copy of this letter, I am requesting Messrs. Childs and Halligan to communicate in writing with you concerning the legal issues in this matter, serving a copy of any such communication on Ms. Murphy or her attorney, and also by copy of this letter inviting Ms. Murphy or her attorney to provide you with any written information, which they may care to submit. It is in the interest of all concerned to accomplish this task expeditiously.

We appreciate your willingness to assist our Board and the District in this matter, and we will, of course, pay a reasonable fee, plus expenses, for your services.

Sincerely yours,

Robert Gantt, Board Chair

Attachment

c: All Board Members
Kenneth L. Childs, Esq.
Ms. Kim Murphy

PUBLIC STATEMENT
January 28, 2013

As promised, I plan to keep the public informed concerning Ms. Murphy's residency in question.

On Tuesday, January 15, 2013, following the January 14, 2013 Board Meeting in which substantial concerns were raised by Mr. Bobby Bowers' January 11, 2013 letter concerning the residency of Board Member Kim Murphy, I sent Ms. Murphy a letter requesting her position on the issues. Once the correct information was officially made known, the Board was compelled to follow the law. Richland County residency is required by the law that establishes the criteria to hold the office of School Board Trustee for the Richland County portion of School District 5. A copy of my letter to Ms. Murphy is attached. On Friday afternoon, January 18, 2013, attorneys for the District received a letter from Ms. Murphy's attorney, John Moylan

Chairman, 5D5 Board of Trustees

---

of the Wyche Law Firm in Columbia. A copy of his letter is attached.

The boundary of Richland and Lexington counties was established by the General Assembly. Lexington County's GIS shows one boundary line, while Richland County's GIS shows another. Mrs. Murphy's residence is in the area of the two counties' overlapping boundaries as shown on their GIS maps. The line is objectively determinable through State authorities responsible for these lines. The South Carolina Budget and Control Board, Division of Research and Statistics is the agency charged with that responsibility. The School Board has no authority to determine the lines but does have the responsibility to ensure that residency requirements are met.

Many of the statements in Mr. Moylan's letter on behalf of Ms. Murphy – for example, Ms. Murphy has a voter registration certificate for Richland County signed by Lillian McBride, and she has paid taxes as a resident of Richland County --

RLL6

(2)

seem to be entirely correct, but they do not determine if the county boundary established by the General Assembly was improperly located by Richland County and then used for these two purposes.

On Tuesday, January 22, 2013, I sent the attached letter to recently retired SC Circuit Judge The Hon. Thomas Cooper, as outlined (and authorized) by my public statement at the Board Meeting on January 14. The Board has designated Judge Cooper to act as a hearing officer in this matter. Judge Cooper is an experienced, highly respected, and impartial member of the South Carolina judiciary who we have asked to determine the facts and law in this matter, rather than have the issues under any cloud of suspicion and rumor. It is my understanding that Judge Cooper will meet with the attorneys this week to determine how to proceed. Judge Cooper's proceedings, and certainly his legal and factual conclusions and recommendations to our Board, will be made

(3)

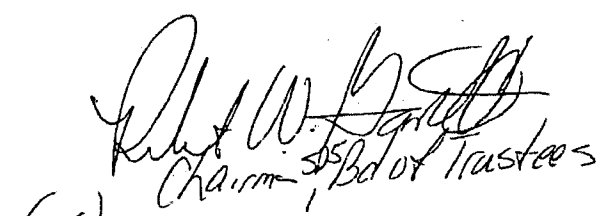
public. I will keep the public informed of any developments in this matter as it moves toward a desired timely conclusion.

Finally, I most sincerely regret Mrs. Murphy's statements in The State newspaper on Saturday, January 26, 2013, and her e-mail statements sent yesterday circulating in the community. Any suggestion that there is a conspiracy among board members in this matter is totally false. The apparent error in Richland County's placement of the true county line was confirmed by the Office of Research and Statistics using three sources, as stated in Mr. Bobby Bowers' letter of January 11, 2013. The School Board does not, and cannot, establish county lines or the residency qualifications for public offices.

As always, School District 5 will continue its efforts to provide our students, community, and citizens with a high-quality educational program. We certainly regret any distraction from

(4) RDD

our mission and primary responsibility to our students.



(5)

Public Statement Amendment #1

January 28, 2013

The attorneys for the School District were informed this afternoon that Mr. Moylan does not represent Ms. Murphy. Nevertheless, our attorneys, and I am certain Judge Cooper, will work cooperatively and professionally with Ms. Murphy and whomever she selects to represent her.

Chairman, JS Board of Trustees

Kim Murphy
On the record statement
January 28, 2013

Since learning for the first time at the last board meeting that my residency, and subsequently my eligibility to serve on this board to which I was duly elected is being questioned, I have taken every measure and step possible to verify and validate that I am indeed a citizen of Richland County. I have supporting documents available that do just that. Attached to this statement is a copy of a map showing my home clearly located within Richland County line. I have also attached a printout summarizing the property taxes my husband and I have paid in Richland County as well as a copy of my voter registration card just reissued last week. Hopefully, this documentation puts to rest any lingering questions or concerns regarding my residency and eligibility to continue serving the thousands of Richland County voters who elected me.

I do not desire to spend any more time or energy on this issue. I am confident in my position and I do not feel that their claim(s) have any merit. However, if our board chair decides to pursue it further in spite of the evidence I have presented this evening, then I will certainly respond. In the meantime, we have much more pressing issues to address and our students, teachers, parents and taxpayers cannot afford for us to waste any more of their time and money engaging in this back and forth bickering and pursuing our own personal agendas.

Richland County Map

COPYRIGHT 2009, RICHLAND COUNTY GIS

DISCLAIMER : THIS IS A PRODUCT OF THE RICHLAND COUNTY GIS DEPARTMENT. THE DATA DEPICTED HERE HAVE BEEN DEVELOPED WITH EXTENSIVE COOPERATION FROM OTHER COUNTY DEPARTMENTS, AS WELL AS OTHER FEDERAL, STATE AND LOCAL GOVERNMENTS AGENCIES.RICHLAND COUNTY EXPRESSLY DISCLAIMS RESPONSIBILITY FOR DAMAGES OR LIABILITY THAT MAY ARISE FROM THE USE OF THIS MAP.

Residential Taxes

RICHLAND COUNTY
POST OFFICE BOX 11947
COLUMBIA, SC 29211

David A. Adams
Treasurer
803-576-2250
treasurer@rcgov.us

PRINTED: 1/17/2013 ****** REAL ESTATE TAXES *******
CLERK: LEVY-YEAR 2012

Current Year

TY-YEAR-RECEIPT MAP-BLOCK-PARCEL
R-2012-117883 00600-01-36 401.50

LOC: 154 OLD LAUREL LN
RMKS:
DIGEST 21,700
CHANGE 0
NET-ASSM 21,700

R-2012-117883
MURPHY D JAY

DIST-NO:
6UD

154 OLD LAUREL LANE
CHAPIN SC 29036

CNTY-TAX	8,712.55
CNTY-SALES	699.83-
RESID-CR	4,801.92-
PEN/COST	.00
CNTY-TOT	3,210.80
CITY-TAX	.00
CITY-PEN	.00
GARB	249.00
PYMTS-TO-DATE	.00
ADJ-TO-DATE	.00

RICHLAND COUNTY
POST OFFICE BOX 11947
COLUMBIA, SC 29211

David A. Adams
Treasurer
803-576-2250
treasurer@rcgov.us

PRINTED: 1/17/2013 ****** REAL ESTATE TAXES *******
CLERK: LEVY-YEAR 2010

Election Year

TY-YEAR-RECEIPT MAP-BLOCK-PARCEL
R-2010-116775 D 00600-01-36 387.20

LOC 154 OLD LAUREL LN
RMKS:
DIGEST 21,700
CHANGE 0
NET-ASSM 21,700

R-2010-116775 D
MURPHY D JAY 2011/04/01

DIST-NO:
6UD

154 OLD LAUREL LANE
CHAPIN SC 29036

CNTY-TAX	8,402.24
CNTY-SALES	575.05-
RESID-CR	4,626.63-
PEN/COST	517.43
CNTY-TOT	3,717.99
CITY-TAX	.00
CITY-PEN	.00
GARB	249.00
PYMTS-TO-DATE	3,966.99
ADJ-TO-DATE	.00
BALANCE-DUE	.00

THIS IS NOT A TAX BILL, (DO NOT PAY) FOR YOUR INFORMATION ONLY. (PAID RECEIPT)

RICHLAND COUNTY
POST OFFICE BOX 11947
COLUMBIA, SC 29211

David A. Adams
Treasurer
803-576-2250
treasurer@rcgov.us

PRINTED: 1/17/2013 ****** REAL ESTATE TAXES *******
CLERK: SUSAN LEVY-YEAR 2001

First Year

TY-YEAR-RECEIPT: MAP-BLOCK-PARCEL
R-2001-089030 -D 00600-01-36 312.60

LOC 154 OLD HILTON RD
RMKS:
DIGEST 26,440
CHANGE 8,790-
NET-ASSM 17,650

R-2001-089030 D
MURPHY D JAY 2002/04/24

DIST-NO:
6UD

154 OLD LAUREL LA
CHAPIN SC 29036

CNTY-TAX	8,265.14
CNTY-SALES	.00
RESID-CR	.00
PEN/COST	498.26
CNTY-TOT	8,763.40
CITY-TAX	.00
CITY-PEN	.00
GARB	.00
PYMTS-TO-DATE	4,943.39
ADJ-TO-DATE	3,820.01-
WASTE-DUE	.00

THIS IS NOT A TAX BILL, (DO NOT PAY) FOR YOUR INFORMATION ONLY. (PAID RECEIPT)

RICHLAND COUNTY
POST OFFICE BOX 11947

David A. Adams
Treasurer

JLC&A - K. MURPHY 012143

You are now registered to vote in the state of South Carolina. Your official notification of registration is attached. To vote at your polling place, you must present one of the following types of photo identification:

- S.C. Driver's License
- ID Card issued by S.C. Department of Motor Vehicles
- S.C. Voter Registration Card with Photo
- Federal Military ID
- U.S. Passport

Congr.	Senate	House	County Council	School
02	20	071	01	05

This stub along with the attached notification may be used as a VOTER REGISTRATION CARD with PHOTO
To use as a photo ID, DO NOT DETACH STUB.

STATE OF S.C. VOTER REGISTRATION NOTIFICATION

COUNTY: RICHLAND
PRECINCT: Springville

REG. NO: 406724091 REG. DATE: 9/26/2000

RKH
1-17-13

Murphy, Kim A
154 Old Laurel Ln
Chapin, SC 29036

SIGNATURE OF ELECTOR

FOLD HERE

SEX: Female RACE: White DOB: 6/27/1957

VOTE AT:
Lake Murray Elementary
1531 Three Dog Rd

Lillian A. McBride

COUNTY / STATE ELECTION OFFICIAL

JLC&A - K. MURPHY 012144

000205

-----Original Message-----
From: Kim Murphy <movingmountainskwm@gmail.com>
To: Kim Murphy <movingmountainskwm@gmail.com>
Sent: Sun, Jan 27, 2013 6:57 pm
Subject: URGENT District 5 update - Tax dollar protection!

Dear Voter and Taxpayer in Lexington-Richland School District 5:

I do like to keep all of you informed, but this isn't the way I had envisioned it! I've earned a reputation the hard way as a school board member who protects YOU and the way YOUR money is spent by the board. I know that you have recognized as well as I have that the establishment REALLY hates someone looking over their shoulders! Even though I've known they've opposed my efforts to watch out for your tax dollars, I surely didn't see this one coming. As you've probably read in the papers, the School Board and specifically its Board Chairman, Robert Gantt, have taken the totally over-the-top approach of getting rid of me and my taxpayer protection attitude by challenging my residency! Now, they are spending YOUR tax money hiring lawyers just to get me kicked off the board so that you have virtually no one looking out for the way they waste our tax dollars.

Just to clear the air, my family and I have resided in Richland County for 12 years. Yes, we had to obtain a RICHLAND COUNTY building permit, we have RECEIVED and PAID, annually, residential tax bills from RICHLAND COUNTY (Lexington County even bills us for the 2.82 acres of land we own on the Lexington County side of our property that doesn't include our home), my husband and I are registered to vote in the Springville Precinct in RICHLAND COUNTY (in fact, on January 17, 2013—just LAST WEEK—I received the new Photo Voter Registration Card from RICHLAND COUNTY VOTER REGISTRATION OFFICE), I first filed to run in 2004 (a race I lost), in RICHLAND COUNTY and was placed on the ballot and the election was certified by the RICHLAND COUNTY Election Commission. Again, in 2010, when I won this seat, I filed to run for this position in RICHLAND COUNTY, and the election was certified by both the county and state election commissions. I could go on and on but you get the picture. Since we haven't moved, we obviously still

Kenneth L. Childs

From: ROBERT W GANTT [ganttrw@bellsouth.net]
Sent: Monday, January 28, 2013 12:38 PM
To: Kenneth L. Childs; Kathryn Long Mahoney; John M. Reagle
Subject: Fw: Fwd: Fw: Fwd: URGENT District 5 update - Tax dollar protection!
Attachments: The_State_-_School_Board_member_will_'hold_ground'_to_keep_seat_1-26-13.pdf; Richland_County_Map_-_Murphy_154_Old_Laurel_Lane.pdf

FYI

-----Original Message-----
From: Kim Murphy <movingmountainskwm@gmail.com>
To: Kim Murphy <movingmountainskwm@gmail.com>
Sent: Sun, Jan 27, 2013 6:57 pm
Subject: URGENT District 5 update - Tax dollar protection!

Dear Voter and Taxpayer in Lexington-Richland School District 5:

I do like to keep all of you informed, but this isn't the way I had envisioned it! I've earned a reputation the hard way as a school board member who protects YOU and the way YOUR money is spent by the board. I know that you have recognized as well as I have that the establishment REALLY hates someone looking over their shoulders! Even though I've known they've opposed my efforts to watch out for your tax dollars, I surely didn't see this one coming. As you've probably read in the papers, the School Board and specifically its Board Chairman, Robert Gantt, have taken the totally over-the-top approach of getting rid of me and my taxpayer protection attitude by challenging my residency! Now, they are spending YOUR tax money hiring lawyers just to get me kicked off the board so that you have virtually no one looking out for the way they waste our tax dollars.

Just to clear the air, my family and I have resided in Richland County for 12 years. Yes, we had to obtain a RICHLAND COUNTY building permit, we have RECEIVED and PAID, annually, residential tax bills from RICHLAND COUNTY (Lexington County even bills us for the 2.82 acres of land we own on the Lexington County side of our property that doesn't include our home), my husband and I are registered to vote in the Springville Precinct in RICHLAND COUNTY (in fact, on January 17, 2013—just LAST WEEK—I received the new Photo Voter Registration Card from RICHLAND COUNTY VOTER REGISTRATION OFFICE), I first filed to run in 2004 (a race I lost), in RICHLAND COUNTY and was placed on the ballot and the election was certified by the RICHLAND COUNTY Election Commission. Again, in 2010, when I won this seat, I filed to run for this position in RICHLAND COUNTY, and the election was certified by both the county and state election commissions. I could go on and on but you get the picture. Since we haven't moved, we obviously still

reside in Richland County. The only way my residency changes is if they attempt to move the county lines.

Here's the point, the opposition only fires on you if you're over the target!! I wonder what Gantt and his cronies are cooking up to attempt to slide by YOU—the taxpayer—and why they want me off the board so badly that they have to resort to such desperate means?

I have an obligation to you--the 5948 voters who supported me, as well as a duty to this district--which Gantt and some others apparently don't feel. If you know me well, I don't like asking for help. I always seek your input and advice, but I don't like asking you to do something for me, but this time I really need your help. Some of you can make phone calls to pressure the establishment and their puppet, Robert Gantt, into backing off this absurd effort to unseat a duly elected Board member. Some others of you can write emails or hand written letters detailing our anger at this blatant power grab and wasteful spending on lawyers' fees, still others could write a small check to help me defend myself against this outrage. The truth of the matter is that with unlimited funding from YOUR tax dollars and the ability to hide the expenses in some unlabeled cost category, Gantt and his horde will easily outspend our abilities to fight this attack.

For your convenience, I've attached a map showing the location of our house. You'll also find below the numbers and email addresses for Robert Gantt and the rest of the School Board as well as other elected officials that might help. We've often said that we see our nation and state and community going downhill due to excessive government spending, regulation and waste and we don't know what we can do to stop it. Well, I've been stopping it here for some time, and now I need your help to fight off an effort to stop me from protecting you. I am humbled by all of the support and prayers and thank you in advance for helping out in this situation.

God Bless
Kim
PS Please forward this email to anyone who shares your concerns.

Contact Information - Board Members and House and Senate Representatives:
Mr. Robert Gantt, Chairman
1213 Old Tamah Road
Irmo SC 29063
RGantt@lexrich5.org Hm: 781-5408 Cell: 920-0652

Mr. Ed White
327 Steeple Crest North
Irmo SC 29063
EWhite@lexrich5.org Hm: 781-8424

Mrs. Beth Watson, Vice Chairman
906 Shadetree Court

2/1/2013

Columbia SC 29212
BHWatson@lexrich5.org Cell: 261-7123

Mrs. Ellen Baumgardner, Secretary
229 Woodwinds West Drive
Columbia SC 29212
EBaumgar@lexrich5.org Hm: 731-0610 Cell: 397-7457

Mr. Jim Turner
137 Char Oak Drive
Columbia SC 29212
JTurner@lexrich5.org Hm: 781-8979

Mrs. Jondy Loveless
228 Lookout Pointes Drive
Chapin SC 29036
Jloveles@lexrich5.org Hm: 345-0547

Dr. Stephen Hefner, Superintendent
1020 Dutch Fork Road
Irmo SC 29063
shefner@lexrich5.org Wk: 476-8116

Rep. Nathan Ballentine
324 Sienna Dr
Chapin, SC 29036
nathanballentine@schouse.gov B: 734-2989 Cell: 206-4199

Rep. Chip Huggins
308 Wayworth Ct
Columbia, SC 29212
chiphuggins@schouse.gov B: 734-2971 Cell: 331-8468

Rep. Rick Quinn
610 Spruce Glen Ct
Lexington, SC 29072
rickquinn@schouse.gov B: 212-6897 Cell: 467-6209

Senator John Courson
2934 Wheat St
Columbia, SC 29205
seducomm@scsenate.gov B: 212-6250 Hm: 256-7853

Senator Ronnie Cromer
P.O. Box 378
Prosperity, SC 29127
ronniecromer@scsenate.gov B: 212-6330 Cell: 924-0099

Map Source: http://www3.richlandmaps.com/rcgeoportal/ (Zoom in tightly to the northwest corner using Hwy 176, Hwy 76 and I-26. Add the satellite layer and zoom in closer. Add the parcel layer and zoom in

2/1/2013

again.)

--
Kim Murphy 803-446-6565
154 Old Laurel Lane
Chapin, SC 29036

2/1/2013

The State
COLUMBIA • SOUTH CAROLINA
METRO
SATURDAY, JANUARY 26, 2013 • WWW.THESTATE.COM • SECTION B

LEXINGTON-RICHLAND 5

School board member will 'hold ground' to keep seat

Six members cite study that alleges she lives in wrong county.

By TIM FLACH
tflach@thestate.com

Lexington-Richland 5 school board member Kim Murphy is ready to fight possible ouster for alleged nonresidency.

"Other members do not like having a taxpayer watchdog on the board," she said Friday. "Moving the county line to get me off the board is rather drastic."

Asked if that meant she will resist ouster, Murphy replied, "I'm just holding my ground."

She disagrees with a study by state geologists that a long-time boundary error means she doesn't live in Richland County, as required.

The study — undertaken at the request of some of the other six board members — says an updated analysis of county borders discovered Murphy's home should be shifted to neighboring Lexington County. Residency questions have not been raised about other board members, all of whom do not live so near a county border.

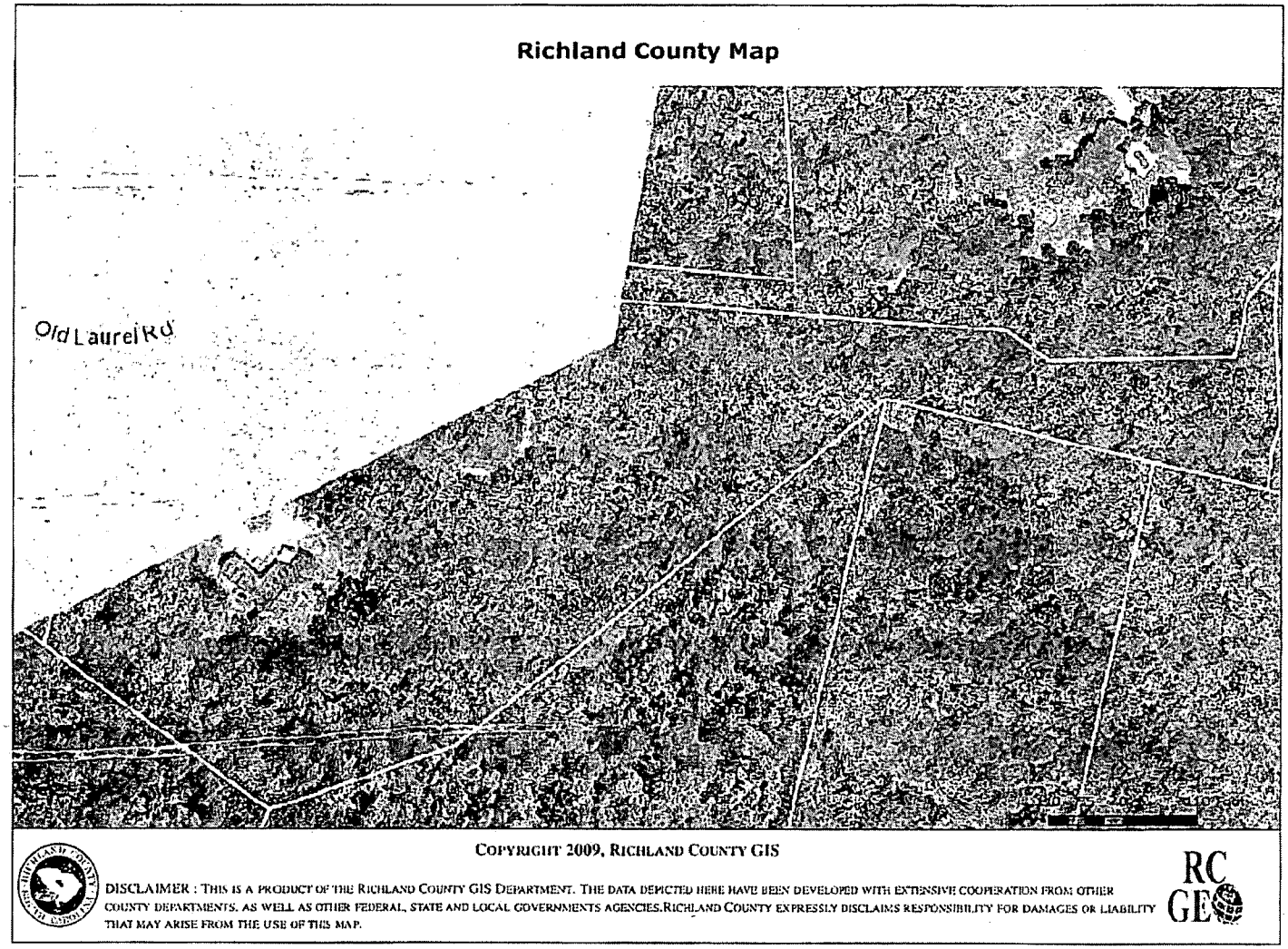
Long-accepted county borders in the Chapin area are erroneous and should be moved a few blocks northeast, the study said.

The change would mean Murphy is ineligible to remain in one of three board seats assigned Richland County.

"There is no evidence that I have ever been considered a resident of Lexington County," Murphy said. "The only way my residency changes is if they attempt to move the county lines in order to remove me."

Board chairman Robert Gantt wants to refer the dispute to an arbiter for a recommendation on whether to proceed with an attempt to oust Murphy from the post she was elected to in November 2010.

Reach Flach at (803) 771-8483.



JLC&A - K. MURPHY 012151
000212

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Connie P. Jackson
Kimberly Kelley Blackburn
Jasmine Rogers Drain++
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†Certified Specialist in Employment and Labor Law
*Also admitted in District of Columbia
**Also admitted in North Carolina
***Also admitted in Missouri
++Also admitted in Georgia

January 29, 2013

VIA E-MAIL AND HAND DELIVERY
Mrs. Kim Murphy
154 Old Laurel Lane
Chapin, SC 29036

Re: Residency Issue and Conference with Judge Thomas Cooper

Dear Ms. Murphy:

It is my understanding that you have been provided with a copy of Robert Gantt's letter of January 23, 2013, to The Honorable Thomas Cooper. I gave a copy of this letter to John Moylan on January 23, 2013. Judge Cooper telephoned me on January 24, 2013, and informed me that he would schedule a conference with counsel on Friday, February 1, 2013, at 10:00 a.m., in the conference rooms of the South Carolina Bar offices located at 950 Taylor Street in downtown Columbia. During my telephone conversation with Judge Cooper, I informed him that you were represented by John Moylan of the Wyche Law Firm. However, I have since learned that Mr. Moylan no longer represents you.

