THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

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SC Court of Appeals

Case No. 2014-CP-40-004666
Appellate Case No. 2016-001198

Kim Murphy.....Appellant,

v.

Bobby Merle Bowers and Robert Gantt.....Respondents.

RECORD ON APPEAL

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VOLUME I

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 **CP**-40-004666

Kim Murphy

PLAINTIFF(S)

Richland Lexington School District 5 Board of Trustees, Bobby Merle Bowers and Robert Gantt

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. ☒ See Page 2 for additional information.

☐ **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: The Court GRANTS each of the Defendant's Motions for Summary Judgment. Plaintiff's Complaint is dismissed in its entirety with prejudice.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

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 day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Refer to attached Order for the Court's complete decision.

STATE OF SOUTH CAROLINA	) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	) CIVIL ACTION NO: 2014-CP-40-004666
Kim Murphy, Plaintiff, vs. Richland Lexington School District 5 Board of Trustees, Bobby Merle Bowers, and Robert Gantt, Defendants.	) **ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

This matter is before the Court on Defendant Bobby Merle Bowers' Motion to Dismiss and Motion for Summary Judgment, Defendant Robert Gantt's Motion for Summary Judgment and Defendant Richland Lexington School District 5's Motion for Summary Judgment, pursuant to Rule 12 and Rule 56 of the South Carolina Rules of Civil Procedure. On February 29, 2016, this Court heard lengthy arguments on the above motions. For the reasons stated below, based upon the arguments of counsel, the lengthy written memoranda submitted by the parties, the deposition and other evidence submitted to the Court and the record in the case, this Court finds that each of the Defendants' Motions for Summary Judgment should be granted and, because evidence was submitted and reviewed, Bower's Motion to Dismiss is not ruled on but merged into his Motion for Summary Judgment.

I. BACKGROUND

Plaintiff Kim Murphy, a former Member of the Board of School District 5 of Lexington and Richland Counties (the "Board" or "School Board"), brings this suit against Defendants. In her Complaint, Mrs. Murphy alleges that Robert Gantt and Bobby Merle Bowers engaged in a

civil conspiracy designed to cause her to resign or be removed from her position on the School Board. She also alleges that Mr. Gantt and the Board of Trustees of School District 5 defamed her, by publishing that she was a resident of Lexington County, rather than Richland County from where she was elected. She further argues in her brief and during the motion hearing that Mr. Gantt and the Board acted in such a way as to create an innuendo or inference that she was engaging in misconduct or an illegal act or that she had been aware that she did not live in Richland County, but had acted deceptively to seek and obtain a Richland County seat on the School Board. Mrs. Murphy sought this seat on the School Board on two occasions.

During late 2012, the South Carolina Office of Research and Statistics (the "Office") discovered in a routine examination that Mrs. Murphy lived in Lexington County rather than Richland County, which was the seat to which she had been elected. Mr. Bowers was the Director of the Office at that time. The Office notified Mr. Gantt of this concern. Mr. Gantt consulted counsel for the School District. Under the guidance of the School District's attorneys, a request was made with the Office for a formal determination of Mrs. Murphy's residency. The Office formally determined that Mrs. Murphy lived in Lexington County. Mr. Gantt again sought the advice of counsel for the District, who created a process designed to fully afford Mrs. Murphy due process on the issue. This resulted in two separate proceedings where Mrs. Murphy and her attorneys had the opportunity to appear and present whatever evidence she had supporting the fact that she resided in Richland County and challenging and refuting the methods and finding of the Office. The first proceeding was a hearing before the Hon. Thomas Cooper, serving as a special referee. Judge Cooper heard the issues and issued a report and recommendation to the Board. His findings were that Mrs. Murphy lived in Lexington County and was legally ineligible to serve on the Board as an elected representative of Richland County.

After his report and recommendation, a second hearing took place before the Board. Again, Mrs. Murphy was provided an opportunity to present evidence in opposition to the findings of the Office and its methods of making those findings. At the conclusion of this process, the Board found that Mrs. Murphy lived in Lexington County and was, therefore, ineligible to serve on the School Board as a Richland County representative. She was removed from the School Board as her residence disqualified her from holding a Richland County seat. She appealed the Board's decision to the Circuit Court, which affirmed the decision of the School Board. She later sought reconsideration from the Circuit Court which upheld its earlier decision. Her counsel informed the Court that they have filed a notice of appeal of the Circuit Court's findings.

After the Circuit Court upheld the School Board's decision, Mrs. Murphy filed this suit which alleges, *inter alia*, causes of action against Bobby Bowers and Robert Gantt for civil conspiracy and causes of action against Robert Gantt and the School Board for defamation. Mrs. Murphy alleges that Mr. Gantt and Mr. Bowers, who she admits were both acting in their official capacities, somehow engaged in a conspiracy to harm her by having her removed from the School Board. Mrs. Murphy also alleges that Mr. Gantt and the School Board defamed her by questioning her qualifications to serve on the School Board based upon the fact that she did not reside in the county from which she was elected.

Defendant Bowers moved to dismiss the case for failure to state a claim. All three defendants moved for summary judgment on multiple grounds alleging, *inter alia*, that there were no material questions of fact in dispute from which Mrs. Murphy could have a valid cause of action against any of them.

II. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP; *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). The purpose of summary judgment is to "expedite the disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. With respect to an issue upon which the non-moving party bears the burden of proof, as in this case, this initial responsibility "may be discharged by 'showing' - that is, pointing out to the district court - that there is an absence of evidence to support the nonmoving party's case." *Celotex Corporation v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 2554, 91 L.Ed.2d 265, 275 (1986). The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim.

Once the moving party carries its initial burden, the opposing party must, under Rule 56(e), "do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986) (emphasis in original). The opposing party must "go beyond the

pleadings and by. . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553.

[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322, 106 S.Ct. at 2552, 91 L.Ed.2d at 273.

Accordingly, once Defendant shows the absence of proof on an essential fact of Plaintiff's case, Plaintiff has the burden of presenting evidence of that fact to the Court. If Plaintiff fails to present any competent, admissible evidence that will prove that fact, Defendant is entitled to summary judgment.

III. DISCUSSION

A. Mr. Bowers' Motions to Dismiss and for Summary Judgment

The Plaintiff's claim against Defendant Bobby Bowers is her second cause of action sounding in civil conspiracy. *See* Complaint, pp. 6-8, ¶¶26-31.

A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff. *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). Civil conspiracy consists of three elements: 1) a combination of two or more persons, 2) for the purpose of injuring the Plaintiff, 3) which causes the Plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989). *Cf., Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875

(Ct. App. 2009) (If a Plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed). It is essential that a plaintiff prove all of these elements in order to recover. *Lyon v. Sinclair Refining Co.*, 189 S.C. 136, 200 S.E. 78 (1938). "[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987); *accord. Cowburn v Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005).

Defendant Bowers initially argues that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against him upon which relief can be granted, relying upon SCRCP Rule 12(b)(6) and *S.C. Code Ann.* §15-78-70 of the South Carolina Tort Claims Act, asserting that Bowers should not be named individually as a Defendant unless the Plaintiff alleged that Bowers acted outside his official duties, with actual fraud, actual malice, intent to harm, or a crime of moral turpitude, which are the five exceptions set forth in §15-78-70. However, Bowers conceded at oral argument that the requisite elements for civil conspiracy include an intent to harm; and since the sole cause of action against Bowers includes an allegation meeting one of the five exceptions, Defendant's argument for 12(b)(6) dismissal fails.