While I assumed Judge Cooper contacted Mr. Moylan himself, as a professional courtesy, I immediately telephoned Mr. Moylan and left a voice mail for him concerning the 10:00 a.m. conference scheduled for Friday February 1, 2013. The purpose of this communication is to make sure you have notice of this conference with Judge Cooper and to make clear that you and/or your attorney are requested to appear and participate in the conference. I would assume the purpose of the conference with Judge Cooper is to develop or discuss a date, time, location, and perhaps procedural matters and a briefing schedule for an upcoming hearing.

Please contact me or my partner, John Reagle, if you would like any additional information or if you have any questions concerning this communication. Thank you for your cooperation in this matter.

Respectfully submitted,

Ken Childs

Kenneth L. Childs
kchilds@childs-halligan.net

/dsr

c: The Honorable Thomas Cooper
Mr. Robert Gantt

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†Certified Specialist in Employment and Labor Law
*Also admitted in District of Columbia
**Also admitted in North Carolina
***Also admitted in Missouri
++ Also admitted in Georgia

January 30, 2013

The Honorable G. Thomas Cooper, Jr.
P.O. Box 192
Columbia, SC 29202

RE: School District Five of Lexington and Richland Counties/Board Matters - Residency Issue

Dear Judge Cooper:

It is my understanding and intention that the meeting on Friday is not the hearing but a conference to reach common understanding on the procedures and timing for the hearing, to see what agreement exists as to the relevant facts, to determine how you will take evidence of any disputed facts, and to establish what sort of briefing you desire. I expect everyone will want you to issue (with input from the parties) a short written statement as to the outcome of the meeting on Friday and the next steps in your review. The conference on Friday is not a "meeting" subject to the FOIA, but some members of the press may desire to be present. The business of the conference is to get those issues lined up, not to conduct a press briefing. Thus, the press should only have an observational presence. If they are disruptive to the business that needs to be conducted, they can be excluded.

We are continuing efforts to keep Mrs. Murphy apprised of these developments. The last news we had was that her prior counsel no longer represents her. It may be prudent for you to touch base with her directly to confirm Friday's conference. Her contact information is:

Mrs. Kim Murphy
154 Old Laurel Lane, Chapin, SC 29036
Home: (803) 345-8855 / Mobile: (803) 446-6565
Kwmurphy@lexrich5.org

Sincerely,

Ken

Kenneth L. Childs

c: John M. Reagle, Esq.

* * * Communication Result Report (Jan. 30. 2013 1:56PM) * * *

1) Childs and Halligan
2)

Date/Time: Jan. 30. 2013 1:55PM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
3936	Memory TX Firm	95761741	P. 2	OK	

Reason for error
E. 1) Hang up or line fail
E. 2) Busy
E. 3) No answer
E. 4) No facsimile connection
E. 5) Exceeded max. E-mail size

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Phone (803) 254-4255 • Fax (803) 771-4422

FAX

www.childshalligan.com

DATE: January 30, 2013 IF RECIPIENT HAS BEEN CONTACTED

TO: Shirene Hanaoka
COMPANY:
FAX NO: (803) 576-1741

FROM: Kenneth L. Childs
FAX NO: (803) 771-4422

REFERENCE: School District Five of Lexington and Richland Counties/Board Matters - Residency Issue

MESSAGE: Please give the attached letter to Judge Cooper. Thank you.

THIS DOCUMENT CONSISTS OF 2 PAGE(S), INCLUDING THIS COVER PAGE.
PLEASE CALL (803) 254-4255 IMMEDIATELY IF THERE ARE ANY PROBLEMS DURING THIS TRANSMISSION.
THIS FACSIMILE MAY CONTAIN CONFIDENTIAL INFORMATION OR PRIVILEGED INFORMATION AND IS INTENDED ONLY FOR THE RECIPIENT NAMED ABOVE. RECEIPT OF THIS TRANSMISSION BY ANY PERSON OTHER THAN THE INTENDED RECIPIENT DOES NOT CONSTITUTE PERMISSION TO EXAMINE, COPY OR DISTRIBUTE THE ACCOMPANYING MATERIAL. IF YOU RECEIVE THIS FACSIMILE IN ERROR, PLEASE NOTIFY US BY TELEPHONE AND RETURN THE ORIGINAL TO US BY MAIL.

Kenneth L. Childs

From: Kenneth L. Childs
Sent: Wednesday, January 30, 2013 1:54 PM
To: G. Thomas Cooper Jr. (gcooperj@sccourts.org)
Cc: John M. Reagle
Subject: Lexington School District Five / Kim Murphy
Attachments: LET Judge Cooper.doc

Please see attached letter.

Kenneth L. Childs
Childs & Halligan, P.A.
PO Box 11367
Columbia, SC 29211
(803) 254-4035

NOTICE: This e-mail may contain information that is PERSONAL AND CONFIDENTIAL, NON-DISCLOSABLE AND PROTECTED BY ATTORNEY/CLIENT PRIVILEGE. If you have received this e-mail in error, this does not constitute permission to examine, copy or distribute the accompanying material. If you receive this message in error, please notify us by telephone as listed above immediately.

1/30/2013

Cc: "Kenneth L. Childs (kchilds@childs-halligan.net)" <kchilds@childs-halligan.net>
Subject: Residency

Dear Ms. Murphy: My name is Thomas Cooper. I am a retired Judge of the 5th Judicial Circuit and live in Camden. My biography is available on the S.C. Judicial Department website. I sit to hear judicial cases on a part time basis and am certified by the South Carolina Bar to conduct mediations and/or arbitrations. Attorney Ken Childs representing School District 5 contacted me in mid-January and asked if I would be willing to arbitrate the issue of your residency in either Richland or Lexington county. I told him I would and, at that time, called and reserved a room at the S.C. Bar conference center (Park Street) tomorrow (2/1/13) at 10:00 am for the purpose of identifying the issues and developing a schedule to move this matter along. Obviously this needs your participation and the participation of your attorney if you are represented. No testimony or final action will be taken at this meeting. I expect a representative of the School Board and it's attorney to be present. I would appreciate it if you would confirm your presence by return email and let me know if you are represented by counsel. G. Thomas Cooper, Jr.

1/31/2013

BOARD OF TRUSTEES OF SCHOOL DISTRICT FIVE OF LEXINGTON AND RICHLAND COUNTIES	)))	IN RE: KIM MURPHY RESIDENCY

PRE-HEARING ORDER AND HEARING NOTICE

The Board of Trustees ("Board") of School District Five of Richland and Lexington Counties ("District") requested the undersigned to act as a hearing officer for the benefit of the Board's deliberations over the issue of whether Kim Murphy qualifies by residency to hold the office of Trustee of the District for the Richland County portion of the District. My task is to provide, on behalf of the Board, the appropriate notice and opportunity for a fair hearing meeting due process standards, and then to make recommendations to the Board as to the factual and legal situation, for the Board's disposition as it deems appropriate.

South Carolina Acts 141 of 1969 and 601 of 1994 devolved the powers of the respective county boards of education to the trustees of the school districts in Richland and Lexington counties, respectively. South Carolina law provides that, "School district trustees shall be subject to removal from office for cause by the county boards of education, upon notice and after being given an opportunity to be heard by the county board of education." S.C. Code § 59-19-60. The applicable special legislation requires that, "in Richland-Lexington School District 5 ... three trustees must reside in Richland County and four must reside in Lexington County."

The issues referred to me are straightforward:

- whether Mrs. Murphy's residence is in Richland County; and
- if Mrs. Murphy's residence is not in Richland County, then whether the Board may remove Mrs. Murphy for cause under § 59-16-60; and

- what other remedies may be available to either the Board or Mrs. Murphy

The undersigned met with Mr. Robert Gantt, Board Chairman, and the Board's counsel on February 1, 2013, at the offices of the South Carolina Bar, to establish a procedure to resolve these issues upon due notice and an opportunity to be heard. The following will be used:

(1) No later than February 13, 2013, the parties will exchange via electronic mail or hand delivery the same date, a copy of any documentary evidence the party intends to submit at the hearing, along with any pre-hearing brief the party wishes to submit. These will be sent to me via electronic mail with a copy to the other party via electronic mail or hand delivery the same date. Materials not submitted by this time may be refused consideration.

(2) A hearing will be held at 10:00 a.m. on February 15, 2013, at the District 5 Board Room 1020 Dutch Fork Road, Irmo, for the undersigned to receive evidence and hear the legal arguments of the parties. A court reporter will be used to prepare a transcript. This hearing will be open to the public. I will apply generally accepted principles of liberally taking fair and reasonable evidence in an administrative setting, and mean to allow the parties a fair opportunity to present and test any relevant evidence or arguments. The hearing is not, however, an open-ended inquiry, and will not be permitted to stray from the core issues I am charged with hearing.

Following the hearing, the transcript will be expeditiously ordered so that I may produce my Report and Recommendations to the Board as quickly as possible. This report and the record will be filed with the Board with a copy sent to the parties. The Board, and not the undersigned, is charged with making the final determination in this matter.

Issued the 1st day of February, 2013.

G. Thomas Cooper, Hearing Office

CHILDS & HALLIGAN

A PROFESSIONAL ASSOCIATION
ATTORNEYS AND COUNSELORS AT LAW

The Tower at 1301 Gervais Street, Suite 900, Columbia, SC 29201
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Dwayne T. Mazyck

†Certified Specialist in Employment and Labor Law
*Also admitted in District of Columbia
**Also admitted in North Carolina
***Also admitted in Missouri
**Also admitted in Georgia

February 4, 2013

VIA HAND DELIVERY

Ms. Kim Murphy
154 Old Laurel Lane
Chapin, SC 29036

Re: Judge Cooper's Order

Dear Ms. Murphy:

I e-mailed the enclosed Order to all Lexington Five Board members as soon as it was received by facsimile in our office on Friday afternoon, February 1, 2013. I hope you received your copy. However, in an abundance of caution, I am having a copy hand-delivered to your home today.

You and/or your attorney are most welcome to contact John Reagle or me if you have any questions concerning this Order or its contents. Thank you.

Respectfully submitted,

Ken

Kenneth L. Childs
kchilds@childs-halligan.net

/dsr
Enclosure

c: Mr. Robert W. Gantt (w/o enclos.)
John M. Reagle, Esq. (w/o enclos.)

BOARD OF TRUSTEES OF SCHOOL DISTRICT FIVE OF LEXINGTON AND RICHLAND COUNTIES	)))	IN RE: KIM MURPHY RESIDENCY

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(1) No later than February 13, 2013, the parties will exchange via electronic mail or hand delivery the same date, a copy of any documentary evidence the party intends to submit at the hearing, along with any pre-hearing brief the party wishes to submit. These will be sent to me via electronic mail with a copy to the other party via electronic mail or hand delivery the same date. Materials not submitted by this time may be refused consideration.

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Following the hearing, the transcript will be expeditiously ordered so that I may produce my Report and Recommendations to the Board as quickly as possible. This report and the record will be filed with the Board with a copy sent to the parties. The Board, and not the undersigned, is charged with making the final determination in this matter.

Issued the 1st day of February, 2013.

G. Thomas Cooper, Hearing Office

BOARD OF TRUSTEES OF SCHOOL DISTRICT FIVE OF LEXINGTON AND RICHLAND COUNTIES	)	IN RE: KIM MURPHY RESIDENCY
	)	**AFFIDAVIT OF Debbie Childs**

PERSONALLY APPEARED BEFORE ME Debbie Childs, who being first duly sworn, deposes and says as follows:

1. I am a part-time employee of Childs & Halligan.

2. On Monday, February 4, 2013, I went to Kim Murphy's home, located at 154 Old Laurel Lane in Chapin, South Carolina 29036, at approximately 6:30 p.m. Two cars were in the driveway and lights were on in the home. I knocked on the front door several times, but the door was not answered.

3. I left two copies of the attached letter and Order in a sealed envelope, one in Ms. Murphy's mailbox and one inside the front door, along with some other uncollected mail.

4. A copy of the attached Order was e-mailed to Ms. Murphy at KWMurphy@lexrich5.org Friday afternoon, February 1, 2013.

AFFIANT FURTHER SAYETH NAUGHT.

Debbie Childs

SWORN TO BEFORE ME THIS 7th DAY OF February, 2013

Dianne S. Robey
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 05-16-2021

The State
South Carolina's Homepage℠

Tuesday, Feb 12, 2013

Posted on Wed, Feb. 06, 2013

Kim Murphy's home may be in wrong county, officials agree

By TIM FLACH
tflach@thestate.com

Coming up

Retired circuit judge G. Thomas Cooper will listen to a discussion of the residency dispute at 10 a.m. Feb. 15 at Lexington-Richland 5 headquarters, 1020 Dutch Fork Road, Irmo. Board member Kim Murphy is invited to make her case. Cooper subsequently will advise board members on what to do.

Some Richland County officials are ready to accept a border change in the Chapin area, increasing trouble for Lexington-Richland 5 school board member Kim Murphy's fight against ouster.

School leaders are looking at a boundary change recommended by state geographers that would make Murphy ineligible to remain on the panel as a Richland County representative.

The adjustment would shift her residency just inside adjoining Lexington County.

Long-accepted borders on which Murphy is relying as proof of Richland County residency probably are wrong, officials said this week.

"It appears she lives in Lexington," Richland County Assessor John Cloyd said.

County election officials say Murphy is eligible to remain in the board post she was elected to in November 2010, based on borders in place for the past century.

But Cloyd now says those borders in Murphy's neighborhood likely are incorrect.

Modern mapping equipment is discovering minor mistakes in boundaries often based on features set in colonial days more than 250 years ago, officials said.

Adjustments of county lines are "sort of a continuing thing, " Cloyd said. County officials rely on the expertise of state officials to settle questions that normally happen when a parcel is developed for homes and businesses.

Most are easily fixed without consequence, officials said.

"This is bigger than usual," Lexington County Assessor Rick Dolan said of the impact on Murphy.

Besides Murphy, one other family would be affected. Taxes on both homes total nearly $6,600, records show.

State officials recommend moving the boundary on the edge of Murphy's home a few blocks northeast.

The dispute puts the other six board members – most of whom are at odds to Murphy – in a quandary.

Murphy is a political lightning rod in supervision of classrooms for 16,000 students in the Irmo, Chapin, Harbison and Dutch Fork areas. Schools there are rated among the best in South Carolina.

To Murphy's supporters, she is a crusader against waste and high taxes. To her critics, she is an obstructionist.

Murphy says she is the victim of a vendetta, characterizing the residency fuss as "bickering" without merit and a waste of time.

Other board members say the question of her residency can't be ignored.

JLC&A - K. MURPHY 012163

000224

"This is not a situation where one board member is singled out," board vice chairwoman Beth Burn Watson said, adding "we don't have a choice" but to review it.

Murphy's problem led Watson to make sure she lives just inside Lexington County under the new lines. All other board members live, as board chairman Robert Gantt described, "deep inside" the district.

The board brought in retired circuit Judge G. Thomas Cooper of Camden to review Murphy's residency and recommend what to do. While having the final say, board members could ask for a legal ruling on his findings.

Meanwhile, Cloyd and Dolan await the await the outcome of the battle before moving to make the border change permanent.

"We're going to wait until all the dust settles and we're in total agreement on that line," Cloyd said.

Reach Flach at (803) 771-8483.

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COLUMBIA NEWS & ARTS

What County Does School Board Member Kim Murphy Live In?

by : Al Dozier

On Feb. 15 retired Circuit Judge Thomas Cooper will hold a hearing to decide if Lexington/Richland District 5 School Board member Kim Murphy is a legal resident of Richland County — and a legal holder of the Richland County seat she was elected to serve.

The situation appears a bit strange.

Her driver's license says she lives in Richland County. She's been paying taxes to Richland County for the past 12 years. She is a registered voter in Richland County.
Her garbage collector is Richland County.

Could her enemies have gotten so fed up with what they call her "political grandstanding" that they conspired with other government officials to cook the books and change her residency so she could be kicked off the board?

Nope. That didn't happen, says Bobby Bowers, director of the Office of Research and Statistics for the state Budget and Control Board.

"We didn't change any county lines," says Bowers. "They have been there since 1913."

Board chairman Robert Gantt asked Bowers to check out Murphy's residency in December, writing, "it has come to my attention, from sources which I deem reliable" that she might not live in Richland County.

Bowers has carefully documented his findings. He cites three different sources: the U. S. Census Bureau, precinct maps and research conducted by the S.C. Geodetic Survey.

Bowers says the entire street of Old Laurel Lane where Murphy lives is located in Lexington County.

In fact, Bowers said there is another residence on Old Laurel Lane that is also misidentified as a Richland County residence.

JLC&A - K. MURPHY 012165

000226

Murphy, one of the district's three school board members elected by Richland County voters (the other four are elected by Lexington County voters), insists she is a resident of Richland County, as indicated by her personal records.

Murphy accuses the board of wasting time and money engaging in "back and forth bickering" while "pursuing personal agendas."

The ongoing rift between the outspoken Chapin resident and the rest of the school board has never been wider.

Several board members often dismiss her comments during board meetings as "political statements" and accuse her of wasting time on irrelevant issues. They also blame her for what they say is the loss of taxpayer funds totaling $12 million resulting from an unsuccessful lawsuit she filed trying to protect a creek bed at a Chapin High School construction site.

The incident involving Murphy is no anomaly, Bowers says. Close scrutiny of county lines often presents challenges to the legal status of a person's residence near a county line. It's not just Richland and Lexington, but every county in the state.

Dean Crepes, director of the voter registration and elections for Lexington County, agrees with Bowers that the aged mapping of county lines presents a problem, especially in areas once sparse that are now heavily populated.

"We need to come up with more accurate property lines," he says.

Crepes says there are often problems settling residency questions when a property is close to two different county lines.

Residents are now living on properties that were not clearly identified in the maps of the past.

"Back in the day, it may have been a field. It wasn't populated," Crepes says.

It's not just a problem with county borders, but also state borders, as indicated by the boundary disputes between North and South Carolina.

The boundary between the two states, drawn up in the 1700s, was revisited last year and found to be 150 feet too far to the north after GPS systems and computer calculations determined a new location.

JLC&A - K. MURPHY 012166

000227

That computation resulted in 93 property owners discovering that their residences were in a different state.

The bitter battle between Murphy and the board is likely to go on for some time.
Even if she loses her seat, supporters say she would likely try to run again.

Let us know what you think: Email news@iree-times.com.

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JLC&A - K. MURPHY 012167

000228

BOARD OF TRUSTEES OF
LEXINGTON DISTRICT FIVE
LEXINGTON AND RICHLAND COUNTIES

IN RE:

KIM MURPHY RESIDENCY

H E A R I N G
BEFORE THE LEXINGTON COUNTY
DISTRICT FIVE SCHOOL BOARD

DATE: Tuesday, March 19, 2013

TIME: 7:09 p.m.

LOCATION: School District Five of Lexington
and Richland Counties Board Room
1020 Dutch Fork Road
Irmo, South Carolina

REPORTED BY: KATY MCCORMICK
Stenographic Court Reporter

COMPUSCRIPTS, INC.
A Full-Service Court Reporting Agency
Post Office Box 7172
Columbia, South Carolina 29202
803-988-0086
1-888-988-0086

APPEARANCES:

ATTORNEYS FOR THE LEXINGTON RICHLAND SCHOOL DISTRICT FIVE

CHILDS & HALLIGAN
BY: JOHN M. REAGLE, ESQUIRE
KEITH R. POWELL, ESQUIRE
1301 Gervais Street, Suite 900
Columbia, South Carlina 29201
jreagle@childs-halligan.com

ATTORNEYS FOR MS. MURPHY

THE KINCANNON FIRM
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(INDEX REAR OF TRANSCRIPT)

Thereupon the following proceedings were held at 7:05 p.m.:

THE CHAIR: Ladies and gentlemen, I know you realize it's five after seven and we do too. I just spoke to Mrs. Murphy but her attorney is not here yet but is in route. Ms. Murphy, is that correct.

MS. MURPHY: Correct.

THE CHAIR: We think it will be a few minutes so we're just going to hold her request for a few minutes. And if he has a delay then we're going to go ahead and proceed because all of you are here and I know you're anxious to get started. So we are going to try to work with that in just a minute.

(Off the record until 7:09 p.m.)

THE CHAIR: Ladies and gentlemen, I'm going to call our meeting to order, and I think Mrs. Murphy is still waiting on her attorney. I have an opening statement that I want to read before we start this process.

I'd like to thank you all for attending this special called meeting of School District Five Lexington County School Board of Trustees. The purpose of our meeting this evening is to

conduct a hearing to consider the residency of Ms. Kim Murphy and her continued service as a board member of the Board of Trustees. All parties in this matter have had more than two months to gather information in preparation for this hearing. In addition all parties have been given the opportunity to participate in meetings and the evidentiary hearing conducted by Judge G. Thomas Cooper on February 15, 2013.

This hearing is held pursuant to the Board's authority under South Carolina Code of Laws 59-19-60 to remove a board member for cause. The South Carolina Budget and Control Board Division of Research and Statistics has rendered the opinion that Ms. Kim Murphy does not reside in Richland County as required under Act Number 326 of 2002. A retired circuit court judge G. Thomas Cooper, Jr., conducted an evidentiary hearing on February 15, 2013 to take evidence regarding this matter and thereafter on March 14, 2013 issuing his findings and recommendations for the Board on the question of Ms. Murphy's residency and the Board's authority to remove her from the Board should the Board find she does not reside in Richland County. The transcript and

exhibits from the evidentiary hearing have been provided to the Board along with Judge Cooper's findings and recommendations. The Board is not bound by Judge Cooper's findings and recommendations but will review the record from the hearing of February 15, 2013 as evidence at this hearing.

In addition any remarks Ms. Murphy and her counsel wish to make will also be reviewed. I've asked Ms. Murphy's legal counsel to limit his remarks, if any, to 30 minutes. Additionally Mr. John Reagle with Childs and Halligan will have 30 minutes to present the evidence and findings of Judge Cooper. Mr. Reagle has asked to reserve five minutes of his 30 minutes for concluding his rebuttal remarks following Ms. Murphy's attorney's comments. As this is a hearing, public comment is not appropriate as it may bias the Board. The Board must only consider factual and legal information in this matter.

After hearing from legal counsel the Board will deliberate and entertain any motions on whether or not to remove Ms. Murphy from the Board. We appreciate the cooperation of counsel in bringing this matter in an orderly fashion

before the Board and the public's interest in this hearing. This proceeding to being transcribed by a court reporter sitting to my right.

At this time I will accept a motion to approve tonight's agenda. Is there a motion?

MS. BAUMGARDNER: I move that we approve tonight's agenda.

THE CHAIR: Is there a second?

MS. LOVELESS: Second.

THE CHAIR: Any discussion? Hearing none, all those in favor?

Ms. Murphy, you're going to participate as a board member?

MS. MURPHY: I'm going to vote no.

THE CHAIR: So it's six to one.

At this time I want to remind the audience -- and you have all been very patient so far and I'll remind Board members and anyone participating tonight that we are here to follow a process, and as an audience and as adults we need to set a very good example by words and our remarks. And I believe we have some students here tonight and we always should do things in this district that sets a good example for the

students that we service. So I'm going to ask everybody to cooperate with that.

The agenda has been approved and all Board members have received copies of Judge Cooper's report, exhibits and transcripts. And now we'll hear statements from legal counsel starting with Mr. Reagle.

MR. REAGLE: Good evening. I am John Reagle with the law firm of Childs and Halligan. I want to first of all thank the Board for the opportunity to assist with this important matter. I also want to thank Mr. Kincannon, Ms. Murphy's attorney, for his cooperation in this hearing and proceeding. And finally I want to thank the public for its interest and attention to this serious issue and thank the media as well.

The procedural background of this matter is generally well known at this point. In late 2012 concerns about whether Ms. Murphy resided in Richland County were brought to Mr. Gantt's attention as the Board Chair. Consistent with his obligation as Board Chair Mr. Gantt sought a determination from the Budget and Control Board's Division of Research and Statistics regarding Ms. Murphy's residency. And

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Mr. Gantt's request is Exhibit 1 to the evidentiary hearing before Mr. Cooper, and the Budget and Control Board's Division of Research and Statistic's response is Exhibit 2.

Significantly Bobby Bowers, the director of that division, concluded his response to Mr. Gantt stating that Act Number 326 of 2002 requires that four members be elected from the Lexington County portion of the school district and three members are to be elected from the Richland County portion of the district. As Ms. Murphy was elected in 2010 for a seat in Richland County while residing in Lexington County she is and was not qualified to hold her position the way she has been elected. This is obviously a very serious and significant determination that the Budget and Control Board's Division of Research and Statistics provided to Mr. Gantt. Consistent with his responsibility as Board Chair, Mr. Gantt brought these concerns formally before the Board on January 14, 2013 and retired circuit court judge G. Thomas Cooper, Jr., was designated to conduct an evidentiary hearing and make the report of his findings and recommendations to the Board concerning the

determination of the Budget and Control Board as to Mrs. Murphy's residency and qualifications to remain as a board member.

On February 1st, 2013 Judge Cooper held a conference to address the scheduling and procedures for the evidentiary hearing. Although she was provided with notice of this conference Mrs. Murphy did not attend the conference and Judge Cooper scheduled the evidentiary hearing for February 15, 2013 and asked for hearing briefs to be provided by February 13, 2013.

The evidentiary hearing was duly conducted on February 15, 2013 at 10:00 a.m. Mrs. Murphy was provided notice of the hearing via both e-mail and hand delivery to her house. Mrs. Murphy and her attorney Todd Kincannon showed up for the hearing to object to the proceeding but did not attend or participate in the evidentiary hearing. Instead of participating in the evidentiary hearing Mrs. Murphy seemingly chose to contest the issue of her residency in Lexington County through the media and mass e-mails, which clearly demonstrate Mrs. Murphy understands the concerns over her residency and the basis for those concerns.