Bowers further argues that, for summary judgment purposes, there is no genuine issue of material fact. At all times relevant to the matters alleged in the Complaint, Bowers acted within the course and scope of his official duties as Director of Mapping Services for the South Carolina Revenue and Financial Affairs Office, in good faith and without conduct constituting actual fraud, actual malice, intent to harm, or a crime of moral turpitude. Bowers had no specific intent

or purpose to injure the Plaintiff, and the Plaintiff has no evidence establishing the requisite elements of her civil conspiracy claim against Bowers.

Having considered the material submitted by Plaintiff in opposition to Bowers' Motion for Summary Judgment, I find and conclude that there is no genuine issue of material fact but that Bowers had no prior relationship or alliance with Defendant Robert Gantt for purposes of conspiring against Plaintiff, and that there is no evidence of prior conflict or animus between Bowers and Plaintiff that could reasonably be interpreted as leading to an intent to harm Plaintiff. I further find and conclude that there is no evidence that Plaintiff has suffered special damages which she attributes to a civil conspiracy, which is a requisite element of the cause of action. Finally, I further find and conclude from the un-contradicted deposition testimony of Will Roberts and Alan-Jon Zupan, both of whom worked for Bowers' agency and actually did the work resulting in the finding that Plaintiff resided in Lexington County, which finding was only published by Bowers as the Director of the agency, that Roberts and Zupan did their work correctly, with no one instructing them to do anything in the process improperly or with a particular end result in mind.

I, therefore, find and conclude that Defendant Bobby Bowers' Motion for Summary Judgment should be granted, and Plaintiff's claim against him dismissed with prejudice.

B. <u>Mr. Gantt's Motion for Summary Judgment</u>

Plaintiff's claims against Defendant Robert Gantt are included in her first cause of action for defamation, *see* Complaint, pp. 5-6, ¶¶19-25, and her second cause of action alleging civil conspiracy involving Robert Gantt and Bobby Bowers, *see* Complaint, pp. 6-8, ¶¶26-31.

i. Plaintiff's Claim for Civil Conspiracy against Robert Gantt

Mr. Gantt moves for summary judgment on multiple grounds, including that Plaintiff is unable to adduce evidence sufficient to create a genuine issue of material fact such that a trier of fact might conclude that he was engaged in a civil conspiracy with Mr. Bowers as a matter of law and that the Plaintiff has no evidence establishing the requisite elements of her civil conspiracy claim against Gantt. Gantt further argues that each of his activities in this case was undertaken solely in his capacity as the School Board Chairman and that he cannot be liable as a result of the fact that he was acting in his official capacity. He points out that Plaintiff has been unable to identify any action on his part that was done outside his role as School Board Chairman.

The elements of civil conspiracy and discussion, *supra*, in relation to Bowers' motion are equally applicable as it relates to Mr. Gantt. Moreover, it is significant that neither Mrs. Murphy, nor any other witness, has offered any evidence whatsoever that Mr. Gantt and Mr. Bowers engaged in any conduct except for the proper exercise of their legitimate public positions in the handling of the determination of the location of her residence. Moreover, their own uncontradicted testimonies clearly indicate that they had no relationship, no mutual desire or even any reason to act jointly to cause her harm.

Having considered the material submitted by Plaintiff in opposition to Gantt's Motion for Summary Judgment on Plaintiff's civil conspiracy claims against him, I find and conclude that there is no genuine issue of material fact that Gantt had a prior relationship or alliance with Defendant Bobby Merle Bowers for purposes of conspiring against Plaintiff. I also find that Plaintiff cannot proffer any evidence of any combination between Mr. Gantt and Mr. Bowers for the purpose of injuring her. She has

failed to produce any evidence that there was communication between them other than a single telephone conversation, a meeting where they were present with counsel for the School District and members of Mr. Bowers' staff, and the official letter asking for a determination and the determination letter. There is nothing in these interactions from which a fact finder, as a matter of law, could even circumstantially conclude that they engaged in an alliance or combination for the purpose of causing injury to Plaintiff. Likewise, there is no evidence that Bowers and Gantt acted in any way with an animus or intent to harm Plaintiff or that Plaintiff has suffered special damages which she attributes to a civil conspiracy, all being the requisite elements of the cause of action.

Thus, she is unable to offer anything that creates even a circumstantial inference necessary to survive summary judgment as to any element of her cause of action for civil conspiracy against Mr. Gantt. I, therefore, find and conclude that Defendant Robert Gantt's Motion for Summary Judgment on Plaintiff's civil conspiracy cause of action should be granted, and Plaintiff's claim against him dismissed with prejudice.

ii. Plaintiff's Claim for Defamation against Robert Gantt

Mr. Gantt moves for summary judgment on multiple grounds, including that there is no material question of fact from which a trier of fact could conclude as a matter of law that Gantt made a false statement about Plaintiff with the knowledge of its falsity or with reckless disregard for its truth. He further asserts that his statements were made in his capacity as School Board Chairman and that, as such, they were subject to a qualified privilege.

1. **Plaintiff is unable to establish that Robert Gantt had actual, Constitutional Malice in regard to any statement that he made as a matter of law.**

The parties agree that Plaintiff is a public official. A public official is one who has a governmental role and whose "position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it." *Rosenblatt v. Baer*, 383 U.S. 75, 86, 86 S.Ct. 669, 15 L.Ed.2d 597 (1966). Such interest must go "beyond the general public interest in the qualifications and performance of all government employees." *Id.* "An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case." *Gertz v. Robert Welch, Inc.*, 418 U.S. 322, 344, 94 S.Ct. 2997, 3009, 41 L.Ed.2d 789, 808 (1974). For a public official, "society's interest . . . is not strictly limited to the formal discharge of official duties," but "extends to 'anything which might touch on an official's fitness for office.'" *Id.*, at 344-45 (quoting *Garrison v. Louisiana*, 379 U.S. 64, 77, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964). Here, whether or not Plaintiff is legally qualified to serve the citizens of Richland County if she lives in Lexington County fundamentally touches on her fitness for office. It is a matter of significant concern and statements about her residence and the qualifications emanating therefrom enjoy the highest level of constitutional protection.

Because she is a public official, Plaintiff has the burden to "prove by clear and convincing evidence" the Defendant made the statement with actual malice, which means "with the knowledge of its falsity or with reckless disregard for its truth." *Elder v. Gaffney Ledger*, 341 S.C. 108, 114, 533 S.E.2d 899, 902 (S.C. 2000) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct. 710, 726, 11 L.Ed.2d 686, 706 (1964). The courts have held not only that: A "reckless disregard: for the truth . . . requires more than a departure from reasonably prudent

conduct. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct. 1323, 1325, 20 L.Ed.2d 262, 267 (1968). There must be evidence the defendant had a "high degree of awareness . . . of probable falsity." *Garrison v. Louisiana*, 379 U.S. 64, 74 85 S.Ct. 209, 216, 13 L.Ed.2d 125, 133 (1964).