At the hearing Mr. Bobby Bowers, who is the director of the Division of Research and Statistics, and Mr. Sid Miller, who is the former chief of the South Carolina Geodetic Survey and licensed land surveyor and the current South Carolina Chair of the South Carolina/North Carolina Boundary Commission which resolves boundary disputes between North Carolina and South Carolina. They both testified at the hearing and 15 Exhibits were admitted into evidence. Thereafter on March 14, 2013 Judge Cooper issued his findings and recommendations, the hearing transcript, the hearing exhibits and Judge Cooper's finding and recommendations have all been provided to each board member including Ms. Murphy and her attorney and made available to the public through its Website.

Judge Cooper was asked to address two issues, one factual and the other legal. The factual issue is whether Ms. Murphy's residence is in Richland or Lexington County. The legal issue is if Mrs. Murphy's residence is not in Richland County does the Board have the authority to remove her for cause under South Carolina Code of Laws section 59-19-60.

In his findings and recommendations Judge Cooper answers the factual question finding that Ms. Murphy resides in Lexington County. Secondly Judge Cooper finds that the Board does have the lawful authority to remove Ms. Murphy from the board for cause under section 59-19-60. It is important to emphasize that the Board is not bound by Judge Cooper's findings and recommendations. The Board is free to take its own view of the evidence and to reach its own factual and legal conclusions. Further, the board members should keep an open mind with respect to the evidence and law until it has fully heard Mr. Kincannon's statements and deliberated on the matter. However, in reviewing the evidence and law, it is useful to highlight the principle and chief evidence and law before the court and discussed by Judge Cooper.

First with regard to the Board's authority to remove a member for cause, we believe the law is clear. The South Carolina Constitution Article Three Section 27 provides that quote, officers shall be removed for incapacity, misconduct or neglect of duty in such a manner that may be provided by law. Now,

the South Carolina Code of Law section 59-19-60 expressly provides that when a school district trustee shall be subject to removal from office for cause by the County Board of Education, closed quote. Legislation concerning District Five specifically Act Number 601 of 1994 and Act Number 141 of 1969 establishes that if the board exercises all of the powers of the County Board of Education. Accordingly this Board has the authority under 59-19-60 to remove a board member for cause, and the Attorney General in an opinion in 2005 specifically noted that the Board of Trustees of Lexington/Richland District Five would now most probably possess the authority to remove a board member pursuant to the procedures specified in 59-19-60. Cause for removal is limited to incapacity, misconduct and neglect of duty. Here Ms. Murphy's failure to meet the residency requirement for holding her seat on the board as a member elected from Richland County constitutes incapacity, or in other words Mrs. Murphy lacks the legal capacity or qualifications to hold a seat on the Board to which she was elected. As succinctly stated by Judge Cooper, quote, legal cause for removal exists if Mrs.

Murphy is not a resident of Richland County, closed quote.

The factual question of whether Mrs. Murphy resides in Richland County is also clearly addressed by Judge Cooper. Mrs. Murphy's current voter registration states she resides at 154 Old Laurel Lane in Chapin. This is contained in Exhibit 12 to the hearing exhibits. 154 Old Laurel Lane is indicated -- and I'll show you a blowup of Exhibit 9 -- 154 Old Laurel Lane is indicated here on the blowup of this map which is Exhibit 9 as Kim Murphy residence. Mr. Sid Miller testified during the hearing as to the location of Ms. Murphy's residence. I asked: Now, are you certain of your finding that 154 Old Laurel Lane identifies Kim Murphy's residence on that map? Answer, Yes.

The red lines, you can see on the map, intersecting at point identified as Rocky Ford identify the Lexington/Richland County line in the area of Kim Murphy's residence. To the left of the red line is Lexington County, to the right of the red line is Richland County.

What Judge Cooper found particularly persuasive about this exhibit and Sid Miller's

testimony is that both the statutes establishing the Lexington and Richland County boundaries in this area reference Rocky Ford and Rocky Ford as a feature of the boundary line. So Rocky Ford is specifically identified in the State Statute for identifying the boundary for Lexington County as well as the State Statute for the boundary identifying Richland County, they both identify Rocky Ford as the feature point on that boundary line. And with the boundary line intersecting with Rocky Ford based on calls or bearings was described by Sid Miller as set forth in the statutes. So there's no question of ambiguity regarding the boundary line in this area. Sid Miller testified to this fact. He stated: So we verified that the bearings going off of that point are graphically accurate and that's what the two lines represent. At that particular area on the Richland/Lexington County line we can say with confidence, a surety really, that that's where the county line is in that particular area.

And also I want to highlight here that these statutes that describe this county line and identify with Rocky Ford as on that boundary line have been in existence since the 1920s, so this

it not a change in the boundary lines; this boundary line has been established by law since the 1920s. Further, Rocky Ford is consistently identified in the same place in the 1921 Wessinger count survey, that's Exhibit 8. The Murphy survey, that was a survey done by Dr. Murphy in 1997 and that's Exhibit 13, and the Division of Research and Statistics survey here on Exhibit 9 all identify Rocky Ford independently and at that same identical location.

One point I want to make regarding the record as put up online is because the 1921 Wessinger count survey was shrunk down, in doing that where it says Rocky Ford on the actual survey was cut off and doesn't appear on the online version, but the full survey map that is in the record clearly identifies Rocky Ford at that point as the same point as Exhibit 9.

Accordingly it is with confidence that the evidence shows that Ms. Murphy resides in Lexington County. There is no reasonable factual dispute about this issue. Therefor, since Ms. Murphy has not and does not reside in Richland County she does not meet the qualifications to

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hold her board seat which under Act 326 of 2002 is a legal requirement, and she is subject to removal by the Board under South Carolina Code of Laws 59-16-60. The South Carolina Constitution provides that public officials shall be removed. Additionally, there are numerous credential and equitable reasons for removal under these circumstance as outlined by Judge Cooper in his recommendations. Importantly Judge Cooper notes that quote, Not only does Mrs. Murphy's residence in Lexington County deprive her of the qualifications for the office but the disqualification of the trustee in her mandatory, statutory residency requirement specially imposed by the General Assembly is something of a substantial nature affecting the rights and interests of the public. Indeed not only would allowing Mrs. Murphy to remain on the board the five principals of representational democracy would further jeopardize the validity of even the routine decisions of the Board. Consequently Judge Cooper recommends that quote, These and any other issues should give District Five Board of Trustees grave concerns. In my opinion the only appropriate course of action is to recognize the

existence of cause under Section 59-19-60 thus granting the Board the power to proceed with the removal process as outlined in the statute.

In light of the challenging circumstances necessarily involved in reviewing Board members' qualifications to remain on the Board we believe the process utilized by the Board is the most fair and provides the best opportunity to fully develop the evidentiary and legal issues for the Board's consideration. Having a professional adjudicator hold a hearing and make recommendations provide the parties and the Board an opportunity to fully develop the evidence and their positions and provide additional legal input and advice to the Board on how best to proceed in such a manner. We have been asked to bring the concerns and the evidentiary issues relating to Mrs. Murphy's residency and qualifications to continue as a board member in an orderly and deliberate manner before the Board. I hope we have done so. Thank you for your consideration of this important matter.

THE CHAIR: Thank you, Mr. Reagle. At this time we will hear from Mr. Kincannon.

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MR. KINCANNON: Thank you, Mr. Chairman. I have a motion to dismiss and some written material to hand up. If you don't have a problem with that I'd like to give it up to you.

THE CHAIR: Should I pass that to the Board.

MR. KINCANNON: We've had so little time to get everything prepared, not in terms of legal and factual matters but just in terms of basic preparation and printing and things like that. Quite honestly that's all the copies that I have plus this one and it was a miracle to get those out on time.

THE CHAIR: That's fine.

MR. KINCANNON: At the outset we would like to present a motion to dismiss and a motion for directed verdict, and it's laid out in this document that I have handed you but for the benefit of the Board I'll go through it.

First of all, a very fundamental issue that's gone sort of unnoticed here, what Mr. Reagle says about the authority of this Board to remove its own members is just frankly not right. Act Number 140 does not give this body any authority whatsoever from the Richland County

Board of Education -- the old defunct Richland County Board of Education. In fact, Act 140 -- and let me clarify this that there's a consistent typographical error -- and I'm no one to criticize people for typographical errors, but there's a consistent typographical error in opposing counsel's documents. Act 140 of 196 is the Act referenced, not 141. Act 141 is a different Act on a different subject.

But we'll back up just a bit. South Carolina Code Section 59-19-60, which is the authority that this Board and the County sited as to why it can do this, it says that county Boards of Education have the authority to remove trustees. But section 59-19-30 gives the Boards of Education the authority to appoint them. 59-19-30 and 59-19-60 were in the 1942 code, all part of the same statute. The 1952 South Carolina code was redone and a lot of bigger statutes were broken up into bits and pieces but it's crystal clear that 59-19-60, the statute that allows the County Boards of Education to remove a trustee was clearly always intended to be incidental to the authority to appoint trustees which the County Boards of Education

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used to have. You know, I certainly wasn't around for it but the County Boards of Education, the County Board of Trustees issue has really developed in South Carolina in an unusual way. There has not been much uniform legislation on the topic and many of the acts that relate to the school boards around the state are not in the regular code of laws, they are special laws and you have to find them in the general statute. And that's the case for all the acts that we're talking about. And so it's very important to understand that it is absolutely true that at one point in time in 1969 Richland County had a Board of Education and that Board of Education did have the power to appoint and remove trustees from the Boards of Trustees from various school districts. And I'm not sure how many districts there were at the time, but that was true in 1969. And I am talking about Richland County only because Richland and Lexington are different, they are very different.

So in 1969 Act 140 was passed by the South Carolina General Assembly. Act 140 dissolves the Richland County Board of Education and it also dissolves the position of

superintendent. It used to be -- I think it was an elected position, I'm not certain, but in any event there was a superintendent of education that was a county-wide officer and the Board of Education Trustee. Act 140 of 1969 -- which is in the materials supplied by opposing counsel, it says quite clearly it devolved all the powers of Richland County Boards of Education, not to Boards of Trustees but to Richland County Council. It also gave appointment of trustees to Richland County Council as well. It gave that as a combination. Section four of Act 140 says that.

In fact so really what happens in Act 140 of 1969 is every power that the Richland County Board of Education has and also the superintendent were taken away, those offices are ended, all that power including the power to remove trustees is given to Richland County Council, and that is where that power sat. Now, the statute Act 140 goes on to say that Richland County Council can delegate this authority to remove or whatever, any authority, yeah, it can delegate it if it wants to. However, Richland County would have to do that by ordinance and no

ordinances have been presented were that to happen, in fact it didn't happen. And if it did happen it's buried in a book somewhere and it may never be found. And it was repealed when Richland County adopted its ordinances as a codified set of ordinances in 1984.

I apologize for all the legal mumbo jumbo and all the history here, it's complicated. The fact of the matter is that the way schools are administered in this state is real haphazard. From county to county it varies greatly. I am sure you all have dealt with that more than I have, but this is a very important matter for Kim Murphy because the point of all this is this Board of Trustees never got the authority to remove Richland members from the Richland County Board of Education. That simply never happened.

Now again, if you look at Act 140 it says that there's power forgiven to Richland County Council, and however Act 140 wasn't the end. Act 140 was not the last time General Assembly would pass a law relating to Richland County Board of Education. Act 140 -- in 1984 the General Assembly amended Act 140 with Act 610. Act 610 of 1984 actually addressed this

removal authority that Richland County had inherited from the Board of Trustees -- and just for your alls edification in 1984 Richland County Council was still appointing trustees. Trustees from Richland County weren't popularly elected until I think '88 or maybe the election after '88, but that's the way it started. They weren't so in 1984 Richland County was still appointing these trustees itself.

Act 610 expressly stripped Richland County Council trustee removal authority. It actually amended Act 140 of 1969. It said Richland County Council may not remove Richland County School District trustees in school districts situated in whole or in part in Richland County. I'll read that again. Richland County Council may not remove Richland County School District trustees in school districts situated in whole or in part in Richland County. School District Five is in part in Richland County. So Act 140 gives this power to Richland County Council. Richland County Council never gives it to anybody else. Then the state legislature in 1984 killed the power, in fact there isn't any of this in Act 610 of 1984;

there's absolutely no language in there that says anything whatsoever about we're giving it to somebody else now. You have this thing and all these school acts and whatnot over the years where the legislature is taking powers from different people and whatnot. None of that in this 1984 Act 610 just said, Richland County, we gave you the power to remove district trustees by Act 140 and now we're just killing it, we're cutting that off. So that power was killed by Act 610 of 1984. And then three years later Act 287 the general Assembly establishes trustees to be popularly elected. Kim Murphy was elected to a Richland County seat on the District Five Board of Trustees. So the entire proceeding hinges upon the District Five board of Trustees actually receiving the grant of authority to remove under 29-19-60.

South Carolina Code 59-19-60 says quite plainly that it's the Boards of Education that has the authority. Boards of Trustees don't have the authority to remove their own members under the title 59 chapter 19 as it was originally written, it just didn't happen. So the only way that that power comes to this Board of Trustees,

the only way it's even possible, is if it was somehow delegated to you all by somebody with the authority to delegate it and it just never happened. If you compare and contrast it to Lexington County in Lexington County this actually did happen. In Lexington County there was an ordinance and it's referenced in some of your materials. I think it's Act 601 of 1994. It says Lexington County Board of Education abolished its power to use or devolve the respected Boards of Trustees in Lexington County. So in Lexington County there's still a statute that says we're abolishing this Board of Education, we're giving all the power of the Board of Trustees. That never happened in Richland. The Lexington County Board of Education had the authority to remove Lexington trustees. The Richland County Board of Education had the authority to remove Richland trustees. Kim Murphy is a Richland trustee serving on this board, so if the Richland County Board of Education, that removal power never found its way to this board because this board doesn't have that power and can't remove. That's exactly what the statutes say. It's crystal clear.

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Beyond that, Act 140, there's no way around that but even Act 140 it says there's an ordinance and that the Richland County Council would have to by ordinance give this power to someone. Well, there's an interesting thing about ordinances and statutes. In statutes the court does not have to have evidence in statue except of the existence of the statute. But in South Carolina ordinances are evidentiary in nature, you have to provide them as evidence. There are no ordinances that have been provided at all, I don't think one exists to provide. But no ordinances were provided in the evidence in the petitioner's case here and so there's no evidence at all here that this Act 140 that gave Richland this power, Richland never wrote an ordinance to give it to you all, and I don't think it did. I really don't and if they did let's cover that.

If somehow someone were to find in 1975 there's some ordinance out there that Richland County gave all its power to the Board of Trustees, that ordinance would be inapplicable because it's been repealed. The Richland County Code of Ordinances which is 1600 pages -- which I

have an electronic copy of and I will ask you all to provide an electronic copy of it for the record since it was impossible today for me to print 2000-odd pages of ordinance, but I would like that to be admitted into the record. The Richland County Code of Ordinances enable an ordinance that enacted the ordinance.

By the way let's talk a little bit about ordinances. South Carolina statute requires that ordinances be codified. What that means is it has to be written down and put in the code. That's pretty obvious why; people ought to have a right to know what the law is and if they don't put it in an ordinance they don't get to read it then they can get arrested for something the next day, that's not in there, that's a problem. So south Carolina statutes requires that counties, the county councils codify their ordinances which means they are included in the code. And so there is no ordinance in the code as it is today that delegates this power that Richland County Council has. And even though the power was killed by the legislature, I think at this point in time we are pretending like that didn't happen, the legislature never killed the

power, could Richland County give it to all today? Well, no. Strike that, I misspoke.

Richland County never adopted an ordinance, and if they did adopt an ordinance back before 1984 that ordinance was repealed because when Richland County adopted their code of ordinances they adopted an enabling ordinance or something like that and it said here's our code of ordinances. I'm paraphrasing now. Here's our code of ordinances. If there are other ordinances floating around out there they are repealed. If it didn't make it into the code of ordinances, it didn't make it into this book it ain't an ordinance, it's not valid any longer. So there's no ordinance in there.

And if there was at some point in time an ordinance out there -- and I don't believe there ever was -- then it had to have been admitted into evidence in this proceeding which means for these purposes the exhibit didn't exist, but even if it did exist and you can find a paper copy of it tomorrow it's of no force and effect after it was appealed in 1984 along with every other ordinance that didn't make it into the codified book of ordinances Richland County

puts out. So this is legal and its evidentiary. For this Board to gain the authority to remove Ms. Murphy there has to be an evidentiary submission of ordinance that establishes you all's authority given to you by Richland County in Act 140. It's not here and we don't have it so that means Ms. Murphy has to win and she has to win a directed verdict because there's not any evidence here that you all have this authority that you don't have.

Beyond that it's also legal because of the reasons I've been explaining about the Richland County ordinances and all the stuff about the acts in 1983, whatever that one was. All these numbers run together and I apologize. Anyway I said it a minute ago. The point is that authority has been killed, it's been extinguished. There's no evidence that you all ever got it even if it hadn't been, so in reality this Board -- and you all might not see it that way, it's spared the unpleasant task of having to go forward with this. It's been an unpleasant proceeding, and I have been practicing law for a little bit now and I've been an election lawyer for a while too, and I can tell you that nothing

gets people's blood boiling more than election cases. It's been my experience most people are loathed to throw out the result of an election and that's what you all are being asked to do. So let's talk about that for just a minute.

In the past year, 2012, there's a whole lot of election litigation. It's like a banner year for election litigation in South Carolina. I'm sure you've all read the newspapers and all saw all the people removed from the ballot and all that. Well in the context of all that there was one case that came out and I actually represented someone in that case. It was Dorchester County democratic party versus the Dorchester County republican party. An order was entered in the case dismissing the appeal. And in that order, and I'll read it to you. The South Carolina court said that if somebody is running for office and they are not qualified or there's some defect in their qualifications, there's a remedy for that and the remedy is an election protest.

Now let's set apart one thing from another here. It's real important to understand what I am about to say. The stuff about the

ordinances is all great and wonderful but what I am about to tell you is very important. In South Carolina if there is an administrative procedure by which you can get something done then you have to use that administrative procedure, and then if you lose that administrative procedure you go by and file an appeal and you go file an appeal in court and you continue on that way. What you can't do is you can't skip that procedure if it's out there and then go do it another way. I boil things down in sort of layman's terms so I'll boil this down in layman's terms.

The south Carolina legislature put in place election protest statutes, there are a number of them. There's an election protest statute that applies to you all. I am sure you all have been in close elections and you're sitting there winning but you're kind of biting your nails. And the protest is as all of you all know probably is a real short window of time after an election and the window of time for you all being non-partisan county officers, the window of time is noon Wednesday after the results are announced. And so a week after the election for all intents and purposes. So a week

after the election you have this amount of time to protest someone who got elected. Now, let's think about that in terms of Kim Murphy's case, and also the supreme court said in the Dorchester County case you have to use that statutory procedure, you have to use it. If you don't use it you can't go do it another way. You have to use that statutory administrative procedure since it's out there.

Now, let's change the facts a little bit. Let's say Kim Murphy lives in a house in Richland County and she moves to a house in Lexington County, let's say she moved into this house in Lexington County. Let's say she does it a month after the election. That's a different matter, that's a different matter. There she was elected then her qualifications change. There is an administrative procedure for dealing with that but it may not even apply. The election protest procedure clearly doesn't apply. You can't protest an election based on something somebody is going to do next month, you don't even know. So the point here is this. Not all residency issues are administratively ruled on by the legislature, but if there's a residency issue or

any kind of qualifications issue that's attendant to your election and it's out there and no one files a protest based upon it by the end of the protest, which is Wednesday at noon after the election, then that challenge can never be brought ever because everyone who might bring it failed to exhaust their administrative remedy. That's exactly what the South Carolina Supreme Court said in the Dorchester County case from last year. And let's apply that to Kim Murphy.

Kim Murphy has not moved. You know people say I didn't leave the democratic party, the democratic party left me. Kim Murphy didn't leave Richland County, Richland County left her. So what happens here is this. Since all the facts of Kim Murphy's residency -- nobody argues that she lives in a different house. She's lived in that same house for over a decade, something like 15 years. And she was clearly there in 2010. She's been there the whole relevant time period here since I think probably the late 90s. Is that right?

MS. MURPHY: 2000.

MR. KINCANNON: 2000, so since 2000. So since she lived in this house on the day of

the election she hasn't moved, she stayed in it. There was an administrative procedure out there for anybody who wanted to go and make this an issue. If somebody wanted to go challenge this they could have. And they could have done it in 2010 if they filed something by Wednesday noon after the election. That they did not do. Anybody could have gone and figured all this out if they wanted to. I don't know how it ended up getting figured out but somebody thought of this and went and looked it up, and so since that could have been done in 2010 but wasn't, we have a failure to exhaust administrative remedies. And under a failure to exhaust administrative remedies this issue cannot come up anymore. Once that Wednesday new deadline passes, think about like the statute of limitations, it can never be brought up again. Again, that is not the case if Kim Murphy had moved or if something happened after the election then it wouldn't count, but anything that could have been brought up in a protest filed Wednesday noon after the election has to go to an election protest, and then you go to appeal that if you lose, but it has it go to an election protest; it cannot come anywhere else

including here.

There's another administrative remedy but it's sort of redundant for me to explain all this so I'll just briefly address it. Richland County Board of Voter Registration, there's a statute that establishes administrative procedure for challenging someone's voter residency as they say and whether they properly reside as they say they do. That administrative procedure is out there and the South Carolina Supreme Court said there's a case not long ago with a judge and the judge got elected and judges have to live in the district where they are the judge, except for some of them, but this one did. And the South Carolina Supreme Court said the Judicial Merit Selection commission gets to make these decisions, they are not going to intervene, it's a political question. But they also said these people could have gone and challenged this residency under the Beaufort County Board of Registration and could have used that statute but they didn't. I don't think that case uses the term failure to exhaust administrative remedies but it clearly is the same concept. The point is the court has said where you can go and file an

election protest or you can go and challenge residency through an administrative procedure established by a statute, and that you have to do. If you don't do it you can't come back and attack through some other way like this.

So that's all that stuff. Now, there are a couple other items here that I really need to cover with you all. And I'll try not to be too long but there are a lot of tidbits and stuff here.

THE CHAIR: Mr. Kincannon, you have about five and a half minutes if you can try to keep that kind of focus.

MR. KINCANNON: I understand that and I hope that you will allow me to continue to explain my client's position if I should run out of time because due process requires that I have an opportunity to be heard.

THE CHAIR: Let's see where you are in the next five minutes.

MR. KINCANNON: Well, I'd like to know what your plan is because if your plan is that you're not going to keep letting me keep talking then I'm going to talk a little faster.

THE CHAIR: Well, talk a little faster

then.

MR. KINCANNON: Okay. Then we need to get to due process and we also need to get to the statute about hearing officers. There's a statute, I think it's 59-19-110 that says the hearing officer has to be a member of the Board; it can't be anyone else. Judge Cooper is not a member of this board, therefor your all's hearing officer procedure is illegal. That's one of the reasons why I didn't participate.

The Voting Rights Act. The Voting Rights Act says that any procedure related to the removal of an election official have to be pre-cleared by the US Department of Justice under Section. 5 of the Voting Rights Act -- and that was not done -- while adopting a procedure here for dealing with removals of Board members -- and you didn't pre-clear it with the Justice Department -- has to done, wasn't done and therefor you can't proceed. There are issues also and we're requesting attorneys fees under the Voting Rights Act issue as well because we are entitled to it. And there's no reason Mrs. Murphy should have to go through all this frankly.

We have due process objections to the way the hearing officer was chosen. The hearing officer was chosen by the lawyers for the Board. That violates due process for a number of reasons, in fact Judge Cooper is a great judge. I think the world of Judge Cooper but the simple fact is Judge Cooper previously heard a case and ruled for this district against Kim Murphy in circuit court years ago. There's some history here. And I got thinking about this. If you all told me I could pick the judge who would I pick. It wouldn't be Judge Cooper. No offense to Judge Cooper whatsoever but he previously ruled against Ms. Murphy. I suggested to Mr. Reagle on the telephone when we were discussing this some time ago that perhaps we should just randomly pick a hearing officer. I said I'd waive my objection to the statute if we could just have a random selection. I think I know why because he felt like he had a good shot with Judge Cooper. Not that Judge Cooper is biased but you get a sense how judges are going to rule and you get a sense of what they're going to do. If I have one type of case I want Justice Scalia, if I have another case I'd like Justice Ginsburg. Same concept.

But moving along there are -- and again the objections are all written in here and I would request leave also because of the exhibits. There are a number of exhibits referenced in here. A 24 hour time frame for this hearing is unreasonable. There's no reason we can't wait until the next hearing. All the concerns Judge Cooper mentioned in his order aren't affective if you all have a meeting until the next one. Frankly I'd bring out all the different exhibits if there are to what I had sent you all and I didn't even have time to finish just writing it. It's not a matter of did we have two months to prepare, sure that's fine but the problem is we didn't get notice of Judge Cooper's order until yesterday evening. I don't know how to write something that is an objection to an order essentially until I've seen it, and I hadn't seen it. So we have a due process objection to that too.

Again there are some other things referenced in here. One of the problems is that there is no petitioner. You all said and from what I understand some people just told Mr. Gantt there was a problem here and Mr. Gantt decided to

start this process. There's no petitioner in supposedly an adversary process. Well, there's nobody on the other side. It's not like an election protest where they're protesting a respondent. There's no protestant here. And the Board's attorneys are barred by South Carolina law from presenting the case against Kim Murphy and also advising the quasi-judicial body that he's going to decide it. They can't do that but they have chosen to do that and it's illegal quite frankly. There are so many problems with this 30 minutes is just not enough time to go through all this. You all as best I can tell did not comply with the Administrative Procedures Act with regard to the adoption of the hearing procedure that you created. You have to do that. I don't think you did it.

There are a number of other things in here and I'll let you all read it and I will submit the electronic versions of these exhibits as soon as I return to my office as soon as this hearing is over, and I request leave from you all to do it. But I'll close with this. This is fundamentally a judicial decision. You all are making a judicial decision. And what I would ask

you to do is this. Don't think about how Kim Murphy votes, don't think about whether you agree with her politically or not. That's not an issue and shouldn't play in this at all. I know it's hard to ask you all to do that. I don't think the statute should ask you to do this and I don't think it does, but anyway please try and separate politics from right and wrong in this. You know, there are a lot of people that voted for Kim Murphy, something like 5000 people voted for her. If you go forward with this there are no profit of her own and Mr. Reagle talks about equitable concerns. Equity says that if you didn't do anything wrong something bad shouldn't happen to you. I want you all to think about this and this is what I would leave you with. By the way one other thing, I'm sorry. Ms. Murphy is going through the process right now. There's a statute process which allows her to take the rest of her parcel into (loud phone rings -- inaudible). It's not as though she didn't want to live in Richland County, she did. She did want to live in Richland County, she always thought she lived in Richland County. And so she's going through that process right now and so the idea that she's

going to be disqualified permanently, she's not. She'll be in Richland County very shortly and if she's not now. We don't concede she's not now. But this is what I'll close with.

From an equitable standpoint, equity requires that you -- if the application of the law appears to be strict or unfair sometimes you depart from it. That's what equity means. And equity says this in this case. This is my opinion and I think it's a good statement of the law. Richland County and Lexington County and various other government officials have for years if these surveys are correct, been telling Ms. Murphy wrongly that she lived in Richland County. Yet think about this. Who is out to lose their job if those government officials are wrong. Not them, Ms. Murphy. That's not fair. That's not right. You know, equity says that if somebody else makes a mistake and it disadvantages you, you shouldn't have to bear the punishment of that while they don't. And I'm not saying they should go fire anybody at Richland County that sent her a tax notice, it's a complicated thing. I think we have all learned something about boundary lines in this mess. But the simple fact is Ms.

Murphy did nothing wrong. She thought she lived in Richland County. Everybody in government told her she lived in Richland County and so that's where she filed from. She could have filed from Lexington. If she had believed she lived in Lexington and was told she lived in Lexington by the government she would have filed in Lexington County when she ran for office. It's not like she can't still be on the Board if she lives in Lexington County, she sure can. But this is what's key and I'll close with this. I promised a time or two but now I mean it. I'm sorry, I appreciate you all giving me the time to speak tonight, this is a complicated matter and I appreciate you all at least please flip through this, there's more in here than just what I told you. There is no harm that will come to this Board if Kim Murphy stays on it until the end of her term. I've looked through the minutes and you all's votes don't tend to be close. Ms. Murphy doesn't appear to be in the permanent majority. And I'll tell you this, if any votes came down to one vote it might be an issue. It's not. None of you all's votes come down to one vote. You've had some issues and it's like five

to two every time or something like that. There's no reason to continue with this, it's a waste of taxpayer's money. None of you all's votes are going to get affected. You all can do whatever you want to do. Kim Murphy's vote -- I hate to say this, Kim Murphy's vote just doesn't count on this board, and that's because of what the voters have decided is because of the way things go in Richland County and Richland/Lexington Five. This is the point. There's no reason for this. Taxpayers are going to start thinking that there is all a vendetta and frankly when you get right down to it that's what I think too, and I say that with all respect --

(Crowd erupts in outburst and PA system malfunctions.)

THE CHAIR: Mr. Kincannon and the audience, I'm going to give you fair warning on outbursts. We have three officers here tonight. This is a hearing and we want to keep it very professional. I'd like to say that for the audience and likewise I'd like to ask for your cooperation as well. Thank you.

MR. KINCANNON: Mr. Gantt, I appreciate it but what I'll tell you is in talking to Kim

Murphy about all this I think it's time everybody in Richland Lexington District Five start trying to get along. I think that can happen tonight. I hope it happens tonight. I don't know that it will happen tonight but that's my plea for voters, for the children, for everybody involved. Let's put all this nastiness behind us and try to start working for the kids. That's all I have and I appreciate you all's time. Thank you.

THE CHAIR: Thank you. Mr. Reagle I realize Mr. Kincannon brought a document tonight that you hadn't seen about 10 minutes after seven or quarter after. Do you and Mr. Powell need any time to look at that? You still have five minutes to respond but we'd be glad to give you some time to do that.

MR. REAGLE: We're fine and ready to proceed. I think the important thing is the Board be able to conclude this matter.

Mr. Kincannon did cover a lot of ground while trying to speak quickly as well. With respect to the Board's authority to exercise the powers of the County Board of Education under 59-19-60 the voter legislation can often be confusing and complex. What I think is most

significant is that not only has Judge Cooper determined that the Board has this authority, our law firm opined that the Board has this authority and most importantly the Attorney General back in 2005 without any context to this situation determined that the Board most probably had the authority to remove one of its Board members for cause. So I think that the greater weight of legal analysis on this supports the recommendation of Judge Cooper in that regard.

Secondly regarding the election protest and the exhaustion of administrative remedies, Mr. Kincannon I think as pointed out by Judge Cooper forgets that Act 326 of 2002 begins with not withstanding another provision of law. It doesn't matter what other provisions of law say with respect to the residency requirements of a member of this Board. Act 326 controls and it says the board member must reside as Judge Cooper indicated. That's a continuing residency requirement. The General Assembly didn't have to impose that. The General Assembly could have said at the time of election the board member must reside. That's not what they said. They made a continuing residency requirement that is

applicable notwithstanding another provision of law.

The administrative procedures -- this is the administrative procedure. This is an administrative hearing that is being conducted according to the applicable statute which is 59-19-60. So the appropriate administrative procedure is being followed according to the appropriate statute which says the Board can determine the manner of the hearing as long as it provides appropriate due process to the board member that is subject to removal. Again this matter has been pending for over two months. It was over two months ago that Mrs. Murphy got notice of the Budget Control Board's determination. It was on February 15 a month ago that the evidentiary hearing was held. It was February 1st, over six weeks ago that Judge Cooper had a scheduling conference and hearing. Mr. Kincannon and certainly Mrs. Murphy have known of every one of these issues they have raised here tonight for over at least a month since the evidentiary hearing was held, and really for two months the information has been available and there's been an opportunity to

respond and object. It was only tonight that they have come forward with a written submission and made those objections. But in terms of administrative procedure the Board is following appropriate administrative procedure under the applicable statute for that.

Mr. Kincannon referenced Section 29-19-110. That statute gives the Board the authority to designate one of its board members or board members to hear matters. It doesn't deny the authority of the Board to designate somebody else as a hearing officer and it is common that school boards and other boards designate professional hearing officers to hear matters particularly with respect to school boards and student disciplinary matters in many districts and cases with respect to teacher disciplinary matters to make initial findings and recommendations. So this is not an unusual or new procedure. What is unusual and new is the occasion of having to remove board members for cause. And frankly in every case that has come up before where it's clear residency qualification no longer exists for a board member they have resigned. What is really unique here

is the intransigence in forcing a hearing for cause on this issue when the factual question of the residency seems very clear. That brings me back briefly to the issue of the Board's authority.

Mr. Kincannon recognized without question this Board's authority to remove a member for cause with respect to Lexington County. But Ms. Murphy is a resident of Lexington County. That is where she truly would be qualified to stand for office. So even under that analysis there is no question this Board has authority.

The Voting Rights Act issue, there has been no change in the law. These laws that are being relied upon, Section 59-19-60, the local legislation Act 326 2002 have all been on the books for a long time. Certainly the county boundary line has been there since the 1920s. There is no change in the law that would require a pre-clearance under the Voting Rights Act.

The one thing we do agree upon is that this is fundamentally a judicial matter, so what would be more appropriate than to ask a retired judge to offer his recommendations and conduct

the evidentiary hearing for the Board but a professional member of the judiciary.

And there is finally as noted by Judge Cooper a right to appeal. The statute clearly gives Mrs. Murphy a right to appeal under 59-19-60. So there is that procedural safeguard to ensure full judicial rights are afforded to a member of the board subject to removal in this matter.

Finally the fundamental harm at issue here, there is a very real and continuing harm which is why Act 326 makes continuing residency in the county from which you're elected a requirement. The fundamental harm as Judge Cooper points out is that citizens of Richland County will not and are not represented by a member of the Board accountable to them as required under the law in the next election. If the fact is Ms. Murphy is not a resident of Richland county she will not stand for election in Richland County next time and the members of the public in Richland County do not have a representative that has any influence any more over that representative's vote, so it is continuing and important, in fact one of the most

fundamental rights that citizens have is to representation of all kinds. Thank you.

MR. KINCANNON: Mr. Gantt, if I could make just one brief comment just to clarify for the record. Mr. Reagle indicated that I conceded the Lexington half of this that you all have that authority for Lexington, I did not concede that. I don't mean to imply Mr. Reagle is saying I said things I didn't say. I understand why he might have thought I said that. The written submission makes clear that I don't concede that in any way. I just want to make that clear on the record. Thank you all.

THE CHAIR: Thank you, Mr. Kincannon. Mr. Reagle, if you and Mr. Powell feel like you need more time, I apologize but I have no control over that.

MR. REAGLE: That's fine. We certainly wouldn't object and I think it would be appropriate if Mr. Kincannon submits the documents he referenced that he wanted to submit those records.

THE CHAIR: Thank you both for your input. That brings us to our item 4 which is the possibility of any actions on the items we

discussed tonight and if anyone has a motion on what we're dealing with at this time. Mr. White.

MR. WHITE: I have got a motion and it's -- I can pass out copies and if you want me to read it or -- it's a motion to basically accept Judge Cooper's finding of facts and conclusions of law and proceed with removal of Ms. Murphy. If it's your pleasure I can read it or we can proceed.

THE CHAIR: I think it would be good if you could read it into the record.

MR. WHITE: Mr. Chairman, I move that the Board adopt the following resolution: Order removal pursuant to South Carolina code 59-19-60. On March 19, 2013 the Board of Trustees of Lexington and Richland School District Five held a special meeting concerning the matter of the residency of trustee Kim Murphy. The Board has considered the record of the proceedings and evidence of the hearing conducted by Judge Cooper on February 15, 2013. Ms. Murphy and the Board's legal counsel were given the opportunity to present arguments on the question of her residency and the existence of cause for removal pursuant to South Carolina Code Section 59-19-60

at the March 19, 2013 special meeting. The Board finds that that the procedural requirements of notice and an opportunity to be heard of South Carolina Code Section 59-19-60 were complied with at its meeting of January 14, 2013 and stated upon the minutes thereof the Board approved an inquiry into the residency of Kim Murphy with reference to Act 326 of 2002. The Chairman of the Board issued a letter to Ms. Murphy concerning the question of her residency dated January 15, 2013 requesting a response by January 21st, 2013. Ms. Murphy replied via legal counsel by letter dated January 18, 2013. Ms. Murphy circulated an e-mail dated February 28, 2013 concerning the Board's inquiry and Ms. Murphy placed an on-the-record statement concerning this matter into the minutes of the Board's January 28, 2013 meeting. In a letter of January 29, 2013 Board counsel advised Mrs. Murphy that Judge Cooper had scheduled a conference to prepare for a hearing on the matter on Friday, February the 1st, 2013 at 10:00 a.m. in the conference room of the South Carolina Bar offices and to request that Ms. Murphy and/or her counsel be present for the meeting.

Judge Cooper issued a prehearing order dated February 1st, 2013. The prehearing order was e-mailed to kwmurphy@lexrichfive.org on the same day. On February 1st a copy of the prehearing order was hand-delivered to Mrs. Murphy's residence. Judge Cooper's order provided in part that she submit to him any prehearing briefs and documents no later than February 13, 2013 and he would conduct the evidentiary hearing on February 15, 2013 at 10:00 a.m. in the District Five boardroom at 1020 Dutch Fork Road, Irmo, South Carolina. Reports of the board's inquiry and Judge Cooper's plan for the hearing were widely circulated in the local press. Judge Cooper convened the hearing on February 15, 2013 and took evidence as reflected in the transcript and exhibits supplied to the Board for its consideration prior to the March 19, 2013 board meeting. The hearing before Judge Cooper is recorded in the transcript and the exhibits received by the Board. Although Ms. Murphy and her counsel were present at the Board office prior to the hearing neither appeared at the hearing.

Judge Cooper sent a report and

recommendations to the Chairman which was received at the district office on Friday February 15, 2013. The Chairman scheduled a special meeting of March 19, 2013 and arranged the complete transcript and exhibits along with Judge Cooper's report and recommendations to be published to the board and the public on Monday March 18, 2013. These materials were also hand-delivered to the Board and to Ms. Murphy's counsel on March 18, 2013. Upon due consideration and deliberations upon the complete record the supplementary arguments before the Board of Trustees at its March 19, 2013 and the report and recommendations recommended by Judge Cooper the Board of Trustees hereby concurs and adopts as its own Judge Cooper's report and the recommendation as the Board's own findings of fact and conclusions of law in this matter incorporating the same into this order. Accordingly the Board finds legal cause exists for the removal of Ms. Murphy from the office of trustee pursuant to the South Carolina Code 59-19-60. Therefor pursuant to South Carolina Code Section 59-19-60 the Board hereby removes Ms. Murphy from the office of school trustee of

District Five of Richland and Lexington counties effective immediately. The Chairman shall provide copies of this resolution to Ms. Murphy and to any public official with responsibilities obtaining hereto. Adopted this 19th day of March, 2013.

THE CHAIRMAN: The motion that Mr. White made was to move that the Board adopt the resolution that I requested is agreed but we have a second to the request or the motion by Mr. White that the Board adopt the resolution that he read. Ms. Loveless has seconded. Now we're open for discussion. Mr. White.

MR. WHITE: Since I made the motion I'd like to start the discussion. I want to point out and I think our attorneys have also presented it. This is not the first time this has happened and where this happened before it was because the boundary lines were not properly recorded by the local county election board. But in those instances that related to us those individuals resigned when they were confronted with the facts. Ms. Murphy had the opportunity to do so. We hired retired jurists which I think is the closest thing we can do to proceed in court. We

gave the opportunity for her to submit with her counsel a brief and we heard a bunch of discussions tonight, but by her own design did not get properly input to the process where the jurist could analyze that stuff critically alongside our attorney's information. I find it -- I think it's significant that she elected not to submit that in a timely fashion and I think the last minute presentation in this hearing without our counsel having that prior, even though we had the 24 notice it's been out there for a long time. It to me appears to be more political than legal and if it were something substantive it could have and should have been submitted to the hearing officer we had designated.

But the real issue I would submit to this Board, when you talk about voters and the election process, and it really goes back to District Five and this is a unique district for a couple of reasons. One is we have two counties. Very few districts in this state have two counties, so we do have representatives elected from both counties. We also have two communities. We're basically made up of the Irmo

community and the Chapin community. And when we drive to our board meetings in Chapin we're 20 minutes on the interstate to predominantly rural areas to get to Chapin itself, but my point is Mrs. Murphy is a resident of the Chapin community and the people that were disenfranchised are the voters that reside in Lexington County that had the right to vote for or against her in that election. So these same people contacted us and wanted to know why they could not vote against her at the time she was filing a legal action to block the construction of Chapin High School while she was running to serve on this board. Those are the disenfranchised voters, not the people in Richland County that voted in favor of her by accident, it's the people in Chapin in the community that she lives in that we have a constitutional and statutory obligation to pursue this path.

And then I think the other compelling reason is for somebody that's not properly elected and cannot, I think the judge's order is clear, that the statute -- it's not just a matter of whether or not the election commission puts you on the ballot, you have to reside in that

county. And the evidence is irrefutable going back to the 1920s, her home is located in Lexington County. And to the extent that she sits on this Board and she listens to personnel matters, she listens to legal matters that are confidential information, we can't allow people that are not properly elected to participate in those decisions. And I think the judge's order is clear; this isn't a matter of discretion, it is something we're obligated to do and we need to proceed with this removal.

THE CHAIR: Any other discussion? Mr. Turner.

MR. TURNER: Perhaps the attorney can answer this or maybe Mr. White as well, I think he addressed it. I realize that Mr. Kincannon had an opportunity to appear before the judge. He did not do that. He has brought some information tonight so my question is, this information here, have the attorneys addressed that to indicate whether or not this is a valid argument that this Board should allow Judge Cooper to at least hear and render an opinion on this, or has a proper opinion been rendered by Mr. Reagle?

THE CHAIR: Mr. Turner, I believe that Mr. Reagle -- and I offered him some time -- I think in his closing he feels like it was addressed in Judge Cooper's order. You were here that day and for the process but we're open to our legal counsel advising us. I believe we're on the advice of the retired jurist who sited the law of the case over and over and I believe that's all there. But I will say to Mr. Reagle or Mr. Powell if there's an issue that you need to state further let us know if you want to run it by us. Any other discussion? Ms. Watson.

MS. WATSON: Mr. White mentioned that this is not the first time that an elected official has been found to be in the wrong voting area and I have two copies of articles from 2012, one is November 21st, 2012. This deals with the Jasper County School Board seat on District Nine and I'll just read just a paragraph. It says that Ms. Pamela Williams planned to run for another school board term this fall but a county election commission correction before the election moved her from District Eight to District Nine. The commission said it corrected a mistake and that Ms. Williams, who lives on

such and such avenue just outside Hardeeville should have been registered in District Nine. Then it goes on to say that Mr. Morrey moved from the District Eight seat that Ms. Williams used to be in. So there was no court case, nothing, it was just accepted that just through a mistake she was not in the right district in Jasper County and therefor could not run for that particular seat.

Here is another one dated June 2nd, 2012. This is with the Clarendon School District One. It says it had one Board member removed from office on May 30th. The Clarendon County Board of Education voted unanimously to remove Mr. Ricky Johnson from the Clarendon School District One Board of Trustees and quote, the Chairman of that board said that Mr. Johnson does not live in District One. No mention of any court case, it was just accepted that the residency was not as it needed to be and so this was a calm and it was a -- I guess just an accepted set of facts and we're not going to take up any more time and we'll move on with the proceedings of the school district.

And I think that while this is

certainly not expected, I have been on this school board for 10 years I have certainly never thought I would be faced with something like this. However a couple of months ago when I first learned of the fact that Ms. Murphy lived in Lexington County I had several people ask me, well she was elected in Richland, it appears she thought she lived in Richland, can't you just let that ride? Well, I said I swore an oath when I was sworn in as a school board member back in November 2012 that I would uphold the law. And if the law says, and it does say that there must be three representatives from Richland County and four from Lexington County, how can I, I don't have the authority to say, well, we just won't pay attention to that. I have to follow the law. And we as a board I think have been very thoughtful and tried to do our best in making this a fair procedure, making it equitable and to do the right thing. So I feel that we've been very fair and we have tried to be very professional about this so I will support the motion. I am going to attach this to the minutes here.

THE CHAIR: I'd like to weigh in for

just a minute on this and just very briefly. I wanted to also share that this is a very unusual circumstance in my years of living here and certainly on the Board not in my wildest dreams did I dream of a night like this, but we are here, the law is very specific. I very much trust the process that we've gone through. I find it very frustrating to have an issue like this and sit at the Board table back in January and hear Ms. Murphy say that night publicly and made a public comment that she was going to do the right thing. She also said she was going to do the research and get to a conclusion on it. I don't know where that got in the process but the right thing did involve her participating in this procedure. It's hard to resolve an issue if only one party comes to the table. We had meetings with Judge Cooper to try to decide how this process might work and Ms. Murphy and the attorney she had at that time chose not to participate. The judge waited probably 15 or 20 minutes. That's very unusual.

We had an evidentiary hearing at this district office on the 15th of February. Ms. Murphy and her attorney came at the very

beginning of that, relayed the process, went back in the back room and met with Judge Cooper to try, I'm sure, some of the same concerns that Mr. Kincannon gave tonight, but then left, didn't participate in the process. I would have loved for Judge Cooper to have had all the information that was put out here tonight, but I have to believe that Judge Cooper is an experienced retired jurist and understands the law. And I thought his report that we all have a copy of -- Mr. Kincannon I know you've got it and Ms. Murphy I know you've got it -- it was extremely complete. It was very complete. And I think it addressed the very issues that we're dealing with. The law requires that you be a resident and I think he clearly through the testimony of Mr. Bowers' office and Mr. Bowers and Mr. Sid Miller was very evident, in fact I remember Mr. Miller's words from when the judge asked him if it was a very close call. He said, no, it's not a close call at all, it's five hundred and some feet away at a minimum from where her house is. I don't know that there was a plan in this to have set up. I don't know if Ms. Murphy knew either, but I know the law was very specific. I

know that I am just like every other board member on this Board, we all took an oath to uphold the law. And I've had people ask me the same thing Ms. Watson has been asked. Why can't you all just let her serve, why can't you just let her stay. If somebody would get the law changed that would probably be just fine. I think a board member with knowledge of law that's in violation would be a very poor board member not to take care of that. I had some hope back in January that Ms. Murphy would do the right thing but I think this is going to be a long protracted process possibly from when I read in the paper today.

I would like to say that the judge pointed out some extremely important things that may affect this board and this community moving forward as a school district and that is just like levying taxes and having votes taken about the personnel, confidential information is that all board members here, that it could put a lot of things that we do in the normal course of business and try to handle in this district and put it in jeopardy, and I think that would be wrong for this board knowing we had this

situation to ignore it and if there was a person in disagreement with this district I'm sure that argument would probably come up.

So I find that compelling. Judge Cooper had no doubt in his mind, he studied the facts that she in fact lives, the Murphys live and their house is located in what is Lexington County, that this board has the right for cause to take this action tonight. So with those things in mind I'm sorry we're at this table tonight but it's a part of the process and it's part of the job. Mr. White.

MR WHITE: I just wanted to add one point to Mr. Turner's question and I think what our attorney said is basically not only do we have a retired jurist Judge Cooper who made a conclusion of the law but their law firm is giving a legal opinion and we rely upon the law firm to give us legal advice and then the attorney General's opinion. So I am satisfied that the law is there.

In terms of Ms. Murphy's choices, and I know her counsel wasn't originally retained by her, she had separate counsel in the beginning, but I think it's a conscious choice to avoid a

hearing where you could have the opportunity to submit written briefs, the testimony of witnesses and have a full-blown hearing. I think that is an opportunity of your own design but I think the other side of it is is that there is a legal process for you to decide and you're making that choice. And we can't control what you do, but I think if it were me personally I was concerned and felt like I was not being treated fairly, I would have my lawyer in there briefing and arguing in front of the jurist to set the record so that the issues if they were legitimate were properly honed by the time they got to this Board, not something handed out at the 11th hour. I don't think also this is any different than the situations we encounter almost every year when there are students identified who are enrolled in these schools who don't live in this district, and we hear the same pleas, why can't they stay, why can't they finish their school year. In that particular situation because we don't have funding when they come in our policy is that they have to be removed once they're brought to our attention. And now that this has been brought to our attention there's no reason for us to ignore

the constitution or ignore the statutory requirements that someone has to be a resident to serve. And as soon as we start ignoring the law here it's going to create constant problems and criticisms with anything else like this in the future.

THE CHAIR: Any other comments from any board member? If not we have a motion and a second. The motion is that the Board adopt the resolution that Mr. White read into the record. The most compelling part of that is that the Board would -- item number 6 according to the Board finds legal cause exists for the removal of Ms. Murphy from the office of trustee pursuant to SC Code 59-19-60. We have a motion and a second, discussion. All those in favor please raise your hand. All those opposed. The motion passes six to one.

MR. KINCANNON: Mr. Chairman, I have an obligation to my client --

THE CHAIR: Mr. Kincannon, you are out of order, sir.

MR. KINCANNON: No, I'm not. I have an obligation to my client to preserve the record on appeal. I am sorry, but I do. I have to make a

motion for a judgement notwithstanding the verdict at this point in time. I'd also like to know for the record and if it's all right with you, if I could construe my motion to dismiss, my motion for directed verdict again. My previous presentations were denied, is that correct?

THE CHAIR: We did dismiss it. We took action.

MR. KINCANNON: No, I understand that. Listen, let me explain something to you.

THE CHAIR: Counselor, legal counsel just advised me if you have got a brief summary --

MR. KINCANNON: No, I don't have any summary at all. I have to make what's called a motion for a judgement notwithstanding the verdict so I can preserve my client's right to argue factual evidence on appeal. I'm not trying to create a problem for you, I wish I wasn't standing here right now. I have an obligation to my client to preserve her right on appeal.

THE CHAIR: Is that the motion you just made?

MR. KINCANNON: Yes. I would like to make a motion notwithstanding the verdict based

upon all the opinions in my written submission and based upon everything that I discussed here tonight. It's the same motion that I made at the end of my opposing counsel's argument. And if we could agree that the motion to dismiss that I made and the motion for directed verdict were both denied. If we can agree to that that would help just for the record. And I assume you'll deny my motion for a judgement notwithstanding the verdict also but I have an obligation to make it.

MR. WHITE: Mr. Gantt, we dont function except through voting and I don't think -- if there's any motions he can put whatever he wants on the record but we're not making decisions on what he says.