Our State Supreme Court has further held that "Whether the evidence is sufficient to support a finding of actual malice is a question of law." *Elder*, *supra* at 341 S.C. at 113, 533 S.E.2d at 901-902.

So, unlike a traditional libel or slander case where the defendant has the burden of proving the truth of the matter asserted, here, the Plaintiff has the burden of proving not only that the statements about which she complains were false, but that Mr. Gantt doubted the truth of his words or had a high degree of awareness that his statements were false. She must meet this burden of proof not by a mere preponderance of the evidence, but, rather, by clear and convincing evidence.

A person makes a defamatory statement if the statement tends to harm the reputation of another as to lower him in the estimation of the community or deter third persons from associating or dealing with him. *Fountain v. First Reliance Bank*, 398 S.C. 434, 730 S.E.2d 305 (S.C. 2012) (quoting *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857, 860 (S.C. 2002)). The tort of defamation, therefore, permits a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653, 664 (2006). A plaintiff must prove the following four elements to state a claim for defamation: (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3)

the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Id.*, 629 S.E.2d at 664.

Mrs. Murphy is unable, as a matter of law, to sustain her burden of proof as it relates to Mr. Gantt. She cannot point to a false statement, an unprivileged utterance or any words that Mr. Gantt made that might tend to lower her in the estimation of the community. Furthermore, it is evident that any statements made by Mr. Gantt regarding Mrs. Murphy's residency were made with reliance on the findings of the Office within the State of South Carolina charged with making such determinations. With that reliance, it is impossible as a matter of law for Plaintiff to meet a burden of demonstrating that Mr. Gantt doubted the truth of his words or had a high degree of awareness that his statements were false. The efficacy of Mr. Gantt's conclusions has been bolstered by the fact that the Circuit Court for this Judicial Circuit has found that Mrs. Murphy resides in Lexington County. To survive this Motion for Summary Judgment, Plaintiff must point to evidence in the record from which the Court might infer that she is able to establish this set of facts. A review of the materials submitted by Plaintiff and the arguments of her counsel reveals that she is unable to meet this burden. Plaintiff cannot, as a matter of law, establish constitutional malice in this case. Mr. Gantt is entitled to summary judgment on her claim on that basis alone.

2. <u>Plaintiff is unable to establish that Robert Gantt made any statement from which a finder of fact could determine that she might recover for defamation per se.</u>

Plaintiff argues that words in statements made by Gantt to the effect that "he hoped she would do the right thing and resign" are somehow defamation *per se* also fail as a matter of law. Slander, which is involved here, "is actionable *per se* when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: (1) commission of

a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319, 322-23 (S.C. App. 2001). Mrs. Murphy's contentions in this realm somehow center around her desire to equate a statement reflecting that she is not qualified to serve on the School Board based upon her residency, with some criticism of the idea that she is, therefore, unfit in her business or profession. However, when asked specifically, "Has any board member (which includes Gantt) ever accused you of being unfit in your profession, in conjunction with this – this residency issue," she responded: "I can't recall at this time." She is, likewise, unable to point to any other statement that even hints, to a reasonable person, that she has been the victim of words that might constitute *per se* defamation.

A review of the materials submitted by Plaintiff and the arguments of her counsel relating to her claim of *per se* defamation reveals that she is unable, as a matter of law, to demonstrate a statement attributable to Robert Gantt which would provide evidence that she has a basis to recover against him for defamation *per se*. Mr. Gantt is, likewise, entitled to summary judgment on her claim on that basis alone.

3. Robert Gantt's statements as board chair are privileged.

A communication made in good faith on any subject matter in which the person communicating has an interest or duty is qualifiedly privileged if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable. *Constant v. Spartanburg Steel Prods., Inc.*, 316 S.C. 86, 447 S.E.2d 194 (1994); *Prentiss v. Nationwide Mut. Ins. Co.*, 256 S.C. 141, 181 S.E.2d 325 (1971). Communications between officers and employees of a corporation are qualifiedly privileged if made in good faith and in the usual course of business. *Conwell v. Spur Oil Co.*, 240 S.C. 170,

125 S.E.2d 270 (1962). The communications about which Plaintiff complains all occurred during a Board meeting and in Mr. Gantt's acting as Chair to conduct the Board's business. His correspondence about this matter and his statements to the public were prepared by the District's lawyers. He made them believing not only in their factual accuracy, but also having been assured that they were apropos to complete the business of the Board.

Moreover, Plaintiff is unable to demonstrate any statement made which goes beyond what a reasonable school board chair, in a similar situation, acting under the advice of counsel should publish. There is no evidence of defamation or unnecessary defamation of Plaintiff to overcome the qualified privilege attached to these communications. There is no evidence that Mr. Gantt "wandered beyond the scope of the occasion." *See, e.g. Woodward v. South Carolina Farm Bureau Ins. Co.*, 277 S.C. 29, 282 S.E.2d 599 (1981).

Mrs. Murphy has been unable to point to any statement made by Mr. Gantt outside of the purview of a School Board meeting or his duties as Chairman of the School Board. There is no fact, allegation or evidence that Mr. Gantt published any statement except in his capacity as Chair of the School Board. In essence, any statement that he published is, therefore, a statement of the Board and his statements were made in light not only of the necessary fact that as Chair he had a duty to communicate with the Board, but also in light of the fact that the Board must conduct its business in public.

A review of the materials submitted by Plaintiff and the arguments of her counsel relating to Mr. Gantt's assertion of a qualified privilege reveals that she is unable, as a matter of law, to demonstrate a statement attributable to Robert Gantt which would ordinarily be actionable, much less when considered in light of his qualified privilege. Mr. Gantt is entitled to summary judgment on her claim on that basis, as well.

I, therefore, find and conclude that Defendant Robert Gantt's Motion for Summary Judgment on Plaintiff's defamation claim should be granted, and Plaintiff's claim against him dismissed with prejudice.

Having found that Robert Gantt is entitled to Summary Judgment on each of Plaitniff's claims against him, all of Plaintiff's claims against him should be dismissed with prejudice.

C. **School Board's Motion for Summary Judgment**

Plaintiff's sole claim against the Richland Lexington School District 5 Board of Trustees is for defamation, see Complaint, pp. 5-6, ¶¶19-25.

The Board moves for summary judgment on grounds similar to Defendant Gantt. The Board contends that the Plaintiff has failed to prove the utterance or publication of a defamatory statement or innuendo, has failed to offer evidence of the falsity of any statement made and has failed to offer evidence of defamation *per se.* The Board's motion as to those matters is granted for the reasons stated above.

The Board also moves for summary judgment on the additional ground that it is immune from suit in an action alleging actual malice. The Board contends that it cannot be sued for defamation by Plaintiff because as a public figure, Plaintiff must prove actual malice, and the Board is immune from suit in an action asserting actual malice. The Court agrees and grants summary judgment to the Board.

As discussed above, Plaintiff Murphy must allege and prove constitutional actual malice in order to bring a defamation action. Whether the evidence supports a finding of actual malice is a question of law for the court. *Elder, supra* at 533 S.E.2d 901-902.

Actions against governmental entities such as the Board are governed by the South Carolina Tort Claims Act. Under the SCTCA, a governmental entity is immune from suit for actions involving actual malice:

> The governmental entity is not liable for a loss resulting from:
>
> (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, ***actual malice***, intent to harm, or a crime involving moral turpitude;
>
> *South Carolina Code Ann.* § 15-78-60(17) (emphasis added).

A governmental entity is immune from suit for defamation by a public figure when actual malice is an element of the cause of action. Therefore, I grant the Board's motion for summary judgment on this additional ground as well.

The Board also contends that in the event that the Plaintiff intended to claim defamation for the Board's act of removing her from her seat, the Board is entitled to quasi judicial immunity. The Board argues that the Plaintiff cannot appeal the Board's decision and then also sue the Board for making that decision. The TCA also provides that:

> The governmental entity is not liable for a loss resulting from:
>
> (1) legislative, judicial, or quasi-judicial action or inaction;
>
> *South Carolina Code Ann.* § 15-78-60(1) (emphasis added).

It is well settled that School Boards act in a quasi-judicial capacity when holding hearings. *Laws v. Richland County School Dist. No.1*, 270 S.C. 492, 243 S.E.2d 192 (1978); *Calhoun v. Marlboro County School Dist.*, 2004 WL 6334910. Here, the Board referred the matter to a Special Referee for an evidentiary hearing and he issued a report and recommendation. The Board then held a hearing and made and exercised discretion in making a

determination based upon that report and recommendation and other evidence offered before the Board. Plaintiff Murphy was invited to participate at both proceedings.

Following the Board's decision, Plaintiff Murphy availed herself of the appellate remedy. She appealed the finding to the circuit court, which affirmed her removal. She has since appealed the circuit court order to the appellate courts. I find that the Board was acting in a quasi-judicial capacity, exercising reason and discretion in the adaptation of a means to an end and therefore the Board is entitled to quasi- judicial immunity for the act of determining that the Plaintiff was a resident of Lexington County and removing her from her seat on the Board. Therefore, summary judgment is granted to the Board with regard to its action of removing the Plaintiff from the Board.

D. CONCLUSION

For the foregoing reasons, the Court grants each of the Defendants' Motions for Summary Judgment. Accordingly, Plaintiff's Complaint is dismissed in its entirety with prejudice.

IT IS SO ORDERED.

Doyet A. Early, III, Judge
Court of Common Pleas
for the Fifth Judicial Circuit

Bamberg, South Carolina

~~March~~ April 6, 2016

FORM 4

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

JUDGMENT IN CIVIL CASE

CASE NO. 2014 CP-40-04666

KIM MURPHY	RICHLAND/LEXINGTON SCHOOL DISTRICT 5 BOARD OF TRUSTEES, BOBBY MERLE BOWERS AND ROBERT GANTT
PLAINTIFF(S)	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. ☐ See Page 2 for additional information.

☐ **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: After careful consideration, the Plaintiff's Motion for Reconsideration is hereby DENIED.

2016 MAY 25 P 1:41 RICHLAND COUNTY FILED

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

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

JUN 2016 J. Cisnes Chandler & Associates, L.L.C.

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

0136
Judge Code

May 24 2016
Date

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

RECEIVED
JUN 06 2016
SC Court of Appeals

State of South Carolina
The Circuit Court of the Second Judicial Circuit

DOYET A. EARLY, III
JUDGE

2959 MAIN HIGHWAY
POST OFFICE BOX 90
BAMBERG, SOUTH CAROLINA 29003
TELEPHONE: (803) 245-4004
FAX: (803) 245-2983
E-MAIL: dearlyj@sccourts.org

Mr. Jim Truitt
Richland County Clerks of Court
PO Box 2766
Columbia, SC 29202-2766

Re: Murphy v. Richland/Lexington School District 5 Board of Trustees, et al.
C/A No.: 2014-CP-40-4666
May 24, 2016

Mr. Truitt,

I hope you are well. Please find an enclosed Form 4 Order Denying Plaintiff's Motion for Reconsideration in the above referenced case for filing. Please circulate to all parties. Please let me know if I can be of further assistance.

Sincerely,

Marti Dennis

FORM 4

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

JUDGMENT 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. ROSEMOND
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

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013-CP-40-1897

Kim Murphy

PETITIONER
PLAINTIFF(S)

Richland-Lexington School District No. 5 by and through its Board of Trustees by and through Robert Ledbetter of Trustees

RESPONDENT
DEFENDANT(S)

RECEIVED
FEB 05 2016
SC Court of Appeals

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 : This matter concerns a motion for reconsideration of an Order issued October 30, 2014. The motion was filed on November 5, 2014 with the Clerks office, however a copy of the motion for reconsideration was not served upon Judge Benjamin according to the Certificate of Service. SCRCP 59(g) states that a party filing a written motion under this rule shall provide a copy of the motion to the judge within 10 days after filing the motion. Judge Benjamin did not receive this copy and therefore could not rule on the motion. Accordingly, the motion for reconsideration is dismissed.

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
		$
		$
		$

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 RBB Judge Code 2161 Date 1-7-16

For Clerk of Court Office Use Only

This judgment was entered on the 20 day of Jan, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court Jeanette W. Grube

SCRCP Form 4C (10/2011)

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	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT
Kim Murphy , Plaintiff, v. Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers, in their individual capacities, Defendants.	Civil Action No.: 2014-CP-40- **COMPLAINT** **(Jury Trial Demanded)**

RICHLAND COUNTY
2014 JUL 28 PM 1:54

Plaintiff complaining of the Defendants respectfully alleges as follows:

PARTIES & JURISDICTION

1. Plaintiff, Kim Murphy, is a resident and citizen of Richland County, South Carolina. At all times relevant to this matter, she represented Richland and Lexington Counties on the Defendant Board before she was unlawfully removed by said Defendant.

2. Defendant Richland-Lexington School District 5 Board of Trustees ("Board") is the governing body of Richland-Lexington District Five Schools and is located within Richland and Lexington Counties, South Carolina. The Board is governed by a total of seven Board members, four of which represent Lexington County and three represent Richland County. All Board members are popularly elected.

3. Defendant Robert Gantt (hereinafter "Gantt") served as Chairman and later Vice-Chairman of the Defendant Board at all times relevant to this matter and is a resident and is a citizen of Richland County.

4. Defendant Bobby Merle Bowers (hereinafter "Bowers") served as the Director of Budget and Control Board's Office of Research and Statistics at all times relevant to this matter and, upon information and belief, is a citizen of Lexington County.

5. This action arises out of the common and statutory law of South Carolina.

6. The Parties have sufficient connections to Richland County, South Carolina; the events at issue occurred therein, and jurisdiction is proper.

FACTUAL ALLEGATIONS

7. Plaintiff is a member of the Defendant Board and served District Five Schools as an exceptional and diligent Board member since her election in 2010. During her tenure on the Board, Plaintiff was outspoken and fervently represented the citizens of Richland County.

8. Gantt's aversion to Plaintiff's presence on the Board was well known prior to the contention concerning her residency and was shared by several other Board members. Plaintiff was knowingly outspoken against a multitude of procurement violations carried out by Gantt and other Board members. Upon information and belief, on several multi-million dollar projects, Gantt would intentionally select a contractor with whom he had an established relationship rather than award the contract to the lowest bid. Additionally, Gantt violated various procurement and Board policies – about which, Plaintiff was forthright and opposed.