THE CHAIR: I think if you want to put that on the record that's what you probably need to do.

MR. KINCANNON: That's what I just did. I would like for you all to vote to deny it just so it's clear but if you don't want to then I've done all I can do.

MR. REAGLE: If I could be heard briefly. It's our position that those motions

are not necessary to preserve his right to appeal. There is a statutory right to appeal under 59-19-560 but at the same time --

MR. KINCANNON: That's fine. You understand what I --

MR. REAGLE: I do and we respect that and so the record should reflect the motions have been made and we oppose them for the record as well for the reasons stated by -- in Judge Cooper's order and the statements to the Board tonight.

MR. WHITE: Just to clarify one point. Ms. Murphy is well aware under state law she could put anything on the record tonight so that stuff goes on the record automatically.

THE CHAIR: I have a final statement to read and I'll have copies of this. The final statement is this. This evening at this special called meeting of Lexington/Richland Five Board of Trustees the Board considered the recommendation of the Honorable Judge Thomas Cooper and other legal and factual information concerning the residency of Board Trustee member Kim Murphy. After careful consideration and deliberation of the Board the Board sustains and

agrees with the opinion of Judge Cooper which states that there is a clear and convincing evidence that Ms. Murphy's residence is in Lexington County, therefore her residence in Lexington County deprives her of the qualifications for office as a representative of Richland County and on the Lexington/Richland Five School Board of Trustees. Based on these facts the Board voted to remove Ms. Murphy from the Board of Trustees. We thank Ms. Murphy for her service on the Board and wish her well in the future.

In previous communications Ms. Murphy and others have attempted to shape this issue as a personal attack toward Ms. Murphy. Nothing could be further from the truth. Our actions this evening center on the simple truth that she does not live in the county which she has elected to represent, a simple but essential requirement of the law. To allow Ms. Murphy to remain on this Board would violate State law and potentially invalidate future decisions made by the Board. We sincerely hope Ms. Murphy will honor this decision and do the right thing as she has stated previously in public meetings

regarding the law and residency requirements. We also hope that there will be no further disruption or distraction for the Board, the school district or the taxpayers in School District Five regarding this matter. Over the next few days we will consult with legal counsel on the next steps of filling the now vacant Richland County seat on the Board of Trustees. In the meantime our board will continue to focus our efforts of providing the very best educational experience possible for all the students in School District Five.

With that I'll entertain a motion that we adjourn. Do we have a motion? Ms. Watson.

MS. WATSON: I move that we adjourn.

THE CHAIR: Second?

MR. TURNER: Second.

THE CHAIR: All those in favor? All those opposed? Six to two. Abstained?

MR. KINCANNON: Now that you all have voted to remove her she would vote no if you could put that on the record.

(Attachment 1, Order to Remove, was included with the Exhibits and marked for identification)

(Attachment 2, article from the Clarendon Citizen, was included with the Exhibits and marked for identification.)

(Thereupon the proceedings were concluded at 8:41 p.m.)

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CERTIFICATE OF REPORTER

I, Mary K. McCormick, Court Reporter and Notary Public for the State of South Carolina, do hereby certify:

That the foregoing proceeding was taken before me at the date and time and location as stated on page 1 of this transcript; that the proceedings were recorded stenographically by me and were thereafter transcribed; that the foregoing proceeding as typed is a true, accurate and complete record of the proceedings to the best of my ability.

I further certify that I am not of counsel or kin to any of the parties to this cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 25th day of March, 2013, at Aiken County, South Carolina.

Mary K. McCormick (Katy McCormick)
Notary Public
State of South Carolina at Large
My Commission Expires:
June 30, 2015

BOARD OF TRUSTEES OF
LEXINGTON DISTRICT FIVE
LEXINGTON AND RICHLAND COUNTIES

IN RE:
KIM MURPHY RESIDENCY

H E A R I N G
BEFORE THE LEXINGTON COUNTY
DISTRICT FIVE SCHOOL BOARD

DATE: Tuesday, March 19, 2013

TIME: 7:09 p.m.

LOCATION: School District Five of Lexington and Richland Counties Board Room
1020 Dutch Fork Road
Irmo, South Carolina

REPORTED BY: KATY MCCORMICK
Stenographic Court Reporter

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(INDEX REAR OF TRANSCRIPT)

Thereupon the following proceedings were held at 7:05 p.m.:

THE CHAIR: Ladies and gentlemen, I know you realize it's five after seven and we do too. I just spoke to Mrs. Murphy but her attorney is not here yet but is in route. Ms. Murphy, is that correct.

MS. MURPHY: Correct.

THE CHAIR: We think it will be a few minutes so we're just going to hold her request for a few minutes. And if he has a delay then we're going to go ahead and proceed because all of you are here and I know you're anxious to get started. So we are going to try to work with that in just a minute.

(Off the record until 7:09 p.m.)

THE CHAIR: Ladies and gentlemen, I'm going to call our meeting to order, and I think Mrs. Murphy is still waiting on her attorney. I have an opening statement that I want to read before we start this process.

I'd like to thank you all for attending this special called meeting of School District Five Lexington County School Board of Trustees. The purpose of our meeting this evening is to

conduct a hearing to consider the residency of Ms. Kim Murphy and her continued service as a board member of the Board of Trustees. All parties in this matter have had more than two months to gather information in preparation for this hearing. In addition all parties have been given the opportunity to participate in meetings and the evidentiary hearing conducted by Judge G. Thomas Cooper on February 15, 2013.

This hearing is held pursuant to the Board's authority under South Carolina Code of Laws 59-19-60 to remove a board member for cause. The South Carolina Budget and Control Board Division of Research and Statistics has rendered the opinion that Ms. Kim Murphy does not reside in Richland County as required under Act Number 326 of 2002. A retired circuit court judge G. Thomas Cooper, Jr., conducted an evidentiary hearing on February 15, 2013 to take evidence regarding this matter and thereafter on March 14, 2013 issuing his findings and recommendations for the Board on the question of Ms. Murphy's residency and the Board's authority to remove her from the Board should the Board find she does not reside in Richland County. The transcript and

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exhibits from the evidentiary hearing have been provided to the Board along with Judge Cooper's findings and recommendations. The Board is not bound by Judge Cooper's findings and recommendations but will review the record from the hearing of February 15, 2013 as evidence at this hearing.

In addition any remarks Ms. Murphy and her counsel wish to make will also be reviewed. I've asked Ms. Murphy's legal counsel to limit his remarks, if any, to 30 minutes. Additionally Mr. John Reagle with Childs and Halligan will have 30 minutes to present the evidence and findings of Judge Cooper. Mr. Reagle has asked to reserve five minutes of his 30 minutes for concluding his rebuttal remarks following Ms. Murphy's attorney's comments. As this is a hearing, public comment is not appropriate as it may bias the Board. The Board must only consider factual and legal information in this matter.

After hearing from legal counsel the Board will deliberate and entertain any motions on whether or not to remove Ms. Murphy from the Board. We appreciate the cooperation of counsel in bringing this matter in an orderly fashion

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before the Board and the public's interest in this hearing. This proceeding to being transcribed by a court reporter sitting to my right.

At this time I will accept a motion to approve tonight's agenda. Is there a motion?

MS. BAUMGARDNER: I move that we approve tonight's agenda.

THE CHAIR: Is there a second?

MS. LOVELESS: Second.

THE CHAIR: Any discussion? Hearing none, all those in favor?

Ms. Murphy, you're going to participate as a board member?

MS. MURPHY: I'm going to vote no.

THE CHAIR: So it's six to one.

At this time I want to remind the audience -- and you have all been very patient so far and I'll remind Board members and anyone participating tonight that we are here to follow a process, and as an audience and as adults we need to set a very good example by words and our remarks. And I believe we have some students here tonight and we always should do things in this district that sets a good example for the

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students that we service. So I'm going to ask everybody to cooperate with that.

The agenda has been approved and all Board members have received copies of Judge Cooper's report, exhibits and transcripts. And now we'll hear statements from legal counsel starting with Mr. Reagle.

MR. REAGLE: Good evening. I am John Reagle with the law firm of Childs and Halligan. I want to first of all thank the Board for the opportunity to assist with this important matter. I also want to thank Mr. Kincannon, Ms. Murphy's attorney, for his cooperation in this hearing and proceeding. And finally I want to thank the public for its interest and attention to this serious issue and thank the media as well.

The procedural background of this matter is generally well known at this point. In late 2012 concerns about whether Ms. Murphy resided in Richland County were brought to Mr. Gantt's attention as the Board Chair. Consistent with his obligation as Board Chair Mr. Gantt sought a determination from the Budget and Control Board's Division of Research and Statistics regarding Ms. Murphy's residency. And

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Mr. Gantt's request is Exhibit 1 to the evidentiary hearing before Mr. Cooper, and the Budget and Control Board's Division of Research and Statistic's response is Exhibit 2.

Significantly Bobby Bowers, the director of that division, concluded his response to Mr. Gantt stating that Act Number 326 of 2002 requires that four members be elected from the Lexington County portion of the school district and three members are to be elected from the Richland County portion of the district. As Ms. Murphy was elected in 2010 for a seat in Richland County while residing in Lexington County she is and was not qualified to hold her position the way she has been elected. This is obviously a very serious and significant determination that the Budget and Control Board's Division of Research and Statistics provided to Mr. Gantt. Consistent with his responsibility as Board Chair, Mr. Gantt brought these concerns formally before the Board on January 14, 2013 and retired circuit court judge G. Thomas Cooper, Jr., was designated to conduct an evidentiary hearing and make the report of his findings and recommendations to the Board concerning the

determination of the Budget and Control Board as to Mrs. Murphy's residency and qualifications to remain as a board member.

On February 1st, 2013 Judge Cooper held a conference to address the scheduling and procedures for the evidentiary hearing. Although she was provided with notice of this conference Mrs. Murphy did not attend the conference and Judge Cooper scheduled the evidentiary hearing for February 15, 2013 and asked for hearing briefs to be provided by February 13, 2013.

The evidentiary hearing was duly conducted on February 15, 2013 at 10:00 a.m. Mrs. Murphy was provided notice of the hearing via both e-mail and hand delivery to her house. Mrs. Murphy and her attorney Todd Kincannon showed up for the hearing to object to the proceeding but did not attend or participate in the evidentiary hearing. Instead of participating in the evidentiary hearing Mrs. Murphy seemingly chose to contest the issue of her residency in Lexington County through the media and mass e-mails, which clearly demonstrate Mrs. Murphy understands the concerns over her residency and the basis for those concerns.

At the hearing Mr. Bobby Bowers, who is the director of the Division of Research and Statistics, and Mr. Sid Miller, who is the former chief of the South Carolina Geodetic Survey and licensed land surveyor and the current South Carolina Chair of the South Carolina/North Carolina Boundary Commission which resolves boundary disputes between North Carolina and South Carolina. They both testified at the hearing and 15 Exhibits were admitted into evidence. Thereafter on March 14, 2013 Judge Cooper issued his findings and recommendations, the hearing transcript, the hearing exhibits and Judge Cooper's finding and recommendations have all been provided to each board member including Ms. Murphy and her attorney and made available to the public through its Website.

Judge Cooper was asked to address two issues, one factual and the other legal. The factual issue is whether Ms. Murphy's residence is in Richland or Lexington County. The legal issue is if Mrs. Murphy's residence is not in Richland County does the Board have the authority to remove her for cause under South Carolina Code of Laws section 59-19-60.

In his findings and recommendations Judge Cooper answers the factual question finding that Ms. Murphy resides in Lexington County. Secondly Judge Cooper finds that the Board does have the lawful authority to remove Ms. Murphy from the board for cause under section 59-19-60. It is important to emphasize that the Board is not bound by Judge Cooper's findings and recommendations. The Board is free to take its own view of the evidence and to reach its own factual and legal conclusions. Further, the board members should keep an open mind with respect to the evidence and law until it has fully heard Mr. Kincannon's statements and deliberated on the matter. However, in reviewing the evidence and law, it is useful to highlight the principle and chief evidence and law before the court and discussed by Judge Cooper.

First with regard to the Board's authority to remove a member for cause, we believe the law is clear. The South Carolina Constitution Article Three Section 27 provides that quote, officers shall be removed for incapacity, misconduct or neglect of duty in such a manner that may be provided by law. Now,

the South Carolina Code of Law section 59-19-60 expressly provides that when a school district trustee shall be subject to removal from office for cause by the County Board of Education, closed quote. Legislation concerning District Five specifically Act Number 601 of 1994 and Act Number 141 of 1969 establishes that if the board exercises all of the powers of the County Board of Education. Accordingly this Board has the authority under 59-19-60 to remove a board member for cause, and the Attorney General in an opinion in 2005 specifically noted that the Board of Trustees of Lexington/Richland District Five would now most probably possess the authority to remove a board member pursuant to the procedures specified in 59-19-60. Cause for removal is limited to incapacity, misconduct and neglect of duty. Here Ms. Murphy's failure to meet the residency requirement for holding her seat on the board as a member elected from Richland County constitutes incapacity, or in other words Mrs. Murphy lacks the legal capacity or qualifications to hold a seat on the Board to which she was elected. As succinctly stated by Judge Cooper, quote, legal cause for removal exists if Mrs.

Murphy is not a resident of Richland County, closed quote.

The factual question of whether Mrs. Murphy resides in Richland County is also clearly addressed by Judge Cooper. Mrs. Murphy's current voter registration states she resides at 154 Old Laurel Lane in Chapin. This is contained in Exhibit 12 to the hearing exhibits. 154 Old Laurel Lane is indicated -- and I'll show you a blowup of Exhibit 9 -- 154 Old Laurel Lane is indicated here on the blowup of this map which is Exhibit 9 as Kim Murphy residence. Mr. Sid Miller testified during the hearing as to the location of Ms. Murphy's residence. I asked: Now, are you certain of your finding that 154 Old Laurel Lane identifies Kim Murphy's residence on that map? Answer, Yes.

The red lines, you can see on the map, intersecting at point identified as Rocky Ford identify the Lexington/Richland County line in the area of Kim Murphy's residence. To the left of the red line is Lexington County, to the right of the red line is Richland County.

What Judge Cooper found particularly persuasive about this exhibit and Sid Miller's

testimony is that both the statutes establishing the Lexington and Richland County boundaries in this area reference Rocky Ford and Rocky Ford as a feature of the boundary line. So Rocky Ford is specifically identified in the State Statute for identifying the boundary for Lexington County as well as the State Statute for the boundary identifying Richland County, they both identify Rocky Ford as the feature point on that boundary line. And with the boundary line intersecting with Rocky Ford based on calls or bearings was described by Sid Miller as set forth in the statutes. So there's no question of ambiguity regarding the boundary line in this area. Sid Miller testified to this fact. He stated: So we verified that the bearings going off of that point are graphically accurate and that's what the two lines represent. At that particular area on the Richland/Lexington County line we can say with confidence, a surety really, that that's where the county line is in that particular area.

And also I want to highlight here that these statutes that describe this county line and identify with Rocky Ford as on that boundary line have been in existence since the 1920s, so this

it not a change in the boundary lines; this boundary line has been established by law since the 1920s. Further, Rocky Ford is consistently identified in the same place in the 1921 Wessinger count survey, that's Exhibit 8. The Murphy survey, that was a survey done by Dr. Murphy in 1997 and that's Exhibit 13, and the Division of Research and Statistics survey here on Exhibit 9 all identify Rocky Ford independently and at that same identical location.

One point I want to make regarding the record as put up online is because the 1921 Wessinger count survey was shrunk down, in doing that where it says Rocky Ford on the actual survey was cut off and doesn't appear on the online version, but the full survey map that is in the record clearly identifies Rocky Ford at that point as the same point as Exhibit 9.

Accordingly it is with confidence that the evidence shows that Ms. Murphy resides in Lexington County. There is no reasonable factual dispute about this issue. Therefor, since Ms. Murphy has not and does not reside in Richland County she does not meet the qualifications to

hold her board seat which under Act 326 of 2002 is a legal requirement, and she is subject to removal by the Board under South Carolina Code of Laws 59-16-60. The South Carolina Constitution provides that public officials shall be removed. Additionally, there are numerous credential and equitable reasons for removal under these circumstance as outlined by Judge Cooper in his recommendations. Importantly Judge Cooper notes that quote, Not only does Mrs. Murphy's residence in Lexington County deprive her of the qualifications for the office but the disqualification of the trustee in her mandatory, statutory residency requirement specially imposed by the General Assembly is something of a substantial nature affecting the rights and interests of the public. Indeed not only would allowing Mrs. Murphy to remain on the board the five principals of representational democracy would further jeopardize the validity of even the routine decisions of the Board. Consequently Judge Cooper recommends that quote, These and any other issues should give District Five Board of Trustees grave concerns. In my opinion the only appropriate course of action is to recognize the

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existence of cause under Section 59-19-60 thus granting the Board the power to proceed with the removal process as outlined in the statute.

In light of the challenging circumstances necessarily involved in reviewing Board members' qualifications to remain on the Board we believe the process utilized by the Board is the most fair and provides the best opportunity to fully develop the evidentiary and legal issues for the Board's consideration. Having a professional adjudicator hold a hearing and make recommendations provide the parties and the Board an opportunity to fully develop the evidence and their positions and provide additional legal input and advice to the Board on how best to proceed in such a manner. We have been asked to bring the concerns and the evidentiary issues relating to Mrs. Murphy's residency and qualifications to continue as a board member in an orderly and deliberate manner before the Board. I hope we have done so. Thank you for your consideration of this important matter.

THE CHAIR: Thank you, Mr. Reagle. At this time we will hear from Mr. Kincannon.

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MR. KINCANNON: Thank you, Mr. Chairman. I have a motion to dismiss and some written material to hand up. If you don't have a problem with that I'd like to give it up to you.

THE CHAIR: Should I pass that to the Board.

MR. KINCANNON: We've had so little time to get everything prepared, not in terms of legal and factual matters but just in terms of basic preparation and printing and things like that. Quite honestly that's all the copies that I have plus this one and it was a miracle to get those out on time.

THE CHAIR: That's fine.

MR. KINCANNON: At the outset we would like to present a motion to dismiss and a motion for directed verdict, and it's laid out in this document that I have handed you but for the benefit of the Board I'll go through it.

First of all, a very fundamental issue that's gone sort of unnoticed here, what Mr. Reagle says about the authority of this Board to remove its own members is just frankly not right. Act Number 140 does not give this body any authority whatsoever from the Richland County

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Board of Education -- the old defunct Richland County Board of Education. In fact, Act 140 -- and let me clarify this that there's a consistent typographical error -- and I'm no one to criticize people for typographical errors, but there's a consistent typographical error in opposing counsel's documents. Act 140 of 196 is the Act referenced, not 141. Act 141 is a different Act on a different subject.

But we'll back up just a bit. South Carolina Code Section 59-19-60, which is the authority that this Board and the County sited as to why it can do this, it says that county Boards of Education have the authority to remove trustees. But section 59-19-30 gives the Boards of Education the authority to appoint them. 59-19-30 and 59-19-60 were in the 1942 code, all part of the same statute. The 1952 South Carolina code was redone and a lot of bigger statutes were broken up into bits and pieces but it's crystal clear that 59-19-60, the statute that allows the County Boards of Education to remove a trustee was clearly always intended to be incidental to the authority to appoint trustees which the County Boards of Education

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used to have. You know, I certainly wasn't around for it but the County Boards of Education, the County Board of Trustees issue has really developed in South Carolina in an unusual way. There has not been much uniform legislation on the topic and many of the acts that relate to the school boards around the state are not in the regular code of laws, they are special laws and you have to find them in the general statute. And that's the case for all the acts that we're talking about. And so it's very important to understand that it is absolutely true that at one point in time in 1969 Richland County had a Board of Education and that Board of Education did have the power to appoint and remove trustees from the Boards of Trustees from various school districts. And I'm not sure how many districts there were at the time, but that was true in 1969. And I am talking about Richland County only because Richland and Lexington are different, they are very different.

So in 1969 Act 140 was passed by the South Carolina General Assembly. Act 140 dissolves the Richland County Board of Education and it also dissolves the position of

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superintendent. It used to be -- I think it was an elected position, I'm not certain, but in any event there was a superintendent of education that was a county-wide officer and the Board of Education Trustee. Act 140 of 1969 -- which is in the materials supplied by opposing counsel, it says quite clearly it devolved all the powers of Richland County Boards of Education, not to Boards of Trustees but to Richland County Council. It also gave appointment of trustees to Richland County Council as well. It gave that as a combination. Section four of Act 140 says that.

In fact so really what happens in Act 140 of 1969 is every power that the Richland County Board of Education has and also the superintendent were taken away, those offices are ended, all that power including the power to remove trustees is given to Richland County Council, and that is where that power sat. Now, the statute Act 140 goes on to say that Richland County Council can delegate this authority to remove or whatever, any authority, yeah, it can delegate it if it wants to. However, Richland County would have to do that by ordinance and no

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ordinances have been presented were that to happen, in fact it didn't happen. And if it did happen it's buried in a book somewhere and it may never be found. And it was repealed when Richland County adopted its ordinances as a codified set of ordinances in 1984.

I apologize for all the legal mumbo jumbo and all the history here, it's complicated. The fact of the matter is that the way schools are administered in this state is real haphazard. From county to county it varies greatly. I am sure you all have dealt with that more than I have, but this is a very important matter for Kim Murphy because the point of all this is this Board of Trustees never got the authority to remove Richland members from the Richland County Board of Education. That simply never happened.

Now again, if you look at Act 140 it says that there's power forgiven to Richland County Council, and however Act 140 wasn't the end. Act 140 was not the last time General Assembly would pass a law relating to Richland County Board of Education. Act 140 -- in 1984 the General Assembly amended Act 140 with Act 610. Act 610 of 1984 actually addressed this

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removal authority that Richland County had inherited from the Board of Trustees -- and just for your alls edification in 1984 Richland County Council was still appointing trustees. Trustees from Richland County weren't popularly elected until I think '88 or maybe the election after '88, but that's the way it started. They weren't so in 1984 Richland County was still appointing these trustees itself.

Act 610 expressly stripped Richland County Council trustee removal authority. It actually amended Act 140 of 1969. It said Richland County Council may not remove Richland County School District trustees in school districts situated in whole or in part in Richland County. I'll read that again. Richland County Council may not remove Richland County School District trustees in school districts situated in whole or in part in Richland County. School District Five is in part in Richland County. So Act 140 gives this power to Richland County Council. Richland County Council never gives it to anybody else. Then the state legislature in 1984 killed the power, in fact there isn't any of this in Act 610 of 1984;

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there's absolutely no language in there that says anything whatsoever about we're giving it to somebody else now. You have this thing and all these school acts and whatnot over the years where the legislature is taking powers from different people and whatnot. None of that in this 1984 Act 610 just said, Richland County, we gave you the power to remove district trustees by Act 140 and now we're just killing it, we're cutting that off. So that power was killed by Act 610 of 1984. And then three years later Act 287 the general Assembly establishes trustees to be popularly elected. Kim Murphy was elected to a Richland County seat on the District Five Board of Trustees. So the entire proceeding hinges upon the District Five board of Trustees actually receiving the grant of authority to remove under 29-19-60.

South Carolina Code 59-19-60 says quite plainly that it's the Boards of Education that has the authority. Boards of Trustees don't have the authority to remove their own members under the title 59 chapter 19 as it was originally written, it just didn't happen. So the only way that that power comes to this Board of Trustees,

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the only way it's even possible, is if it was somehow delegated to you all by somebody with the authority to delegate it and it just never happened. If you compare and contrast it to Lexington County in Lexington County this actually did happen. In Lexington County there was an ordinance and it's referenced in some of your materials. I think it's Act 601 of 1994. It says Lexington County Board of Education abolished its power to use or devolve the respected Boards of Trustees in Lexington County. So in Lexington County there's still a statute that says we're abolishing this Board of Education, we're giving all the power of the Board of Trustees. That never happened in Richland. The Lexington County Board of Education had the authority to remove Lexington trustees. The Richland County Board of Education had the authority to remove Richland trustees. Kim Murphy is a Richland trustee serving on this board, so if the Richland County Board of Education, that removal power never found its way to this board because this board doesn't have that power and can't remove. That's exactly what the statutes say. It's crystal clear.

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Beyond that, Act 140, there's no way around that but even Act 140 it says there's an ordinance and that the Richland County Council would have to by ordinance give this power to someone. Well, there's an interesting thing about ordinances and statutes. In statutes the court does not have to have evidence in statue except of the existence of the statute. But in South Carolina ordinances are evidentiary in nature, you have to provide them as evidence. There are no ordinances that have been provided at all, I don't think one exists to provide. But no ordinances were provided in the evidence in the petitioner's case here and so there's no evidence at all here that this Act 140 that gave Richland this power, Richland never wrote an ordinance to give it to you all, and I don't think it did. I really don't and if they did let's cover that.

If somehow someone were to find in 1975 there's some ordinance out there that Richland County gave all its power to the Board of Trustees, that ordinance would be inapplicable because it's been repealed. The Richland County Code of Ordinances which is 1600 pages -- which I

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have an electronic copy of and I will ask you all to provide an electronic copy of it for the record since it was impossible today for me to print 2000-odd pages of ordinance, but I would like that to be admitted into the record. The Richland County Code of Ordinances enable an ordinance that enacted the ordinance.