9. During her tenure on the Board, Plaintiff was constantly berated and attacked by speakers during the public comment period, one such speaker included a student of the district, whose verbal attack of Plaintiff was recorded and later uploaded to the Internet on a public website, accessible to millions of people. Such speakers were supported and even encouraged by Gantt, other Board members, and those attending the meeting. These attacks far exceeded the threshold of typical or acceptable criticism of public figures. Gantt and other Board members, motivated to

protect their own personal agendas and to silence Plaintiff's outspoken ways, conspired together to allow such attacks to continue, encouraged the same, and would even prevent Plaintiff from speaking and would consistently interrupt her for the same purpose of silencing her.

10. In late October 2012 or sometime prior, Gantt, as Chairman of the Defendant Board, received allegations that the totality of Plaintiff's residence may not be located in Richland County. Gantt did not act immediately, but instead he intentionally waited two entire months before making any inquiries into such allegations and used that time to plot a scheme against Plaintiff with others.

11. In December 2012, two months after hearing 'rumors' regarding Plaintiff's residency, Gantt wrote to his colleague Defendant Bowers of the South Carolina Budget and Control Board, with whom he had an alliance, and requested Bowers to determine whether Plaintiff's status as citizen and resident of Richland County could be called into question for the purpose of ejecting her from the Board altogether on the grounds that she could not represent the Board constituents if she did not live in Richland County.

12. After determining only that Plaintiff's street address is located in Lexington County, Bowers himself or one of his employees visited Plaintiff's 16-acre property and used a simple GPS device to determine at what location the boundary between Lexington and Richland Counties intersects Plaintiff's property. Bowers utterly failed to review or locate the stakes delineating Plaintiff's property, and he failed to complete a thorough geographical survey. Moreover, Bowers failed to establish in what county Plaintiff's residence, not her street address, is located. In fact, to this day, an accurate and true determination of what county Plaintiff *resides* in, has yet to be established.

13. After such a precursory and obviously maliciously perfunctory review, Bowers informed Gantt that he concluded Plaintiff was a citizen of Lexington County. With this information, Gantt had exactly what he believed he needed to finally remove Plaintiff from the Board and silence her completely.

14. Gantt then decided to raise the issue of Plaintiff's residence to the full Board during a regularly scheduled board meeting. Gantt was very aware that the expected media and public attendance at the January 14, 2013, Board meeting would be much higher than average due to the recent controversy surrounding a Chapin High School teacher's actions with the American Flag. Gantt specifically and intentionally, for the purpose of embarrassing and denigrating Plaintiff, chose this highly attended meeting to formally inform the Board of the concerns surrounding Plaintiff's residence via a public statement, which had been planned for months. Before the attending public and the media film crews, Gantt's speech read much like an indictment, concluding with a strong recommendation that Plaintiff 'do the right thing' and resign – thus suggesting to the attending public that any other form of action by Plaintiff would be wrongful, against public interest, and a breach of the trust garnered in Plaintiff by her constituents.

15. Not only did Defendant Gantt utterly fail to notify Plaintiff of said concerns during the three month period prior to announcing the issue to the public, but Gantt also purposely and maliciously denied Plaintiff the opportunity to respond to such allegations following his statement to the attending public and media. When Plaintiff duly and properly asked to respond to the public statement, Gantt ignored her request; rather, Plaintiff was embarrassingly forced to abstain from voting later in the aforementioned meeting to be able to have an opportunity to be heard. Further, Defendant Gantt waited until the day following the January 14th meeting to formally request – via a letter – Plaintiff's response to said allegations.

16. On March 19, 2013, Gantt made a motion to remove Plaintiff from the Board after his public display of animosity towards her in January. Rather than allow Plaintiff to complete her term, truly determine her residency, and require her to campaign for a Lexington County position in the next election, the Board unlawfully voted to remove Plaintiff, effective immediately.

17. As a result of Defendant Board's decision to publicly call into question Plaintiff's residency and fitness to perform the position to which she was elected and the Board's very public removal of Plaintiff, she has been preempted from seeking to be re-elected to her former position. Plaintiff's ability and likelihood of being re-elected to her former position are severely hindered due to the publicity surrounding this issue brought about by the Defendants.

18. Currently, Plaintiff resides in Richland County, and she is still a registered voter of Richland County. Most notably, no special election was ever held to replace Plaintiff on the Board, and since her removal the residents of Richland County have gone without full representation on the Defendant Board.

FOR A FIRST CAUSE OF ACTION
AGAINST THE DEFENDANT BOARD AND GANTT
(Defamation *Per Se*)

19. Where not inconsistent herewith, Plaintiff realleges the paragraphs 1-18.

20. The Defendant Board and Gantt have published, orally, in public Board meetings to attendees and through said meeting minutes, in writing, to viewers of such minutes – together and separately – that Plaintiff's residency status is questionable and because her residency is questionable, she is rendered incompetent to perform her duties as an elected Board member and has further harmed the Board and her constituents by occupying her position unlawfully, all of which is untrue and dishonest.

21. Such publications have been made to District 5 students and employees and members of the surrounding community without justification or privilege.

22. Such publications are false and have been maliciously made by the Defendants with knowledge of their falsehood and with reckless disregard for the truth.

23. Such defamation was by actions as well as words when the Plaintiff's removal was brought about by an incomplete and cursory review of the location of Plaintiff's property. Moreover, the vote to remove Plaintiff just months after this initial survey insinuated that Plaintiff was incompetent to fulfill her term and must be removed immediately because she illegally held the position and was guilty of deceiving and harming those that voted her onto the Board.

24. The defamation alleged here is per se in that Plaintiff has been accused of unfitness in her profession as a Board Member with Defendant Board and further accuses Plaintiff of possibly committing a fraudulent crime to seat herself on the Board when she was elected as a Richland County representative.

25. As a direct and proximate result of the defamation alleged herein, the Defendant Board and Gantt have caused and are liable for severe and continuing injury to the Plaintiff's reputation, diminished likelihood of re-election, humiliation, embarrassment, pain and suffering, and other losses. Further, such conduct was reckless, wanton, and made with mean spirit and intent and the Plaintiff is entitled to punitive damages for the same against the Individual Gantt.

FOR A SECOND CAUSE OF ACTION AGAINST DEFENDANTS GANTT AND BOWERS (CIVIL CONSPIRACY)

26. Where not inconsistent herewith, Plaintiff realleges paragraphs 1-25.

27. Defendants Bowers, Gantt, and others met at various times and places, schemed, conspired, and planned in secret to make a baseless and shammed determination that Plaintiff is not a of Richland County and thus removed her from the Board. Defendant Gantt met with members of the Defendant Board and Bowers at various times and places and planned to prohibit Plaintiff's effective representation of Richland County by consistently interrupting her, refusing to recognize her to speak, and allowing members of the public to verbally berate her, with the ultimate purpose of harming Plaintiff by having her kicked-off the Board to silence her criticism of Gantt's and other Board Members' personal agendas in making decisions for the District.

28. Such a combination of persons acting, planning, and scheming outside the course and scope of their employment duties to promote their personal interests constitutes an unlawful civil conspiracy for which the Defendants are liable.

29. This conspiracy included defamatory and slanderous statements made about the Plaintiff to the Plaintiff, community members, and other Board members, all of which the Defendants knew were false or which they republished to others with reckless disregard for the truth. Defendant Gantt and other Board Members allowed members of the public, some of which were likely pre-arranged with Defendants, to chastise and attack Plaintiff during Board meetings, and in a one sided and unfair manner refused to allow her to respond to false allegations made against her.

30. Further, this conspiracy included Bowers's actions, which resulted in a baseless and inexact determination that Plaintiff resided in Lexington County that provided Gantt and the Board with unlawful cause to remove her.

31. Such a civil conspiracy on the part of the Defendants, acting as set forth herein, caused Plaintiff special damages including pain, suffering, and emotional distress directly tied to

Plaintiff being blacklisted from Defendant Board, ostracized for her outspoken criticisms that were valid, the loss of her position on Defendant Board, and other intangible damages including loss of reputation linked to her ability to run for and be elected to Defendant Board. Plaintiff requests the costs and attorneys' fees associated with this cause of action. Plaintiff is further entitled to an award of punitive damages against these Defendants for their willful, wanton, and grossly negligent conduct.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for an award and judgment against the Defendant Board and Defendant Gantt for Defamation; Plaintiff also prays for an award and judgment against the Defendants Gantt and Bowers for Civil Conspiracy, and all damages caused thereby, as alleged hereinabove, including punitive damages against the same Individual Defendants in an amount to be determined reasonable by a jury of the Plaintiff's peers. Plaintiff further prays for costs and attorneys' fees against the Individual Defendants for the Civil Conspiracy cause of action.

J. LEWIS CROMER & ASSOCIATES, LLC

BY: _____

J. Lewis Cromer (#1470)
Ashley C. Story (#100578)
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Plaintiff

July 28, 2014
Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kim Murphy , Plaintiff, v. Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers, in their individual capacities, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No.: 2014-CP-40- **SUMMONS**

2014 JUL 28 PM 1:55

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

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

BY: _____

J. Lewis Cromer (#1470)
Ashley C. Story (#100578)
1522 Lady Street
Post Office Box 11675
Columbia, South Carolina 29211
Phone 803-799-9530
Fax 803-799-9533

Attorneys for Plaintiff

July 24, 2014
Columbia, SC

STATE OF SOUTH CAROL \ )
)
COUNTY OF RICHLAND)
)
Kim Murphy,)
Plaintiff(s))
)
vs.)
)
Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers, in their individual capacities)
Defendant(s))

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 40- 4666

Submitted By: J. Lewis Cromer & Ashley C. Story
Address: 1522 Lady Street, Columbia, SC 29201

SC Bar #: 1470 & 100578
Telephone #: 803-799-9530
Fax #: 803-799-9533
Other:
E-mail: astory@jlewiscromerlaw.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply)*

**If Action is Judgment/Settlement do not complete*

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case # 20____-CP-_____-_____
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☒ Other (399) Defamation per se, civil conspiracy, etc.

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Administrative Law/Relief
- ☐ Reinstate Drv. License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Confession of Judgment (770)
- ☐ Petition for Workers Compensation Settlement Approval (780)
- ☐ Other (799)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Comm. (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: Ashley C. Story **Date: July 28, 2014**

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10

000054

FC MANDATED ADR COUNTIES OF Y

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calnoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

James Randall Davis
Patrick J. Frawley
Jeff M. Anderson
John J. McCauley ◊
Carey M. Ayer Δ
John F. Fisher
Judith Callison Fisher
Lisa Lee Smith Δ ‡
Ryan M. Wingard
A. Jewitte Dooley
W. Joseph Maye

Davis | Frawley

Of Counsel
Robert K. Bouknight
George S. Nicholson, Jr.

Francis C. Jones
(1919 – 1968)

Hubert E. Long
(1921 – 2000)

Since 1961

Direct Dial: (803) 951-7419
pat@oldcourthouse.com

◊ American Board of Trial Advocates
Δ Certified Circuit Court Mediator
‡ Certified Circuit Court Arbitrator

September 24, 2014

J. Lewis Cromer, Esquire
Ashley C. Story, Esquire
J. LEWIS CROMER & ASSOCIATES, LLC
PO Box 11675
Columbia SC 29211

David L. Morrison, Esquire
MORRISON LAW FIRM, LLC
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212

RE: *Kim Murphy vs. Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers, in their individual capacities*
Civil Action No. 2014-CP-40-4666
IRF Claim No. 67741
Our File No. 25712.34

Dear Mr. Cromer, Ms. Story, and Mr. Morrison:

Enclosed please find a filed copy of the Answer of Bobby M. Bowers for your file.

Yours truly,

Alasen Strickland

Alasen L Strickland
Project Assistant to Patrick J. Frawley

Enclosure

RECEIVED
SEP
J. LEWIS CR
& ASSOCIATES, LLC.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	Docket No. 2014-CP-40-4666
Kim Murphy,)	
Plaintiff,)	**ANSWER**
)	**OF THE DEFENDANT**
vs.)	**BOBBY MERLE BOWERS**
)	
Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers, in their individual capacities,)	
Defendants.)	

RICHLAND COUNTY FILED
2014 SEP 25 AM 11:18
JEANNETTE A. ADAMS C.C.P. & G.S.

The Defendant Bobby Merle Bowers, answering the Complaint of the Plaintiff Kim Murphy, service of which was accepted August 25, 2014, alleges as follows:

FOR A FIRST DEFENSE.

1. The Complaint fails to state facts sufficient to constitute a cause of action against this Defendant upon which relief can be granted, and should be dismissed pursuant to SCRCP Rule 12(b)(6).

FOR A SECOND DEFENSE.

2. Each and every allegation of the Complaint not specifically admitted, qualified nor otherwise explained, is denied.

3. The allegations of paragraph 1 of the First Defense are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Second Defense.

4. This Defendant admits so much of paragraph 4 of the Complaint as alleges that this Defendant is a Citizen and Resident of the County of Lexington, State of South Carolina, is

employed as the Director of Mapping Services, a division of the South Carolina Revenue and Financial Affairs Office, an agency of the State of South Carolina, and at all times relevant to the matters alleged in the Complaint, was acting in good faith, within the course and scope of his official duties, without actual fraud, actual malice, intent to harm, or criminal acts involving moral turpitude; and as such, this Defendant affirmatively alleges on information and belief he is subject to suit only under the terms, conditions, and limitations of the South Carolina Tort Claims Act, codified at *S.C. Code Ann.* §§ 15-78-10, through -220 (1986 as amended), specifically § 15-78-70, which provides that this Defendant should not be individually named as a party Defendant to this action.

5. This Defendant lacks sufficient information to admit or deny the allegations of paragraphs 1, 2, 3, 7, 8, 9, 10, and 18 of the Complaint, and therefore denies the same and demands strict proof thereof; and as to paragraphs 1 and 18, this Defendant specifically denies, on information and belief, that the Plaintiff resides in Richland County, unless she has relocated into Richland County from her former Lexington County residence.