By the way let's talk a little bit about ordinances. South Carolina statute requires that ordinances be codified. What that means is it has to be written down and put in the code. That's pretty obvious why; people ought to have a right to know what the law is and if they don't put it in an ordinance they don't get to read it then they can get arrested for something the next day, that's not in there, that's a problem. So south Carolina statutes requires that counties, the county councils codify their ordinances which means they are included in the code. And so there is no ordinance in the code as it is today that delegates this power that Richland County Council has. And even though the power was killed by the legislature, I think at this point in time we are pretending like that didn't happen, the legislature never killed the

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power, could Richland County give it to all today? Well, no. Strike that, I misspoke.

Richland County never adopted an ordinance, and if they did adopt an ordinance back before 1984 that ordinance was repealed because when Richland County adopted their code of ordinances they adopted an enabling ordinance or something like that and it said here's our code of ordinances. I'm paraphrasing now. Here's our code of ordinances. If there are other ordinances floating around out there they are repealed. If it didn't make it into the code of ordinances, it didn't make it into this book it ain't an ordinance, it's not valid any longer. So there's no ordinance in there.

And if there was at some point in time an ordinance out there -- and I don't believe there ever was -- then it had to have been admitted into evidence in this proceeding which means for these purposes the exhibit didn't exist, but even if it did exist and you can find a paper copy of it tomorrow it's of no force and effect after it was appealed in 1984 along with every other ordinance that didn't make it into the codified book of ordinances Richland County

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puts out. So this is legal and its evidentiary. For this Board to gain the authority to remove Ms. Murphy there has to be an evidentiary submission of ordinance that establishes you all's authority given to you by Richland County in Act 140. It's not here and we don't have it so that means Ms. Murphy has to win and she has to win a directed verdict because there's not any evidence here that you all have this authority that you don't have.

Beyond that it's also legal because of the reasons I've been explaining about the Richland County ordinances and all the stuff about the acts in 1983, whatever that one was. All these numbers run together and I apologize. Anyway I said it a minute ago. The point is that authority has been killed, it's been extinguished. There's no evidence that you all ever got it even if it hadn't been, so in reality this Board -- and you all might not see it that way, it's spared the unpleasant task of having to go forward with this. It's been an unpleasant proceeding, and I have been practicing law for a little bit now and I've been an election lawyer for a while too, and I can tell you that nothing

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gets people's blood boiling more than election cases. It's been my experience most people are loathed to throw out the result of an election and that's what you all are being asked to do. So let's talk about that for just a minute.

In the past year, 2012, there's a whole lot of election litigation. It's like a banner year for election litigation in South Carolina. I'm sure you've all read the newspapers and all saw all the people removed from the ballot and all that. Well in the context of all that there was one case that came out and I actually represented someone in that case. It was Dorchester County democratic party versus the Dorchester County republican party. An order was entered in the case dismissing the appeal. And in that order, and I'll read it to you. The South Carolina court said that if somebody is running for office and they are not qualified or there's some defect in their qualifications, there's a remedy for that and the remedy is an election protest.

Now let's set apart one thing from another here. It's real important to understand what I am about to say. The stuff about the

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ordinances is all great and wonderful but what I am about to tell you is very important. In South Carolina if there is an administrative procedure by which you can get something done then you have to use that administrative procedure, and then if you lose that administrative procedure you go by and file an appeal and you go file an appeal in court and you continue on that way. What you can't do is you can't skip that procedure if it's out there and then go do it another way. I boil things down in sort of layman's terms so I'll boil this down in layman's terms.

The south Carolina legislature put in place election protest statutes, there are a number of them. There's an election protest statute that applies to you all. I am sure you all have been in close elections and you're sitting there winning but you're kind of biting your nails. And the protest is as all of you all know probably is a real short window of time after an election and the window of time for you all being non-partisan county officers, the window of time is noon Wednesday after the results are announced. And so a week after the election for all intents and purposes. So a week

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after the election you have this amount of time to protest someone who got elected. Now, let's think about that in terms of Kim Murphy's case, and also the supreme court said in the Dorchester County case you have to use that statutory procedure, you have to use it. If you don't use it you can't go do it another way. You have to use that statutory administrative procedure since it's out there.

Now, let's change the facts a little bit. Let's say Kim Murphy lives in a house in Richland County and she moves to a house in Lexington County, let's say she moved into this house in Lexington County. Let's say she does it a month after the election. That's a different matter, that's a different matter. There she was elected then her qualifications change. There is an administrative procedure for dealing with that but it may not even apply. The election protest procedure clearly doesn't apply. You can't protest an election based on something somebody is going to do next month, you don't even know. So the point here is this. Not all residency issues are administratively ruled on by the legislature, but if there's a residency issue or

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any kind of qualifications issue that's attendant to your election and it's out there and no one files a protest based upon it by the end of the protest, which is Wednesday at noon after the election, then that challenge can never be brought ever because everyone who might bring it failed to exhaust their administrative remedy. That's exactly what the South Carolina Supreme Court said in the Dorchester County case from last year. And let's apply that to Kim Murphy.

Kim Murphy has not moved. You know people say I didn't leave the democratic party, the democratic party left me. Kim Murphy didn't leave Richland County, Richland County left her. So what happens here is this. Since all the facts of Kim Murphy's residency -- nobody argues that she lives in a different house. She's lived in that same house for over a decade, something like 15 years. And she was clearly there in 2010. She's been there the whole relevant time period here since I think probably the late 90s. Is that right?

MS. MURPHY: 2000.

MR. KINCANNON: 2000, so since 2000. So since she lived in this house on the day of

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the election she hasn't moved, she stayed in it. There was an administrative procedure out there for anybody who wanted to go and make this an issue. If somebody wanted to go challenge this they could have. And they could have done it in 2010 if they filed something by Wednesday noon after the election. That they did not do. Anybody could have gone and figured all this out if they wanted to. I don't know how it ended up getting figured out but somebody thought of this and went and looked it up, and so since that could have been done in 2010 but wasn't, we have a failure to exhaust administrative remedies. And under a failure to exhaust administrative remedies this issue cannot come up anymore. Once that Wednesday new deadline passes, think about like the statute of limitations, it can never be brought up again. Again, that is not the case if Kim Murphy had moved or if something happened after the election then it wouldn't count, but anything that could have been brought up in a protest filed Wednesday noon after the election has to go to an election protest, and then you go to appeal that if you lose, but it has it go to an election protest; it cannot come anywhere else

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including here.

There's another administrative remedy but it's sort of redundant for me to explain all this so I'll just briefly address it. Richland County Board of Voter Registration, there's a statute that establishes administrative procedure for challenging someone's voter residency as they say and whether they properly reside as they say they do. That administrative procedure is out there and the South Carolina Supreme Court said there's a case not long ago with a judge and the judge got elected and judges have to live in the district where they are the judge, except for some of them, but this one did. And the South Carolina Supreme Court said the Judicial Merit Selection commission gets to make these decisions, they are not going to intervene, it's a political question. But they also said these people could have gone and challenged this residency under the Beaufort County Board of Registration and could have used that statute but they didn't. I don't think that case uses the term failure to exhaust administrative remedies but it clearly is the same concept. The point is the court has said where you can go and file an

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election protest or you can go and challenge residency through an administrative procedure established by a statute, and that you have to do. If you don't do it you can't come back and attack through some other way like this.

So that's all that stuff. Now, there are a couple other items here that I really need to cover with you all. And I'll try not to be too long but there are a lot of tidbits and stuff here.

THE CHAIR: Mr. Kincannon, you have about five and a half minutes if you can try to keep that kind of focus.

MR. KINCANNON: I understand that and I hope that you will allow me to continue to explain my client's position if I should run out of time because due process requires that I have an opportunity to be heard.

THE CHAIR: Let's see where you are in the next five minutes.

MR. KINCANNON: Well, I'd like to know what your plan is because if your plan is that you're not going to keep letting me keep talking then I'm going to talk a little faster.

THE CHAIR: Well, talk a little faster

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then.

MR. KINCANNON: Okay. Then we need to get to due process and we also need to get to the statute about hearing officers. There's a statute, I think it's 59-19-110 that says the hearing officer has to be a member of the Board; it can't be anyone else. Judge Cooper is not a member of this board, therefor your all's hearing officer procedure is illegal. That's one of the reasons why I didn't participate.

The Voting Rights Act. The Voting Rights Act says that any procedure related to the removal of an election official have to be pre-cleared by the US Department of Justice under Section. 5 of the Voting Rights Act -- and that was not done -- while adopting a procedure here for dealing with removals of Board members -- and you didn't pre-clear it with the Justice Department -- has to done, wasn't done and therefor you can't proceed. There are issues also and we're requesting attorneys fees under the Voting Rights Act issue as well because we are entitled to it. And there's no reason Mrs. Murphy should have to go through all this frankly.

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We have due process objections to the way the hearing officer was chosen. The hearing officer was chosen by the lawyers for the Board. That violates due process for a number of reasons, in fact Judge Cooper is a great judge. I think the world of Judge Cooper but the simple fact is Judge Cooper previously heard a case and ruled for this district against Kim Murphy in circuit court years ago. There's some history here. And I got thinking about this. If you all told me I could pick the judge who would I pick. It wouldn't be Judge Cooper. No offense to Judge Cooper whatsoever but he previously ruled against Ms. Murphy. I suggested to Mr. Reagle on the telephone when we were discussing this some time ago that perhaps we should just randomly pick a hearing officer. I said I'd waive my objection to the statute if we could just have a random selection. I think I know why because he felt like he had a good shot with Judge Cooper. Not that Judge Cooper is biased but you get a sense how judges are going to rule and you get a sense of what they're going to do. If I have one type of case I want Justice Scalia, if I have another case I'd like Justice Ginsburg. Same concept.

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But moving along there are -- and again the objections are all written in here and I would request leave also because of the exhibits. There are a number of exhibits referenced in here. A 24 hour time frame for this hearing is unreasonable. There's no reason we can't wait until the next hearing. All the concerns Judge Cooper mentioned in his order aren't affective if you all have a meeting until the next one. Frankly I'd bring out all the different exhibits if there are to what I had sent you all and I didn't even have time to finish just writing it. It's not a matter of did we have two months to prepare, sure that's fine but the problem is we didn't get notice of Judge Cooper's order until yesterday evening. I don't know how to write something that is an objection to an order essentially until I've seen it, and I hadn't seen it. So we have a due process objection to that too.

Again there are some other things referenced in here. One of the problems is that there is no petitioner. You all said and from what I understand some people just told Mr. Gantt there was a problem here and Mr. Gantt decided to

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start this process. There's no petitioner in supposedly an adversary process. Well, there's nobody on the other side. It's not like an election protest where they're protesting a respondent. There's no protestant here. And the Board's attorneys are barred by South Carolina law from presenting the case against Kim Murphy and also advising the quasi-judicial body that he's going to decide it. They can't do that but they have chosen to do that and it's illegal quite frankly. There are so many problems with this 30 minutes is just not enough time to go through all this. You all as best I can tell did not comply with the Administrative Procedures Act with regard to the adoption of the hearing procedure that you created. You have to do that. I don't think you did it.

There are a number of other things in here and I'll let you all read it and I will submit the electronic versions of these exhibits as soon as I return to my office as soon as this hearing is over, and I request leave from you all to do it. But I'll close with this. This is fundamentally a judicial decision. You all are making a judicial decision. And what I would ask

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you to do is this. Don't think about how Kim Murphy votes, don't think about whether you agree with her politically or not. That's not an issue and shouldn't play in this at all. I know it's hard to ask you all to do that. I don't think the statute should ask you to do this and I don't think it does, but anyway please try and separate politics from right and wrong in this. You know, there are a lot of people that voted for Kim Murphy, something like 5000 people voted for her. If you go forward with this there are no profit of her own and Mr. Reagle talks about equitable concerns. Equity says that if you didn't do anything wrong something bad shouldn't happen to you. I want you all to think about this and this is what I would leave you with. By the way one other thing, I'm sorry. Ms. Murphy is going through the process right now. There's a statute process which allows her to take the rest of her parcel into (loud phone rings -- inaudible). It's not as though she didn't want to live in Richland County, she did. She did want to live in Richland County, she always thought she lived in Richland County. And so she's going through that process right now and so the idea that she's

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going to be disqualified permanently, she's not. She'll be in Richland County very shortly and if she's not now. We don't concede she's not now. But this is what I'll close with.

From an equitable standpoint, equity requires that you -- if the application of the law appears to be strict or unfair sometimes you depart from it. That's what equity means. And equity says this in this case. This is my opinion and I think it's a good statement of the law. Richland County and Lexington County and various other government officials have for years if these surveys are correct, been telling Ms. Murphy wrongly that she lived in Richland County. Yet think about this. Who is out to lose their job if those government officials are wrong. Not them, Ms. Murphy. That's not fair. That's not right. You know, equity says that if somebody else makes a mistake and it disadvantages you, you shouldn't have to bear the punishment of that while they don't. And I'm not saying they should go fire anybody at Richland County that sent her a tax notice, it's a complicated thing. I think we have all learned something about boundary lines in this mess. But the simple fact is Ms.

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Murphy did nothing wrong. She thought she lived in Richland County. Everybody in government told her she lived in Richland County and so that's where she filed from. She could have filed from Lexington. If she had believed she lived in Lexington and was told she lived in Lexington by the government she would have filed in Lexington County when she ran for office. It's not like she can't still be on the Board if she lives in Lexington County, she sure can. But this is what's key and I'll close with this. I promised a time or two but now I mean it. I'm sorry, I appreciate you all giving me the time to speak tonight, this is a complicated matter and I appreciate you all at least please flip through this, there's more in here than just what I told you. There is no harm that will come to this Board if Kim Murphy stays on it until the end of her term. I've looked through the minutes and you all's votes don't tend to be close. Ms. Murphy doesn't appear to be in the permanent majority. And I'll tell you this, if any votes came down to one vote it might be an issue. It's not. None of you all's votes come down to one vote. You've had some issues and it's like five

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to two every time or something like that. There's no reason to continue with this, it's a waste of taxpayer's money. None of you all's votes are going to get affected. You all can do whatever you want to do. Kim Murphy's vote -- I hate to say this, Kim Murphy's vote just doesn't count on this board, and that's because of what the voters have decided is because of the way things go in Richland County and Richland/Lexington Five. This is the point. There's no reason for this. Taxpayers are going to start thinking that there is all a vendetta and frankly when you get right down to it that's what I think too, and I say that with all respect --

(Crowd erupts in outburst and PA system malfunctions.)

THE CHAIR: Mr. Kincannon and the audience, I'm going to give you fair warning on outbursts. We have three officers here tonight. This is a hearing and we want to keep it very professional. I'd like to say that for the audience and likewise I'd like to ask for your cooperation as well. Thank you.

MR. KINCANNON: Mr. Gantt, I appreciate it but what I'll tell you is in talking to Kim

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Murphy about all this I think it's time everybody in Richland Lexington District Five start trying to get along. I think that can happen tonight. I hope it happens tonight. I don't know that it will happen tonight but that's my plea for voters, for the children, for everybody involved. Let's put all this nastiness behind us and try to start working for the kids. That's all I have and I appreciate you all's time. Thank you.

THE CHAIR: Thank you. Mr. Reagle I realize Mr. Kincannon brought a document tonight that you hadn't seen about 10 minutes after seven or quarter after. Do you and Mr. Powell need any time to look at that? You still have five minutes to respond but we'd be glad to give you some time to do that.

MR. REAGLE: We're fine and ready to proceed. I think the important thing is the Board be able to conclude this matter.

Mr. Kincannon did cover a lot of ground while trying to speak quickly as well. With respect to the Board's authority to exercise the powers of the County Board of Education under 59-19-60 the voter legislation can often be confusing and complex. What I think is most

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significant is that not only has Judge Cooper determined that the Board has this authority, our law firm opined that the Board has this authority and most importantly the Attorney General back in 2005 without any context to this situation determined that the Board most probably had the authority to remove one of its Board members for cause. So I think that the greater weight of legal analysis on this supports the recommendation of Judge Cooper in that regard.

Secondly regarding the election protest and the exhaustion of administrative remedies, Mr. Kincannon I think as pointed out by Judge Cooper forgets that Act 326 of 2002 begins with not withstanding another provision of law. It doesn't matter what other provisions of law say with respect to the residency requirements of a member of this Board. Act 326 controls and it says the board member must reside as Judge Cooper indicated. That's a continuing residency requirement. The General Assembly didn't have to impose that. The General Assembly could have said at the time of election the board member must reside. That's not what they said. They made a continuing residency requirement that is

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applicable notwithstanding another provision of law.

The administrative procedures -- this is the administrative procedure. This is an administrative hearing that is being conducted according to the applicable statute which is 59-19-60. So the appropriate administrative procedure is being followed according to the appropriate statute which says the Board can determine the manner of the hearing as long as it provides appropriate due process to the board member that is subject to removal. Again this matter has been pending for over two months. It was over two months ago that Mrs. Murphy got notice of the Budget Control Board's determination. It was on February 15 a month ago that the evidentiary hearing was held. It was February 1st, over six weeks ago that Judge Cooper had a scheduling conference and hearing. Mr. Kincannon and certainly Mrs. Murphy have known of every one of these issues they have raised here tonight for over at least a month since the evidentiary hearing was held, and really for two months the information has been available and there's been an opportunity to

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respond and object. It was only tonight that they have come forward with a written submission and made those objections. But in terms of administrative procedure the Board is following appropriate administrative procedure under the applicable statute for that.

Mr. Kincannon referenced Section 29-19-110. That statute gives the Board the authority to designate one of its board members or board members to hear matters. It doesn't deny the authority of the Board to designate somebody else as a hearing officer and it is common that school boards and other boards designate professional hearing officers to hear matters particularly with respect to school boards and student disciplinary matters in many districts and cases with respect to teacher disciplinary matters to make initial findings and recommendations. So this is not an unusual or new procedure. What is unusual and new is the occasion of having to remove board members for cause. And frankly in every case that has come up before where it's clear residency qualification no longer exists for a board member they have resigned. What is really unique here

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is the intransigence in forcing a hearing for cause on this issue when the factual question of the residency seems very clear. That brings me back briefly to the issue of the Board's authority.

Mr. Kincannon recognized without question this Board's authority to remove a member for cause with respect to Lexington County. But Ms. Murphy is a resident of Lexington County. That is where she truly would be qualified to stand for office. So even under that analysis there is no question this Board has authority.

The Voting Rights Act issue, there has been no change in the law. These laws that are being relied upon, Section 59-19-60, the local legislation Act 326 2002 have all been on the books for a long time. Certainly the county boundary line has been there since the 1920s. There is no change in the law that would require a pre-clearance under the Voting Rights Act.

The one thing we do agree upon is that this is fundamentally a judicial matter, so what would be more appropriate than to ask a retired judge to offer his recommendations and conduct

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the evidentiary hearing for the Board but a professional member of the judiciary.

And there is finally as noted by Judge Cooper a right to appeal. The statute clearly gives Mrs. Murphy a right to appeal under 59-19-60. So there is that procedural safeguard to ensure full judicial rights are afforded to a member of the board subject to removal in this matter.

Finally the fundamental harm at issue here, there is a very real and continuing harm which is why Act 326 makes continuing residency in the county from which you're elected a requirement. The fundamental harm as Judge Cooper points out is that citizens of Richland County will not and are not represented by a member of the Board accountable to them as required under the law in the next election. If the fact is Ms. Murphy is not a resident of Richland county she will not stand for election in Richland County next time and the members of the public in Richland County do not have a representative that has any influence any more over that representative's vote, so it is continuing and important, in fact one of the most

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fundamental rights that citizens have is to representation of all kinds. Thank you.

MR. KINCANNON: Mr. Gantt, if I could make just one brief comment just to clarify for the record. Mr. Reagle indicated that I conceded the Lexington half of this that you all have that authority for Lexington, I did not concede that. I don't mean to imply Mr. Reagle is saying I said things I didn't say. I understand why he might have thought I said that. The written submission makes clear that I don't concede that in any way. I just want to make that clear on the record. Thank you all.

THE CHAIR: Thank you, Mr. Kincannon. Mr. Reagle, if you and Mr. Powell feel like you need more time, I apologize but I have no control over that.

MR. REAGLE: That's fine. We certainly wouldn't object and I think it would be appropriate if Mr. Kincannon submits the documents he referenced that he wanted to submit those records.

THE CHAIR: Thank you both for your input. That brings us to our item 4 which is the possibility of any actions on the items we

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discussed tonight and if anyone has a motion on what we're dealing with at this time. Mr. White.

MR. WHITE: I have got a motion and it's -- I can pass out copies and if you want me to read it or -- it's a motion to basically accept Judge Cooper's finding of facts and conclusions of law and proceed with removal of Ms. Murphy. If it's your pleasure I can read it or we can proceed.

THE CHAIR: I think it would be good if you could read it into the record.

MR. WHITE: Mr. Chairman, I move that the Board adopt the following resolution: Order removal pursuant to South Carolina code 59-19-60. On March 19, 2013 the Board of Trustees of Lexington and Richland School District Five held a special meeting concerning the matter of the residency of trustee Kim Murphy. The Board has considered the record of the proceedings and evidence of the hearing conducted by Judge Cooper on February 15, 2013. Ms. Murphy and the Board's legal counsel were given the opportunity to present arguments on the question of her residency and the existence of cause for removal pursuant to South Carolina Code Section 59-19-60

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at the March 19, 2013 special meeting. The Board finds that that the procedural requirements of notice and an opportunity to be heard of South Carolina Code Section 59-19-60 were complied with at its meeting of January 14, 2013 and stated upon the minutes thereof the Board approved an inquiry into the residency of Kim Murphy with reference to Act 326 of 2002. The Chairman of the Board issued a letter to Ms. Murphy concerning the question of her residency dated January 15, 2013 requesting a response by January 21st, 2013. Ms. Murphy replied via legal counsel by letter dated January 18, 2013. Ms. Murphy circulated an e-mail dated February 28, 2013 concerning the Board's inquiry and Ms. Murphy placed an on-the-record statement concerning this matter into the minutes of the Board's January 28, 2013 meeting. In a letter of January 29, 2013 Board counsel advised Mrs. Murphy that Judge Cooper had scheduled a conference to prepare for a hearing on the matter on Friday, February the 1st, 2013 at 10:00 a.m. in the conference room of the South Carolina Bar offices and to request that Ms. Murphy and/or her counsel be present for the meeting.

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Judge Cooper issued a prehearing order dated February 1st, 2013. The prehearing order was e-mailed to kwmurphy@lexrichfive.org on the same day. On February 1st a copy of the prehearing order was hand-delivered to Mrs. Murphy's residence. Judge Cooper's order provided in part that she submit to him any prehearing briefs and documents no later than February 13, 2013 and he would conduct the evidentiary hearing on February 15, 2013 at 10:00 a.m. in the District Five boardroom at 1020 Dutch Fork Road, Irmo, South Carolina. Reports of the board's inquiry and Judge Cooper's plan for the hearing were widely circulated in the local press. Judge Cooper convened the hearing on February 15, 2013 and took evidence as reflected in the transcript and exhibits supplied to the Board for its consideration prior to the March 19, 2013 board meeting. The hearing before Judge Cooper is recorded in the transcript and the exhibits received by the Board. Although Ms. Murphy and her counsel were present at the Board office prior to the hearing neither appeared at the hearing.

Judge Cooper sent a report and

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recommendations to the Chairman which was received at the district office on Friday February 15, 2013. The Chairman scheduled a special meeting of March 19, 2013 and arranged the complete transcript and exhibits along with Judge Cooper's report and recommendations to be published to the board and the public on Monday March 18, 2013. These materials were also hand-delivered to the Board and to Ms. Murphy's counsel on March 18, 2013. Upon due consideration and deliberations upon the complete record the supplementary arguments before the Board of Trustees at its March 19, 2013 and the report and recommendations recommended by Judge Cooper the Board of Trustees hereby concurs and adopts as its own Judge Cooper's report and the recommendation as the Board's own findings of fact and conclusions of law in this matter incorporating the same into this order. Accordingly the Board finds legal cause exists for the removal of Ms. Murphy from the office of trustee pursuant to the South Carolina Code 59-19-60. Therefor pursuant to South Carolina Code Section 59-19-60 the Board hereby removes Ms. Murphy from the office of school trustee of

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District Five of Richland and Lexington counties effective immediately. The Chairman shall provide copies of this resolution to Ms. Murphy and to any public official with responsibilities obtaining hereto. Adopted this 19th day of March, 2013.

THE CHAIRMAN: The motion that Mr. White made was to move that the Board adopt the resolution that I requested is agreed but we have a second to the request or the motion by Mr. White that the Board adopt the resolution that he read. Ms. Loveless has seconded. Now we're open for discussion. Mr. White.

MR. WHITE: Since I made the motion I'd like to start the discussion. I want to point out and I think our attorneys have also presented it. This is not the first time this has happened and where this happened before it was because the boundary lines were not properly recorded by the local county election board. But in those instances that related to us those individuals resigned when they were confronted with the facts. Ms. Murphy had the opportunity to do so. We hired retired jurists which I think is the closest thing we can do to proceed in court. We

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gave the opportunity for her to submit with her counsel a brief and we heard a bunch of discussions tonight, but by her own design did not get properly input to the process where the jurist could analyze that stuff critically alongside our attorney's information. I find it -- I think it's significant that she elected not to submit that in a timely fashion and I think the last minute presentation in this hearing without our counsel having that prior, even though we had the 24 notice it's been out there for a long time. It to me appears to be more political than legal and if it were something substantive it could have and should have been submitted to the hearing officer we had designated.