6. This Defendant denies the allegations of paragraphs 11, 12, and 13 as alleged, and affirmatively alleges that he is not now nor has he ever been a "colleague" of the Defendant Gantt, that the technological means of determining that the Plaintiff's residence was not located in Richland County was multi-tiered and not the "simple GPS device" as alleged by the Plaintiff, and that the Plaintiff had the means, since at least September, 2012, from which to determine for herself that she was not a Richland County resident, yet denied that information and continues to assert that she is a Richland County resident despite Geodatic evidence to the contrary.

7. This Defendant denies the allegations of paragraphs 6 and 24 insofar as those paragraphs purport to paraphrase the law or reach legal conclusions, and this Defendant craves reference to the applicable legal authority for an accurate enumeration of the law.

8. This Defendant is informed and believes that paragraphs 14, 15, 16, 17, 20, 21, 22, 23, and 25 allege acts or omissions on the part of other Defendants, and not this Defendant; but to the extent that such paragraphs allege liability on the part of this Defendant, those allegations are denied.

9. This Defendant denies the allegations of paragraphs 5, 27, 28, 29, 30, and 31 of the Complaint.

10. Paragraphs 19 and 26 of the Complaint require no response, but to the extent that they may be deemed to allege acts or omission on the part of this Defendant that purport to establish liability on the part of this Defendant, they are denied.

FOR A THIRD DEFENSE.

11. The allegations of paragraphs 1 through 10 of the First and Second Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Third Defense.

12. This Defendant is informed and believes that all matter claimed by the Plaintiff in her Complaint to be defamatory was, in fact, truthful; and this Defendant does plead truth as an affirmative defense and complete bar to recovery to the Plaintiff's defamation claim.

FOR A FOURTH DEFENSE.

13. The allegations of paragraphs 1 through 12 of the First, Second, and Third Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Fourth Defense.

14. This Defendant is informed and believes that the remarks allegedly made by this Defendant, complained of by the Plaintiff, a member of the Richland-Lexington School District 5 Board of Trustees, and herself a public official, were made in good faith, without actual malice, with a valid interest to be upheld, were limited to the scope of that valid interest, and were made

on proper occasion, in proper manner, and to proper parties. This Defendant is therefore informed and believes that any remarks complained of by the Plaintiff were absolutely privileged; and this Defendant does plead absolute privilege as an affirmative defense and complete bar to the Plaintiff's defamation claim against this Defendant.

FOR A FIFTH DEFENSE

15. The allegations of paragraphs 1 through 14 of the First, Second, Third, and Fourth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Fifth Defense.

16. This Defendant is informed and believes that the remarks allegedly made by this Defendant, complained of by the Plaintiff, a member of the Richland-Lexington School District 5 Board of Trustees, and herself a public official, were made in good faith, without actual malice, with a valid interest to be upheld, were limited to the scope of that valid interest, and were made on proper occasion, in proper manner, and to proper parties. This Defendant is therefore informed and believes that any remarks complained of by the Plaintiff were qualifiedly and conditionally privileged; and this Defendant does plead qualified privilege and conditional privilege as affirmative defenses and complete bars to the Plaintiff's defamation claim.

FOR A SIXTH DEFENSE.

17. The allegations of paragraphs 1 through 16 of the First, Second, Third, Fourth, and Fifth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Sixth Defense.

18. This Defendant is informed and believes that the remarks allegedly made by this Defendant, complained of by the Plaintiff, a member of the Richland-Lexington School District 5 Board of Trustees, and herself a public official, were made in good faith, without actual malice, were fair and honest, and amounted to fair comment on the job performance of a public official;

and this Defendant does plead Fair Comment as an affirmative defense and complete bar to the Plaintiff's defamation claim.

FOR A SEVENTH DEFENSE.

19. The allegations of paragraphs 1 through 18 of the First, Second, Third, Fourth, Fifth, and Sixth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Seventh Defense.

20. This Defendant is informed and believes that the remarks allegedly made by this Defendant, complained of by the Plaintiff, a member of the Richland-Lexington School District 5 Board of Trustees, and herself a public official, were statements made in good faith, without actual malice, in discharging this Defendant's official duty as Director of Mapping Services for the South Carolina Revenue and Financial Affairs Office, an agency of the State of South Carolina; and this Defendant does plead Public Duty as an affirmative defense and complete bar to the Plaintiff's defamation claim.

FOR AN EIGHTH DEFENSE.

21. The allegations of paragraphs 1 through 20 of the First, Second, Third, Fourth, Fifth, Sixth, and Seventh Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Eighth Defense.

22. This Defendant is informed and believes that the remarks allegedly made by this Defendant, as Director of Mapping Services for the South Carolina Revenue and Financial Affairs Office, an agency of the State of South Carolina, complained of by the Plaintiff, a member of the Richland-Lexington School District 5 Board of Trustees, and herself a public official, were made in good faith, without actual malice, and were made to further a legitimate public interest; and this Defendant does plead Legitimate Public Interest as an affirmative defense and complete bar to the Plaintiff's defamation claim.

FOR A NINTH DEFENSE

23. The allegations of paragraphs 1 through 22 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Eighth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Ninth Defense.

24. This Defendant is informed and believes that, as Director of Mapping Services for the South Carolina Revenue and Financial Affairs Office, an agency of the State of South Carolina, he may be entitled to certain limitations, immunities, and defenses to the Plaintiff's claims under the South Carolina Tort Claims Act, codified at *S.C Code Ann.* §§15-78-10 through -220 (1985 as amended), including, without limitation, immunities and defenses afforded by *S.C Code Ann.* §15-78-60 (1), (2), (3), (4), (5), (13), and (20), and to the extent that such immunities and defenses are available to it, this Defendant pleads the various defenses and immunities afforded by the South Carolina Tort Claims Act as an affirmative defense to the claims alleged by the Plaintiff.

FOR A TENTH DEFENSE.

25. The allegations of paragraphs 1 through 24 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, and Ninth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein, insofar as they are not inconsistent with this Tenth Defense.

26. This Defendant is informed and believes that, under the terms, conditions, and limitations of the South Carolina Tort Claims Act, an agent or employee of a governmental entity who commits a tort while acting within the scope of his official duties is not individually liable therefore unless his conduct has constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude, and that a person bringing an action under the Tort Claims Act shall name as a party Defendant only the governmental entity for which the employee was acting.

27. This Defendant affirmatively alleges that, at all times relevant to the matters alleged in the Complaint, this Defendant has acted within the course and scope of his official duties as Director of Mapping Services for the South Carolina Revenue and Financial Affairs Office, an agency of the State of South Carolina, in good faith and without conduct constituting actual fraud, actual malice, intent to harm, or a crime of moral turpitude; and this Defendant does plead *S.C. Code Ann.* §15-78-70 (1986 as amended) as an affirmative defense and complete bar to recovery against him individually.

FOR AN ELEVENTH DEFENSE.

28. Each and every allegation of paragraphs 1 through 27 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Eleventh and affirmative defense.

29. With regard as to the Plaintiff's prayer for judgment against this Defendant for punitive damages, this Defendant is informed and believes that, under the terms, conditions, limitations, and exceptions of the South Carolina Tort Claims Act, no award for damages shall include punitive nor exemplary damages; and this Defendant is informed and believes that the Plaintiff's prayer for punitive damages against this Defendant is barred by *S.C. Code Ann.* § 15-78-120(b).