But the real issue I would submit to this Board, when you talk about voters and the election process, and it really goes back to District Five and this is a unique district for a couple of reasons. One is we have two counties. Very few districts in this state have two counties, so we do have representatives elected from both counties. We also have two communities. We're basically made up of the Irmo

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community and the Chapin community. And when we drive to our board meetings in Chapin we're 20 minutes on the interstate to predominantly rural areas to get to Chapin itself, but my point is Mrs. Murphy is a resident of the Chapin community and the people that were disenfranchised are the voters that reside in Lexington County that had the right to vote for or against her in that election. So these same people contacted us and wanted to know why they could not vote against her at the time she was filing a legal action to block the construction of Chapin High School while she was running to serve on this board. Those are the disenfranchised voters, not the people in Richland County that voted in favor of her by accident, it's the people in Chapin in the community that she lives in that we have a constitutional and statutory obligation to pursue this path.

And then I think the other compelling reason is for somebody that's not properly elected and cannot, I think the judge's order is clear, that the statute -- it's not just a matter of whether or not the election commission puts you on the ballot, you have to reside in that

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county. And the evidence is irrefutable going back to the 1920s, her home is located in Lexington County. And to the extent that she sits on this Board and she listens to personnel matters, she listens to legal matters that are confidential information, we can't allow people that are not properly elected to participate in those decisions. And I think the judge's order is clear; this isn't a matter of discretion, it is something we're obligated to do and we need to proceed with this removal.

THE CHAIR: Any other discussion? Mr. Turner.

MR. TURNER: Perhaps the attorney can answer this or maybe Mr. White as well, I think he addressed it. I realize that Mr. Kincannon had an opportunity to appear before the judge. He did not do that. He has brought some information tonight so my question is, this information here, have the attorneys addressed that to indicate whether or not this is a valid argument that this Board should allow Judge Cooper to at least hear and render an opinion on this, or has a proper opinion been rendered by Mr. Reagle?

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THE CHAIR: Mr. Turner, I believe that Mr. Reagle -- and I offered him some time -- I think in his closing he feels like it was addressed in Judge Cooper's order. You were here that day and for the process but we're open to our legal counsel advising us. I believe we're on the advice of the retired jurist who sited the law of the case over and over and I believe that's all there. But I will say to Mr. Reagle or Mr. Powell if there's an issue that you need to state further let us know if you want to run it by us. Any other discussion? Ms. Watson.

MS. WATSON: Mr. White mentioned that this is not the first time that an elected official has been found to be in the wrong voting area and I have two copies of articles from 2012, one is November 21st, 2012. This deals with the Jasper County School Board seat on District Nine and I'll just read just a paragraph. It says that Ms. Pamela Williams planned to run for another school board term this fall but a county election commission correction before the election moved her from District Eight to District Nine. The commission said it corrected a mistake and that Ms. Williams, who lives on

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such and such avenue just outside Hardeeville should have been registered in District Nine. Then it goes on to say that Mr. Morrey moved from the District Eight seat that Ms. Williams used to be in. So there was no court case, nothing, it was just accepted that just through a mistake she was not in the right district in Jasper County and therefor could not run for that particular seat.

Here is another one dated June 2nd, 2012. This is with the Clarendon School District One. It says it had one Board member removed from office on May 30th. The Clarendon County Board of Education voted unanimously to remove Mr. Ricky Johnson from the Clarendon School District One Board of Trustees and quote, the Chairman of that board said that Mr. Johnson does not live in District One. No mention of any court case, it was just accepted that the residency was not as it needed to be and so this was a calm and it was a -- I guess just an accepted set of facts and we're not going to take up any more time and we'll move on with the proceedings of the school district.

And I think that while this is

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certainly not expected, I have been on this school board for 10 years I have certainly never thought I would be faced with something like this. However a couple of months ago when I first learned of the fact that Ms. Murphy lived in Lexington County I had several people ask me, well she was elected in Richland, it appears she thought she lived in Richland, can't you just let that ride? Well, I said I swore an oath when I was sworn in as a school board member back in November 2012 that I would uphold the law. And if the law says, and it does say that there must be three representatives from Richland County and four from Lexington County, how can I, I don't have the authority to say, well, we just won't pay attention to that. I have to follow the law. And we as a board I think have been very thoughtful and tried to do our best in making this a fair procedure, making it equitable and to do the right thing. So I feel that we've been very fair and we have tried to be very professional about this so I will support the motion. I am going to attach this to the minutes here.

THE CHAIR: I'd like to weigh in for

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just a minute on this and just very briefly. I wanted to also share that this is a very unusual circumstance in my years of living here and certainly on the Board not in my wildest dreams did I dream of a night like this, but we are here, the law is very specific. I very much trust the process that we've gone through. I find it very frustrating to have an issue like this and sit at the Board table back in January and hear Ms. Murphy say that night publicly and made a public comment that she was going to do the right thing. She also said she was going to do the research and get to a conclusion on it. I don't know where that got in the process but the right thing did involve her participating in this procedure. It's hard to resolve an issue if only one party comes to the table. We had meetings with Judge Cooper to try to decide how this process might work and Ms. Murphy and the attorney she had at that time chose not to participate. The judge waited probably 15 or 20 minutes. That's very unusual.

We had an evidentiary hearing at this district office on the 15th of February. Ms. Murphy and her attorney came at the very

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beginning of that, relayed the process, went back in the back room and met with Judge Cooper to try, I'm sure, some of the same concerns that Mr. Kincannon gave tonight, but then left, didn't participate in the process. I would have loved for Judge Cooper to have had all the information that was put out here tonight, but I have to believe that Judge Cooper is an experienced retired jurist and understands the law. And I thought his report that we all have a copy of -- Mr. Kincannon I know you've got it and Ms. Murphy I know you've got it -- it was extremely complete. It was very complete. And I think it addressed the very issues that we're dealing with. The law requires that you be a resident and I think he clearly through the testimony of Mr. Bowers' office and Mr. Bowers and Mr. Sid Miller was very evident, in fact I remember Mr. Miller's words from when the judge asked him if it was a very close call. He said, no, it's not a close call at all, it's five hundred and some feet away at a minimum from where her house is. I don't know that there was a plan in this to have set up. I don't know if Ms. Murphy knew either, but I know the law was very specific. I

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know that I am just like every other board member on this Board, we all took an oath to uphold the law. And I've had people ask me the same thing Ms. Watson has been asked. Why can't you all just let her serve, why can't you just let her stay. If somebody would get the law changed that would probably be just fine. I think a board member with knowledge of law that's in violation would be a very poor board member not to take care of that. I had some hope back in January that Ms. Murphy would do the right thing but I think this is going to be a long protracted process possibly from when I read in the paper today.

I would like to say that the judge pointed out some extremely important things that may affect this board and this community moving forward as a school district and that is just like levying taxes and having votes taken about the personnel, confidential information is that all board members here, that it could put a lot of things that we do in the normal course of business and try to handle in this district and put it in jeopardy, and I think that would be wrong for this board knowing we had this

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situation to ignore it and if there was a person in disagreement with this district I'm sure that argument would probably come up.

So I find that compelling. Judge Cooper had no doubt in his mind, he studied the facts that she in fact lives, the Murphys live and their house is located in what is Lexington County, that this board has the right for cause to take this action tonight. So with those things in mind I'm sorry we're at this table tonight but it's a part of the process and it's part of the job. Mr. White.

MR WHITE: I just wanted to add one point to Mr. Turner's question and I think what our attorney said is basically not only do we have a retired jurist Judge Cooper who made a conclusion of the law but their law firm is giving a legal opinion and we rely upon the law firm to give us legal advice and then the attorney General's opinion. So I am satisfied that the law is there.

In terms of Ms. Murphy's choices, and I know her counsel wasn't originally retained by her, she had separate counsel in the beginning, but I think it's a conscious choice to avoid a

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hearing where you could have the opportunity to submit written briefs, the testimony of witnesses and have a full-blown hearing. I think that is an opportunity of your own design but I think the other side of it is is that there is a legal process for you to decide and you're making that choice. And we can't control what you do, but I think if it were me personally I was concerned and felt like I was not being treated fairly, I would have my lawyer in there briefing and arguing in front of the jurist to set the record so that the issues if they were legitimate were properly honed by the time they got to this Board, not something handed out at the 11th hour. I don't think also this is any different than the situations we encounter almost every year when there are students identified who are enrolled in these schools who don't live in this district, and we hear the same pleas, why can't they stay, why can't they finish their school year. In that particular situation because we don't have funding when they come in our policy is that they have to be removed once they're brought to our attention. And now that this has been brought to our attention there's no reason for us to ignore

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the constitution or ignore the statutory requirements that someone has to be a resident to serve. And as soon as we start ignoring the law here it's going to create constant problems and criticisms with anything else like this in the future.

THE CHAIR: Any other comments from any board member? If not we have a motion and a second. The motion is that the Board adopt the resolution that Mr. White read into the record. The most compelling part of that is that the Board would -- item number 6 according to the Board finds legal cause exists for the removal of Ms. Murphy from the office of trustee pursuant to SC Code 59-19-60. We have a motion and a second, discussion. All those in favor please raise your hand. All those opposed. The motion passes six to one.

MR. KINCANNON: Mr. Chairman, I have an obligation to my client --

THE CHAIR: Mr. Kincannon, you are out of order, sir.

MR. KINCANNON: No, I'm not. I have an obligation to my client to preserve the record on appeal. I am sorry, but I do. I have to make a

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motion for a judgement notwithstanding the verdict at this point in time. I'd also like to know for the record and if it's all right with you, if I could construe my motion to dismiss, my motion for directed verdict again. My previous presentations were denied, is that correct?

THE CHAIR: We did dismiss it. We took action.

MR. KINCANNON: No, I understand that. Listen, let me explain something to you.

THE CHAIR: Counselor, legal counsel just advised me if you have got a brief summary --

MR. KINCANNON: No, I don't have any summary at all. I have to make what's called a motion for a judgement notwithstanding the verdict so I can preserve my client's right to argue factual evidence on appeal. I'm not trying to create a problem for you, I wish I wasn't standing here right now. I have an obligation to my client to preserve her right on appeal.

THE CHAIR: Is that the motion you just made?

MR. KINCANNON: Yes. I would like to make a motion notwithstanding the verdict based

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upon all the opinions in my written submission and based upon everything that I discussed here tonight. It's the same motion that I made at the end of my opposing counsel's argument. And if we could agree that the motion to dismiss that I made and the motion for directed verdict were both denied. If we can agree to that that would help just for the record. And I assume you'll deny my motion for a judgement notwithstanding the verdict also but I have an obligation to make it.

MR. WHITE: Mr. Gantt, we dont function except through voting and I don't think -- if there's any motions he can put whatever he wants on the record but we're not making decisions on what he says.

THE CHAIR: I think if you want to put that on the record that's what you probably need to do.

MR. KINCANNON: That's what I just did. I would like for you all to vote to deny it just so it's clear but if you don't want to then I've done all I can do.

MR. REAGLE: If I could be heard briefly. It's our position that those motions

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are not necessary to preserve his right to appeal. There is a statutory right to appeal under 59-19-560 but at the same time --

MR. KINCANNON: That's fine. You understand what I --

MR. REAGLE: I do and we respect that and so the record should reflect the motions have been made and we oppose them for the record as well for the reasons stated by -- in Judge Cooper's order and the statements to the Board tonight.

MR. WHITE: Just to clarify one point. Ms. Murphy is well aware under state law she could put anything on the record tonight so that stuff goes on the record automatically.

THE CHAIR: I have a final statement to read and I'll have copies of this. The final statement is this. This evening at this special called meeting of Lexington/Richland Five Board of Trustees the Board considered the recommendation of the Honorable Judge Thomas Cooper and other legal and factual information concerning the residency of Board Trustee member Kim Murphy. After careful consideration and deliberation of the Board the Board sustains and

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agrees with the opinion of Judge Cooper which states that there is a clear and convincing evidence that Ms. Murphy's residence is in Lexington County, therefore her residence in Lexington County deprives her of the qualifications for office as a representative of Richland County and on the Lexington/Richland Five School Board of Trustees. Based on these facts the Board voted to remove Ms. Murphy from the Board of Trustees. We thank Ms. Murphy for her service on the Board and wish her well in the future.

In previous communications Ms. Murphy and others have attempted to shape this issue as a personal attack toward Ms. Murphy. Nothing could be further from the truth. Our actions this evening center on the simple truth that she does not live in the county which she has elected to represent, a simple but essential requirement of the law. To allow Ms. Murphy to remain on this Board would violate State law and potentially invalidate future decisions made by the Board. We sincerely hope Ms. Murphy will honor this decision and do the right thing as she has stated previously in public meetings

regarding the law and residency requirements. We also hope that there will be no further disruption or distraction for the Board, the school district or the taxpayers in School District Five regarding this matter. Over the next few days we will consult with legal counsel on the next steps of filling the now vacant Richland County seat on the Board of Trustees. In the meantime our board will continue to focus our efforts of providing the very best educational experience possible for all the students in School District Five.

With that I'll entertain a motion that we adjourn. Do we have a motion? Ms. Watson.

MS. WATSON: I move that we adjourn.

THE CHAIR: Second?

MR. TURNER: Second.

THE CHAIR: All those in favor? All those opposed? Six to two. Abstained?

MR. KINCANNON: Now that you all have voted to remove her she would vote no if you could put that on the record.

(Attachment 1, Order to Remove, was included with the Exhibits and marked for identification)

(Attachment 2, article from the Clarendon Citizen, was included with the Exhibits and marked for identification.)

(Thereupon the proceedings were concluded at 8:41 p.m.)

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CERTIFICATE OF REPORTER

I, Mary K. McCormick, Court Reporter and Notary Public for the State of South Carolina, do hereby certify:

That the foregoing proceeding was taken before me at the date and time and location as stated on page 1 of this transcript; that the proceedings were recorded stenographically by me and were thereafter transcribed; that the foregoing proceeding as typed is a true, accurate and complete record of the proceedings to the best of my ability.

I further certify that I am not of counsel or kin to any of the parties to this cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 25th day of March, 2013, Aiken County, South Carolina.

Mary K. McCormick (Katy McCormick)
Notary Public
State of South Carolina at Large
My Commission Expires:
June 30, 2015

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STATE OF SOUTH CAROLINA	)	IN COMMON PLEAS
COUNTY OF RICHLAND	)	COURT
	)	
KIM MURPHY,	)	
	)	TRANSCRIPT
-V-	)	OF
	)	RECORD
RICHLAND LEXINGTON SCHOOL	)	2013-CP-40-01897
DISTRICT NO. 5	)	
DEFENDANT.	)	

SEPTEMBER 11, 2014

RICHLAND, SOUTH CAROLINA

B-E-F-O-R-E:

HONORABLE DEANDREA BENJAMIN, JUDGE;

A-P-P-E-A-R-A-N-C-E-S:

FOR THE PLAINTIFF:

ASHLEY COLE STORY, ESQ.

FOR THE DEFENDANT:

JOHN MARSHAL REAGLE, ESQ.

I-N-D-E-X

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MOTION:	3
CERTIFICATE OF REPORTER:	30

(REPORTER'S NOTE: THERE WERE NO EXHIBITS ENTERED.)

(The following proceedings were held on September 11, 2014.)

THE COURT: All right. This is an appeal of Kim Murphy vs. Lexington County School District No. 5. Ms. Murphy is represented by?

MS. STORY: Ashley Story, Your Honor.

THE COURT: And the school district is represented by, is it Reagle?

MR. REAGLE: Yes, John Reagle, Your Honor.

THE COURT: All right. Yes, ma'am, Ms. Story.

MS. STORY: May it please the Court, Your Honor. Just as a matter of course, I have courtesy copies of our brief I'll give to your law clerk if you need those. We e-mailed it yesterday when it was filed, but I have hard copies if you need it.

THE COURT: I think I have a -- I have -- let's see. I have yours. Thank you.

MS. STORY: Thank you. We're good?

THE COURT: Yes, ma'am.

MS. STORY: Okay. Thank you, Your Honor. This -- this appeal is kind of complex, but I'll try to make it as simple as possible. I thought a lot of -- spent a lot of time thinking about how I was going to approach it and bring it to your attention today. My client, Ms. Murphy, she was elected to the Richland/Lexington School District Five Board

of Trustees in November of 2010. And she served for a little over two years before she was removed by the Board of Trustees. And that's what brings us here today. There were a lot of meetings and hearings. There was a hearing officer involved. And all that has been put in the record that's before you.

But I kind of wanted to talk about, basically, two things that I think are relevant. There are two statutes that I think bring us here. One is the ability to appeal, and that's statute 59-19-560. Then the other statute is what brought all this about, was the 59-19-60. And that's the removal statute and has to do with for cause removal of a member of the Board of Trustees and Board of Education.

So just kind of to get the easy one out of the way, I think 59-19-560, we're here because Ms. Murphy claims that she was improperly removed from the Board of Trustees to which she was elected by the constituents of Richland County. There's extensive record before the Court. Like I said, there were many meetings, there were hearings. There was an order by the Board of Trustees issuing her removal from the Board in March of 2012. And additional evidence may be presented to the Court based on the appeal, but that's why we're here today.

Going into the actual statute that is at issue here, 59-19-60, this is what allows or provides for the

removal of an Board of Trustees member who has been elected to the Board by constituents. The school district was created by two different boards of education, the Richland Board of Education and the Lexington County Board of Education. There was a need for these two counties to come together and kind of create a school district where there were going to be some crossing borders between Richland and Lexington County lines.

And one of the things we argue here, though, is that that statute provides that it's the board of education that has the authority to remove someone from a Board of Trustees. In this situation, the Board of Trustees themselves removed Ms. Murphy, not a county board of education.

Now, Act 601 from 1994 abolished the Lexington County board of education, so that county board is no longer in existence. They're gone. There is no county board left in Lexington County. And that same act gave power to the Lexington County Board of Trustees to do whatever they need to do on behalf of that school district.

Now, there's another act that also got rid of the Richland County board of education and that's Act 601 -- I'm sorry, that's Act 140 of 1969. Now, Act 601, which is what got rid of the Lexington County Board of Education, doesn't give or take power away from the Richland County Board of

Education. It was also abolished by Act 140 of 1969.

The difference, though, between those two acts is that when the Richland County Board of Education was abolished, it didn't provide for anyone to remove -- didn't give any authority or removal power to the Richland/Lexington Board of Trustees for those seats. Because as you may know, this Board of Trustees is made up of several different seats. Some of those seats represent the Richland County constituents and some of those represent Lexington County constituents. Ms. Murphy was on the Richland County seat. She resided in Richland County and that's why she ran for the Richland County seat in November of 2010 and was elected. And just for the record, she had previously run for that seat in 2004. And none of these issues arose until 2012 when her residency was challenged at that time. So that's another argument I have in a few minutes.

So anyway, so one of the arguments we have, based on these acts, based on the removal powers that were delegated and weren't delegated, we don't think the Board of Trustees has the power to remove Ms. Murphy because there is no power give to the Board of Trustees. The respondents rely on the attorney general opinion that says that well, hey, wait a minute, the Board of Trustees most probably had that power. But there is no statute saying that. There's

no ordinance. There's nothing saying that. And if they were going to argue that the Lexington County -- the act that dissolved the Lexington County Board of Education gave them that power, then we argue it only gives them the power for the Lexington County seat and not the Richland County seats that apply here in this case. That's just one of the arguments.

The second argument, even if you were to find that the Board of Trustees in this case has the power to remove Ms. Murphy pursuant to 59-19-60, then we've got a second problem. And that's when a board member is removed, they have to be removed for cause. Now, I've done a little bit of digging into what cause means because I think that can mean a lot. The attorney general has issued some guidance on this matter and this was an opinion that was held July 1, 1999. And they state a cause is a flexible concept that relates to an employee's qualifications and implicates no public interest. Cause for discharge has been defined as some substantial shortcoming that renders the person's continuance in office in some way detrimental to the discipline and efficiency of service and which the law and sound public policy recognizes and is good cause for no longer holding the position. Or it could also mean that dismissal for cause is appropriate when an employee's conduct affects his or her ability and fitness to perform

his or her duties.

Now, the second part about the conduct, I don't think that applies at all in this case. There's no evidence Ms. Murphy did anything that she shouldn't have done while she was on the Board that would render incapable of her performing her job or doing anything that she shouldn't be doing. And even if they did argue that, I would just argue I have not been provided any proof that she was not qualified based on anything that she did to hold her office.

There's been some case law about things that can keep you from being qualified based on your conduct. And there was a case, I can't remember it off the top of my head, but the attorney general ruled on that as well. It had to do with a Board member who, actually, got a charge for some type of crime or criminal conduct and that was not enough cause as far the qualifications were concerned to have that person removed for cause.

So I think what we're looking at here is the first part of that definition. And in saying all that, I still don't think they have cause and I'll talk to about why I think that is. First of all, one of the major issues is whether or not Ms. Murphy is a resident of Richland County. And that's really -- kind of the crux of the argument is well, she's not a resident of Richland County, that's cause to remove her. Well, first of all, we argue there's

evidence in the record that she is a resident of Richland County. There's evidence in the record that she votes in Richland County and she pays taxes in Richland County. Also, as recently as this year, she's paid taxes in Richland County on her vehicles. She has voted in a primary this year in Richland County. Also, the respondent's rely on some information from the Budget and Control Board who they say came out to Ms. Murphy's property and did a review of where the property stood. And I argue that that's insufficient because one, there's no full survey conduct. Based on the corners that are there on the property, the points in statute that define a property. And there's some case law out in Montana as well as Illinois that talks about redrawing county lines or county lines are in question, you have to really look at where those points in the property were, where they're put in statute. Two of those cases, one is Clyde Dorsey v. Ray Ryan, that's 110 Illinois App. 3rd 577. And then the other case that I've been able to pull is Buckley v. Laird. This is a Supreme Court of Montana case. It's 158 Montana 483. And I have copies for y'all. May I approach?

THE COURT: Yes.

MS. STORY: And just taking about property, these cases talk about what you need to do when you're looking at trying to resurvey something and you can't find points or

you can't find lines. And there's just no evidence in the record that the appropriate points were used, that the points in statute were filed or used by the Budget and Control Board. And, in fact, we have an e-mail from a Budget and Control Board employee to a Lexington County employee that says, Well, we did go out there and we did some stuff, but Lexington County doesn't have to buy our analysis of it. Now, if the counties don't buy analysis, how in the world are we sitting here today having removed her because she is not a resident of Richland County? And that's just not the determination, proper determination for the Board of Trustees to make.

So we say that she wasn't removed for cause because she is a resident of Richland County. There is that e-mail provided in the brief as an exhibit and, also, there was some more exhibits. There was a subdivision letter that certified where the county lines were in relation to Ms. Murphy's property and the house is located within the Richland County side.

Just some other issues, Your Honor. Equity plays a big part in this appeal for several reasons. One, Mrs. Murphy ran in 2004 as a resident of Richland County for this position. She lost. Nobody challenged anything. She ran again in 2010. And at that time, her residency wasn't challenged. And what's important here is the governmental

entity who determined where she could run said yes, you should run in Richland County. She went and filed her documentation in Richland County and no one challenged it at that time. It's not until 2012, some time later, that oh, wait a minute, we don't think she really lives in Richland County. Now, we're going to do something about it.

The other part that's important is that if you look at the statue that we've been talking about, 59-19-60, it also provides for reinstatement or appointment of a vacancy. And the respondents have not filled the seat. So if there argument is that Ms. Murphy does not really represent the constituents because she doesn't live in Richland County, they have failed to put anybody in there to represent them and they have gone unrepresented this entire time she has been off the Board.

Now, a couple of other things that we argue. There's not an adverse party here. Typically, when you're looking at who's the person that's been done wrong, who brings these type of things, that would be maybe someone who lost to Ms. Murphy and they would come forward to contest that she's not a resident and that she was inappropriately elected. And no constituents have come forward and said well, now, we've got this issue, we're not represented and we need something there. So there's no adverse party to that right.

Also, again, Ms. Murphy rely on these governmental agencies when she's paying her taxes, when she's voting, when she runs for election. She's relying on them to tell her where it is where she lives and they told her you're in Richland County. And that's why she filed the way she filed.

Another thing I think is important, even if there's an argument that she doesn't live in Richland County, if she lived in Lexington County, this Board represents all of those people, represents folks in Lexington and folks in Richland. And so during the time they were talking about removing her, it's not that she was representing, you know, anybody inappropriately, she could be representing people in Lexington County and Richland by virtue of her seat. So I think that's important to consider when you're thinking about whether or not she should be reinstated to the Board.

Another argument that came out from the hearing officer's decision, and that was the retired Judge Cooper who made that decision, was that the for cause also applied in this case because there was a legal uncertainty about where Ms. Murphy fit into all of this. And I would argue that doesn't meet cause. I mean uncertainly is just, they had the burden to carry to prove that she has a cause and a just reason to be removed from the Board in the first place.

So I just don't think that carries the weight at the end of the day.

There's are a couple of other considerations for you to look at, too. There's some procedural defect here I want to mention briefly and I won't harp on it. I think we've touched on those in the brief and there's been -- the notice touches on these as well. First of all, this hearing officer tribunal, if you will -- and I was not present at that, I did not represent Ms. Murphy at the time, but I argue that that's a procedural defect here because from the By-Laws and the rules of Board of Trustees, they would have had to appoint one of their own to be hearing officer and they didn't do that. They went and appointed retired Judge Cooper to do that. And so I think that's procedural defect. I also don't think the way that the hearing officer was selected was a fair process and violated Ms. Murphy's due rights because she didn't have any say in that. There was no list of selectees or anything of that nature. So even if they wanted to make an argument that it wasn't procedural, they went outside their own procedures. The way in which it occurred was not fair to her. I also think she wasn't able to properly cross-examine or give any type of testimony that she wanted to do at that time. Again, I was not there at that hearing, I did not represent her, but she was represented by Todd -- who brought this on her behalf.

Also, I think it's important the respondent didn't exhaust all its administrative remedies before deciding to remove her from the Board. I would argue that section of the code, 7-5-230 says that there's some prerequisites here if you're going to challenge somebody's residency. You have to go to the board of voter registration or you have to go to the Richland County Election Commission. And the respondent did not do that here. There's never been any type of -- case with either of those administrative bodies. And the general assembly says if there's a prerequisite or some type of administrative remedy, you have to do it. You can't just shortcut that process.

Also, under section five is the voting rights act for clearance to determine where Ms. Murphy lived was not obtained by the respondent. That's another procedural defect we have.

Ms. Murphy has been a resident and taxpayer of Richland County since the year of 2000. And it's just now, after she served on the Board for almost two years, that this is being questioned. And, Your Honor, there are three more meetings left in this Board for this term that Ms. Murphy, we argue, still serves. There's a meeting in September and two in October. And we would just like for her to be able to return and serve out the remainder of he term. This has been a really hard thing for her and her

family, her husband and her daughter, who are here supporting her today. She chose not to run for reelection, even though she really wanted to. She wanted to get this settled and get this resolved. But we're here today because she does have time left. This is not a moot issue. She can still go to those meetings and represent those constituents who have been unrepresented all this time. So thank you so much. I appreciate you hearing us today and defer to Mr. Reagle.

THE COURT: All right. Thank you.

MR. REAGLE: Thank you, Your Honor. I want to introduce this afternoon Beth Watson, who's the Board chair for Richland/Lexington School District Five, Ken Childs and Tyler Turner, who assist with the brief in this matter.

This is an important appeal. And the decision to remove Ms. Murphy from the Board in the first instance was taken very seriously by the Board. In order to ensure a professional, fair and thorough hearing, the Board chair engaged retired Judge Douglas Cooper to conduct an evidentiary hearing consistent with due process and issue a report and recommendation on two issues. And I want to stop there and address one of the issues that was raised.

Judge Cooper was not designated as a subcommittee of the Board. He was simply tasked with conducting a hearing, to conduct the best hearing, fair hearing

consistent with due process and issue a report and recommendation to the Board. Upon receipt of his report and recommendation, the Board then conducted a hearing. Significantly, at the evidentiary hearing conducted by Judge Cooper, Ms. Murphy did not appear -- well, she appeared simply to object the proceeding, but did not participate in the hearing, didn't take advantage of the opportunity to present evidence at that hearing or to cross-examine the witnesses. So she was given a full opportunity to engage in the process and present evidence therein to cross-examine witnesses.

Additionally, at the March 19th hearing, which the Board conduct to receive the report and recommendation, Ms. Murphy was allowed to present additional evidence and exhibit and her attorney was allowed to present her side of the issue. So she was afforded, actually, two opportunities to present evidence and to address the concerns that were before the Board.

But the Board tasked Judge Cooper to address two issues and report a recommendation. One was whether Ms. Murphy's residence is in Richland County; and two, whether the Board has the authority to remove Ms. Murphy under 59-19-60. Significantly, 59-19-60 gives broad latitude to a Board in what kind of hearing it's going to conduct. This is expressed statutory authority and it says the hearing

just needs to be a fair hearing and in your order describe what kind of hearing you provided. It doesn't prescribe any specific type of procedure or hearing as long as it's going to be consistent with due process.

Following a full evidentiary hearing, Judge Cooper found in his report and recommendation that Ms. Murphy did not reside in Richland County and that the Board did have the authority under 59-19-60 to remove her from the Board. Upon receipt of Judge Cooper's report and recommendation, the Board held a hearing on March 19th, 2013, to receive and consider Judge Cooper's report, hearing and transcript and exhibits and additional evidence that Ms. Murphy wished to present.

Following this hearing -- and because there's been a for issue raised, I'm going to, again, stop there and address that issue. The March 19th hearing, there's an agenda issuing a -- it was approved by the vote of the Board six to one, Ms. Murphy voting against approval of the agenda. The agenda was clearly indicated on receipt of the report and recommendations and then hearing on Ms. Murphy's qualification to serve on the Board.

Following the hearings, the Board deliberated and issued this order removing Ms. Murphy from the Board by a six to one vote. Ms. Murphy casting the descending vote. This was a thorough, deliberate and fair process that fully

complies with the requirements of 59-19-60 and due process and it's fully documented in two transcripts in what ended up being hundreds of pages of exhibits largely because Ms. Murphy's lawyer put into the record, I think, the entire Richland County code or ordinances for some period of years. But there is a substantial number of exhibits. The transcript had approximately 15. It was a, you know, an exhaustive proceeding.

At this point, there is no real factual dispute that Ms. Murphy lives in Lexington County, not Richland County, according to the boundaries as set out in state law. As Judge Cooper highlighted, the repeated and clear references to Rocky Ford in the statue as being on the boundary line and clear and consistent placing of Rocky Ford on all of the survey maps and questionably placed as Ms. Murphy's residence in Lexington County.

Now, Ms. Story indicates there was no survey done, but, in fact, witness -- the witness that testified at the hearing, the surveyor for the Budget Control Board, who was also involved in the state geodetic survey, said he went and he stood on Rocky Ford, that point that's identified on the maps and in the statues and the surveys and identified exactly where it was, calculated the mathematical angles of the statute says come off of Rocky Ford to establish the boundary and determined that based on clear identification

of Rocky Ford and the mathematical calculations that Ms. Murphy's residence was clearly in Lexington County.

Further, at 326 of 2002, section nine, which describes qualifications, requirements for the Richland/ Lexington school district Board of Trustees is plain. And it states notwithstanding another provision of law in Richland/ Lexington School District Five, three trustees must reside in Richland County and four must reside in Lexington County. So this is not an equitable question. The law mandates, says it must reside in Richland and must reside in Lexington County. That's the statute the Board is trying to comply with and felt it needed to address in its removal hearing and in the process of determining Ms. Murphy's residency.

Additionally, Board policy BBBC provides that if a Board member's permanent residence ceases to be in his or her resident district, which was Richland County, a portion of district five, a vacancy is created and such change of permanent residence outside of the resident district will be treated as a resignation. So both board policy and state statute establishing the Board of Trustees mandate that you be a resident of the district that you're elected from. And that's constitutional as well. And it happens not infrequently, people no longer reside, whether by change of boundary or movement or correction in boundary as we have in

this case in the district from which they're elected, they're not eligible to continue to serve in their elected capacity. It's not a estoppel or equity.

Since Ms. Murphy was elected for Richland County, but, in fact, resides in Lexington County, under the statutes of South Carolina, Ms. Murphy did not meet the requirements of act 326 of 2002 to be a trustee. Ms. Murphy raises several procedural objections to her removal in this appeal. Principally, she asserts that Richland and Lexington County have recognized her residence as being in Richland County and the Lucius Cobb survey, which is the one that Ms. Story referenced done for her husband, shows the residence in Richland County.

First, the Cobb survey, which is actually attached to Ms. Murphy's brief clearly labels the county boundary line as only approximate. It states on there where it says this is approximate. It doesn't purport to be an actual survey of the boundary line. So it has no evidentiary weight in establishing the actual boundary, especially since it also identifies Rocky Ford, which the statute specifically identifies as being on the boundary line. Secondly, Judge Cooper specifically addressed the issue of the county's misidentification of their boundary. And I'll briefly read what Judge Cooper's analysis on that issue is because that was, obviously, a question that he felt he

needed to address. He says -- and this is page three of his recommendation, However, Lexington County, United States Geological Service and the U.S. Census Bureau all have other county boundaries in the area that are mentioned and note the boundary between the counties near Ms. Murphy's residence. That's Exhibit 10. In South Carolina, the general assembly alone has the power to set or change a county boundary. However, counties also depend on self-generated or self-maintained maps or surveys for various county purposes, but, in quotes, in the absence of a statutory authority, a 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. Location of disputed boundary lines are a question of fact. Neither Richland County or Lexington County can establish or remove the county boundary. The boundaries must be set by the general assembly. Errors in an authorized map cannot change the legislative boundary. So the fact that Richland and Lexington County as a matter of convenience have agreed on a boundary line between them is in no way binding on the school district, which is, in fact, a subdivision of the state and not a subdivision of Richland or Lexington County or the county entity at all.

Ultimately, the school district is not a county unit of government, but, rather, a political subdivision of

the -- and county planning or tax maps are neither binding on a school district or determinative of actual statutory boundaries. Ms. Murphy also contends that the Board did not exhaust administrative remedies. Ms. Murphy seeks to -- this matter as an election context and contends the Board should have sought review from the Richland County Election Commission. This is not a matter concerning an election contest. In fact, the school board itself would not have a standing to contest whether somebody is an elector or a contested election outcome as such, but it's a question of whether under act 326 of 2002 Ms. Murphy meets the criteria that notwithstanding another provision of law she must be a resident of Richland County to continue to serve on the county board. For example, 7125 of the South Carolina code, it's the definitional section, it starts off all its definitions for voting purposes, for voting purposes. Subsection D, for voting purposes. It is not meant to be a statute governing, an issue such as this, which arises during someone's term as opposed to an election contest brought by a citizen or another candidate.

Under Act 326, the question is not whether Ms. Murphy is an elector of Richland County, but whether she is currently a resident of Richland County. Board policy BBBC further makes this point clear providing that the board member ceases to be a resident of the district they

represent, it constitutes a resignation.

The final issue is the issue of whether the board had the power to remove Ms. Murphy in the first instance under 59-19-60. I think we cite in our brief the Rainey vs. Hodges case, which is probably the case most on point that actually dealt with removal of a member of an advisory board and conflicting statutes that it enacted over the years. Almost every school district -- or every school district is created and established through local legislation. Richland Five is no exception. There is voluminous history of local legislation dealing with District Five.

I think it does not in this case, in fact, conflict the clearest and simplest interpretation of the statutes is that 601 of 1994, which is the most recent statute on this subject. It says Lexington County Board of Education is abolished and its powers and duties are dissolved and the respective school district Boards of Trustees in Lexington County. It didn't say trustees elected from Lexington County. It gave the powers of the county board to boards of trustees in Lexington County. And that would include Richland/ Lexington County Five, but it also, for example, would include Lexington Three, which includes part of Saluda County. To conclude that it didn't dissolve powers evenly on all board members results in the absurd situation, in my view, that you would have four of

your board members that would have the authority to remove a trustee and three that don't have authority to remove a trustee on one hand. And you have to interpret statutes as to not reach absurdity. I think there are other ways to construe the statutes. I believe in 1984, for example, which is the Richland County act where they say notwithstanding any other provision of law, Richland County council may not remove Richland County School District trustees of school district situated in the -- part of Richland County by making clear Richland County Council did not have that authority by implicating they were evolving it onto the Board of Trustees. I think it's, perhaps, clear as you read down that statute, it says, again, notwithstanding any other provision of law, Richland County Council has no authority for personnel policies of the school district situation in -- in Richland County. I don't think anybody would contend today that no school district in Richland County can issue personnel policies because that power was denied the Richland County Council. Obviously, when it's denied in Richland County Council, it devolves somewhere and, logically, onto the trustees. Similarly, as used in this section, personnel policies are not limited to matters to hiring and dismissal of employees. So to interpret that statute is doing anything other than saying look, county council, you can't do it, this power is devolving onto

boards of trustees would mean you can have no personnel actions in Richland County whatsoever. So I think the clear, logical construction of that statute, which is fully consistent with, 10 years later, 601 of 1994 is that these power were devolved onto the boards of trustees. Again, I refer the Court to Rainey vs. Hodges as it deals with trying to construe a similar spaghetti bowl of local legislation.

THE COURT: So your position is that she's an elector, but not a resident?

MR. REAGLE: I think right now she is -- you know, as an elector -- I don't think the Board has standing to challenge whether she is an elector or not. We do put our standing under our own policies and under 326 of 2002 to determine she is not a resident and doesn't meet the qualifications or requirements to hold that office under 326 of 2002. And Judge Lee in the consent order granting the school board the authority to pursue the -- action that that order recognizes that we have an interest in determining whether she currently meets the statutory requirements to hold that office.

THE COURT: What's your position regarding Ms. Story's argument that there was no adverse party, that the statute requires that it be raised by an adverse party? I think that's --

Is that --

MS. STORY: Yes, Your Honor.

MR. REAGLE: Well, to some extent, I agree. There is no adverse party. This is an action under 59-19-60 where the board is charged with regulating itself, its own members and qualifications under the law. It is an administrative action and not a -- I would say it's not a contested case within the terms of the APA, although that doesn't apply here. But we have lots of administrative actions where rights are adjudicated where it's not a contested case with adverse parties. The Board is determining the residency of one of its own members and the qualifications of one of its own members and is making an effort to try and do so in as thorough and fair manner as possible. And in part, that's why they would designate an independent hearing officer, both to get a professional hearing and record created and to get professional recommendations on complicated legal issues, but also because it's very awkward for a board to conduct an evidentiary hearing concerning one of its own members.

In closing, 59-19-60 is designed to give boards flexibility in hearing matters regarding the removal of board members so long as due process is provided. Here, the board fully complied with Ms. Murphy's due process rights in determining that she is not a resident of Richland County and does not meet the requirements under Act 326 of 2002 to

serve on the board.

This is an important -- residency issue is an important issue. And it's in the record of board deliberations, we're in open session that were on the transcript. And a couple of board members talked about the importance of residency. What I think is a compelling issue is not just what Judge Cooper identified in his order for reasons why you want to make sure members of your board are qualified -- but the fact that the board routinely rules on whether students because of residency are qualified to attend their schools, are qualified to attend certain schools within their district or have to pay tuition if they're out of district to attend their schools. And there's a matter of integrity and credibility and fairness. They needed to police their own as well with respect to residency requirements that are mandated by law. We appreciate the Court's consideration of this issue.

THE COURT: All right. Five minutes.

MS. STORY: Very brief, Your Honor. I just have one thing to say. Mr. Reagle brought up that requirement of the school board have three seats from Richland and four from Lexington. And I just it's telling that they haven't replaced that seat and those constituents remain unrepresented. And I think that's important because she's elected by those constituents to fill that seat. That's all

we have.

MR. REAGLE: If I can address, I, actually, have a couple of letters because this is a new issue. One from John Floyd discussing why they haven't taken any action on this. And one from Ken Childs when he was acting commissioner. And I don't think it's appropriate to put additional evidence in the record, but because the issue has been raised, I want to, at least, discuss that it was discussed with Mr. Salmon and the position was it just doesn't make sense as long as Ms. Murphy has appealed this to fill this seat. If you had somebody elected to it and the Board's decision was overturned, you would have two people qualified to hold the same seat. It would be an absolute mess. It's not because there was not concern about representation of the constituents in the district.

THE COURT: All right.

MS. STORY: Thank you, Your Honor.

THE COURT: All right. Thank you. I'll get something to you. I can promise it will be by the end of September.

MS. STORY: Okay. Well, thank you. We appreciate it.

THE COURT: If you all want to get me proposed orders that might speed it up some, but I've still got quite a few things on my plate from this week already, so I will

do my best to get it done.

MS. STORY: Thank you, Your Honor. We appreciate it.

MR. REAGLE: Thank you, Your Honor.

END OF PROCEEDINGS

COUNTY OF RICHLAND)

CERTIFICATE OF REPORTER

I, Crystal Holmes, hereby certify that I reported the preceding case entitled Kim Murphy Vs. Richland Lexington School District No. 5 Case No. 2013-CP-40-01897, at the Richland County Courthouse, September 11, 2014.

I FURTHER CERTIFY that the foregoing pages 1 through 30 constitute a true, accurate and full transcript of said hearing.

I FURTHER CERTIFY that I am not employed by any of the parties hereto and I have no financial interest in the outcome of said case.

IN WITNESS WHEREOF, I have heretofore set my hand and seal at Richland County on this 18th day of September, 2014.

_____

Crystal Holmes, Official Court Reporter

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-40-01897

Kim Murphy, Plaintiff/Appellant,
vs.
Richland Lexington School District No. 5, by and through its Board of Trustees by and through Counsel to the Board of Trustees, Defendant/Respondent.

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorney:	Defendant's Attorney:
Ashley C. Story, Bar No. 100578 J. Lewis Cromer & Associates, LLC P.O. Box 11675, Columbia, SC 29211 Phone: 803-799-9530Fax 803-799-9533 E-mail: astory@jlewiscromerlaw.com	John M. Reagle Childs & Halligan, P.A. P.O. Box 11367, Columbia, SC 29211 Phone: 803-254-4035 Fax E-mail: jreagle@childs-halligan.net

RICHLAND COUNTY FILED
2014 NOV 5 AM 10: 04
JEANETTE W. WALKER CLERK OF COURT & C.C.P.

☐ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☒ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

_____ 11-04-14
Signature of Attorney for ☒ Plaintiff /☐ Defendant Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: $25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Kim Murphy,

Plaintiff/Appellant,

v.

Richland Lexington School District No. 5, by and through its Board of Trustees by and through Counsel to the Board of Trustees,

Defendants/Respondents.

IN THE COURT OF COMMON PLEAS

CASE NO. 2013-CP-40-1897

APPELLANT'S NOTICE AND MOTION TO RECONSIDER JUDGMENT ON APPEAL

RICHLAND COUNTY FILED
2014 NOV -5 AM 10:04
JEANNETTE W. McBRIDE C.C.P. & G.S.

PLEASE TAKE NOTICE that Appellant, by and through her undersigned counsel, hereby moves pursuant to Rule 59(e), SCRCP, for an order altering or amending the Order Affirming the Appellant's Removal from the Board of Trustees in the above-captioned matter. This motion for reconsideration is based on the following grounds:

PROCEDURAL HISTORY

The Appellant filed an appeal asking the Circuit Court to reverse the Respondent's removal of Appellant as an elected Board Member on Respondent's Board of Trustees on March 28, 2013. Both the Appellant and Respondent filed memorandums in support of their respective positions. A hearing was held before the Honorable DeAndrea G. Benjamin, Circuit Court Judge, on September 11, 2014. Judge Benjamin entered an Order denying Appellant's appeal, which was filed with the Clerk of Court on or about October 30, 2014.

ARGUMENT FOR RECONSIDERATION

The Appellant is now seeking reconsideration of this Order by way of this motion and any additional arguments that may be supplemented to the Court. The Appellant intends to rely on the pleadings, the memorandum in support previously filed with the Court, arguments raised

in the hearing, the record on appeal below, and any additional arguments as set forth herein or provided in an additional memorandum in support to be filed with the Court.

I. The Appellant is a resident of Richland County; thus, she is entitled to hold elected office and represent the constituents of Richland County.

As set forth in Appellant's Appeal Brief, Appellant is a lawful resident and voter of Richland County. She was properly elected to represent the constituents of Richland County on the Respondent Board. Appellant's removal based upon the grounds that she is not a Richland County resident was unlawful and improper.

In support of Appellant's residency in Richland County, Appellant offered abundant evidence. First, as recently as the election primary of 2014, Appellant voted in Richland County. Second, Appellant continues to pay her vehicle taxes in Richland County. *See* Exhibit B. Third, when Appellant first secured approval for the subdivision layout corresponding to the property in question, Lexington County officials approved the proposed layout using approximate county lines, revealing Appellant's property to be affixed in Richland County. *See* Certification Letter, Exhibit B. Fourth, and more conclusively, Appellant's property has been shown to be located in Richland County by virtue of a certified plat. *See* Certified Plat, Exhibit C. Lastly, Appellant relied upon Richland County's determination that she was in fact a resident of that county when she applied for and successfully campaigned to run in the Respondent Board's election to represent those constituents.[1]

Respondent argues that "a detailed review" of Appellant's residence was conducted by the SCB&CB, concluding that Appellant's property falls within Lexington County lines. *See*

[1] *See* the General Assembly's enactment of Act 287 of 1987, charging the Richland County Election Commission and Board of Voter Registration with the task of determining the qualifications of individuals seeking election for Richland County seats on Respondent's Board. The same entity qualified Appellant to hold the seat and run for the election on two separate occasions. As such, Respondent does not have the cause required to remove Appellant based on these grounds.

Respondent's Appeal Brief at p. 1. Thereafter, an evidentiary hearing was conducted, and exhibits were introduced that purported to demonstrate that Appellant's residence is not located in Richland County. *Id.* at p. 2. Following this evidentiary hearing, the Respondent Board held a special meeting, received additional evidence, and concluded that Appellant would be removed from the Board for cause because her residence was located in Lexington County. *Id.*

However, evidence reveals that employees from the SCB&CB admit that as late as February of 2013, around the same time that evidence was being put forth regarding this very issue, a commission had not been formed for the purpose of hearing the disputed county line issues per Title 4 Chapter 5 of S.C. Code Ann. *See* E-mail Exchange Between SCB&CB and Lexington County Officials, Exhibit D. Furthermore, the SCB&CB concedes in that correspondence exchange that its suggestions regarding the boundary lines are not mandatory upon counties like that of Lexington and Richland.[2] *Id.* Moreover, evidence from the record below demonstrates that witnesses testified that no surveys of Appellant's property had been conducted. *See* February 15, 2013 Hearing Transcript at p. 20, line 16.

Assuming *arguendo* Appellant is found to be a resident of Lexington County[3], which she has not been to date by the appropriate processes or authorities, general principals of equity would have Appellant reinstated because Appellant would appropriately serve the Board as a citizen of Lexington County since the Respondent Board is comprised of residents of both

[2] Rather, it is quite telling that the same exchange offers an example of a boundary dispute between two other South Carolina counties. In that case, the SCB&CB employee states that the counties did not accept the findings of the SCB&CB relative to the disputes; as such, the same applies in this case, and the recommendations of the SCB&CB are not dispositive of Appellant's resident location.

[3] Respondent has failed to demonstrate that preclearance under Section 5 of the Voting Rights Act was sought and given prior to the Board's decision to remove Appellant. Per that requirement, preclearance must be obtained for any changes in the county designation of a residence or similar changes of precinct or electoral qualifications regarding residence location.

Lexington and Richland Counties. Respondent cannot claim to now argue that Appellant, as an alleged resident of Lexington County, does not properly represent the constituents who elected her because Respondent has failed to hold any sort of election or have a Richland County representative appointed to Appellant's former seat. Therefore, the judgment on appeal should be reversed and Appellant should be considered a resident of Richland County and the Court should find that Respondent's removal of Appellant on the grounds of her residency was unlawful and should not be upheld by this Court.

II. The Board of Trustees did not have legal authority under S.C. Code Ann. § 59-19-60 to remove Appellant.

In making the decision to remove Appellant and ordering her removal from its Board, Respondent violated multiple local and state statutes and procedures. Critically, the Respondent Board lacked lawful authority to remove Appellant under S.C. Code Ann. § 59-19-60. That statute invests the removal authority of trustee members to *county boards of education* – not boards of trustees. (emphasis added). S.C. Code Ann. § 59-19-10 states that "school districts shall be under management of boards of trustees . . . subject to the supervision and orders of the county board of education." The clear and plain reading of this code section reveals that a board of trustees is not substituted for a county board of education because the two are separate and apart from one another. S.C. Code Ann. § 59-19-90 goes on to list a variety of tasks and responsibilities entrusted to a board of trustees like the Respondent Board; this list does not include removal of trustees.

Furthermore, pursuant to S.C. Code Ann. § 59-19-60, removals from boards, like that of Respondent, may only be made on a for cause basis. In the instant case, Appellant was removed from the Respondent Board because it was determined that she was not a resident of Richland County, which was the constituent base she represented. *See* Order of Removal. Up and until

the Respondent Board received information that Appellant's home may be perhaps located in Lexington County instead of Richland County, the appropriate governmental agencies determined that Appellant resides in Richland County for the purposes of voting, paying taxes, and running for the Respondent Board to represent Richland County constituents. Accordingly, the judgment on appeal should be reversed.

III. The Board did not afford complete due process to Appellant.

The hearing officer procedure, the Respondent's failure to exhaust administrative remedies and the untimely removal did not afford complete due process to Appellant. The procedures established by the Board were not properly promulgated under the South Carolina Administrative Procedures Act or the rules of the tribunal itself; the procedures that were established were in direct violation of the South Carolina Freedom of Information Act; a member of the Respondent Board was not appointed as the hearing officer; preclearance under Section 5 of the Voting Rights Act was not obtained; the procedures themselves were not formally adopted or acted on by the Respondent Board prior to their use; and the procedure for the selection of the hearing officer was unlawful because the hearing officer was selected by counsel for the Respondent.

Respondent further failed to exhaust its administrative remedies to wit: (1) per S.C. Code Ann. § 7-5-230, Respondent did not follow the administrative remedy to challenge Appellant's status as an elector of Richland County; (2) per election protest statutes, Respondent failed to exhaust the administrative remedy for challenging Appellant's status as an individual qualified to hold the seat to which she was elected on Respondent Board. Both administrative remedies are heard by the Richland County Election Commission and the Board of Voter Registration. Respondent failed to exhaust such remedies.

Further, Respondent should be estopped from removing Appellant from its Board

because the removal was not timely. Respondent failed to raise the issue when Appellant ran for election on more than one occasion, and since Respondent failed to fill Appellant's vacancy. As a result of Respondent's statutory and procedural violations in removing Appellant from its Board, the Court should reconsider the Order and Respondent should be ordered to reinstate Appellant.

CONCLUSION

Appellant respectfully requests the Court reconsider its Order and find that Appellant was unlawfully removed from her elected position.

Respectfully Submitted,

J. LEWIS CROMER & ASSOCIATES, LLC

BY: _____

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November 4, 2014
Columbia, South Carolina