FOR A TWELFTH DEFENSE.

30. Each and every allegation of paragraphs 1 through 29 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, and Eleventh Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Twelfth and affirmative defense.

31. This Defendant is informed and believes that any acts or omissions complained of by the Plaintiff were pursuant to this Defendant being called as a witness within the course and scope of his official duties, for purposes of providing testimony incident to matters within the scope of his department's statutorily-authorized purpose in an administrative or judicial hearing; and this Defendant does plead judicial immunity as an affirmative defense and complete bar to recovery.

FOR A THIRTEENTH DEFENSE.

32. Each and every allegation of paragraphs 1 through 31 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, and Twelfth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Thirteenth and affirmative defense.

33. This Defendant affirmatively alleges that his acts or omissions complained of by the Plaintiff were neither improper nor unjustified, and that he had no specific intent or purpose to injure the Plaintiff in carrying out his official duties; and this Defendant does plead such lack of intent or purpose to injure the Plaintiff as an affirmative defense to the Plaintiff's civil conspiracy claim.

FOR A FOURTEENTH DEFENSE.

34. Each and every allegation of paragraphs 1 through 33 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, and Thirteenth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Fourteenth and affirmative defense.

35. This Defendant is informed and believes that there can be no civil conspiracy where the acts complained of, and the means employed in doing the acts, are lawful, and so long as this Defendant sought only to further his own fair interest and fulfill his official duties, he is

not liable for any merely incidental damage to the Plaintiff; and this Defendant does plead such lawful acts as an affirmative defense and complete bar to the Plaintiff's civil conspiracy claim.

FOR A FIFTEENTH DEFENSE.

36. Each and every allegation of paragraphs 1 through 35 of the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, and Fourteenth Defenses are re-asserted and re-alleged as fully as if set forth verbatim herein insofar as they are not inconsistent with this Fifteenth and affirmative defense.

37. This Defendant is informed and believes that the Plaintiff has failed to adequately mitigate her damages, and does plead failure to mitigate damages as an affirmative defense and bar to recovery.

WHEREFORE, having fully answered the Complaint of the Plaintiff, this Defendant prays that the same be dismissed, with costs assessed to the Plaintiff, and for such other and further relief as the Court may deem appropriate.

DAVIS FRAWLEY, LLC

Patrick J. Frawley
Lisa Lee Smith
140 East Main Street (29072)
PO Box 489
Lexington SC 29071-0489
pat@oldcourthouse.com
lisa@oldcourthouse.com

Lexington, South Carolina
September 24, 2014

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS OF THE FIFTH JUDICIAL CIRCUIT
Kim Murphy, Plaintiff, vs. Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers, in their individual capacities, Defendants.	)	Docket No. 2014-CP-40-4666 **CERTIFICATE OF SERVICE**

RICHLAND CO. FILED
2014 SEP 25 AM 11:18
BARBARA BRIDGE
C.C.P. & G.S.

I, Rachelle G. Brown, a paralegal with the law firm of Davis Frawley, LLC, do hereby certify that I have this date served a copy of the following document(s) upon counsel named below, by placing a copy in the United States Mail, postage prepaid and return address clearly indicated to the address below:

COUNSEL SERVED:

J. Lewis Cromer, Esquire
Ashley C. Story, Esquire
J. LEWIS CROMER & ASSOCIATES, LLC
PO Box 11675
Columbia SC 29211

John M. Reagle, Esquire
CHILDS & HALLIGAN
PO Box 11367
Columbia SC 29211-1367

PLEADING: **ANSWER OF DEFENDANT BOBBY MERLE BOWERS**

Rachelle G. Brown
Rachelle G. Brown

Lexington, South Carolina
September 24, 2014

Morrison Law Firm, LLC
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212
Phone: (803) 661-6285
Fax: (803) 661-6289
E-mail: David@dmorrison-law.com
E-mail: Kassi@dmorrison-law.com
E-mail: Bob@dmorrison-law.com

David L. Morrison*
Kassi B. Sandifer
Robert G. Cooper**

*Licensed in SC & NC
*Certified Mediator
**Of Counsel

October 24, 2014

The Honorable Jeanette McBride
Clerk of Court, Richland County
Post Office Box 2766
Columbia, South Carolina 29202

RE: Kim Murphy v. Richland-Lexington School District 5 Board of Trustees, Robert Gantt and Bobby Merle Bowers, in their individual capacities
C/A #: 14-CP-40-4666
Date of Incident: October 2012
Our file: 110.0472

Dear Clerk McBride:

Enclosed is the original and one copy of the Answer filed on behalf of Defendant Robert Gantt in the above-referenced matter. Please file the original and return a clocked-in copy to me in the self-addressed stamped envelope enclosed for your convenience. By copy of this letter, I am serving counsel of record with a copy of same.

Very truly yours,

MORRISON LAW FIRM, LLC

David L. Morrison

DLM/cmm

Enclosure

cc: Patrick John Frawley, Esquire
J. Lewis Cromer, Esquire

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Kim Murphy,	)	
	)	C/A #: 14-CP-40-4666
Plaintiff,	)	
	)	
v.	)	**ANSWER ON BEHALF OF DEFENDANT ROBERT GANTT**
	)	**(Jury Trial Demanded)**
Richland-Lexington School District 5 Board of Trustees, Robert Gantt and Bobby Merle Bowers, in their individual capacities,	)	
	)	
Defendants.	)	
	)	

The Defendant, Robert Gantt, answers the Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. The Summons and Complaint fails to state facts sufficient to state a cause of action. The Defendant reserves the right to file a motion pursuant to Rule 12(b)(6), SCRCP.

FOR A SECOND DEFENSE

2. The Defendant denies each and every allegation of the Plaintiff's Complaint not hereinafter specifically admitted.

3. Paragraph 1 is denied.

4. As to Paragraph 2, this Defendant craves reference to the laws of the State of South Carolina as to the governance of the School District. This Defendant admits that the Board has seven members with four elected from Lexington County and three elected from Richland County.

5. This Defendant admits only that he was a member of the Board and served as both chair and vice chair at times.

6. As to Paragraph 4, this Defendant admits only that Defendant Bowers is an employee of the State of South Carolina and a resident of Lexington County.

7. Paragraph 5 is denied.

8. Paragraph 6 states legal conclusions which require no response. To the extent Paragraph 6 states factual allegations, they are denied. This Defendant reserves the right to contest jurisdiction as the facts are developed.

9. As to Paragraph 7, this Defendant admits only that Plaintiff was a member of the board but had been improperly elected. The remaining allegations are denied.

10. Paragraph 8 is denied.

11. Paragraph 9 is denied.

12. Paragraph 10 is denied.

13. Paragraph 11 is denied.

14. As to Paragraph 12, this Defendant denies that Plaintiff is a resident of Richland County. This Defendant also denies Plaintiff's allegation that an accurate determination of Plaintiff's residency has not been made and instead asserts that an accurate determination has been made by the appropriate state agency.

15. As to Paragraph 13, this Defendant admits only that representatives of the appropriate state agency informed Gant as chairman of the board of trustees for District Five that the Plaintiff was a resident of Lexington County rather than Richland County.

16. Paragraph 14 is denied.

17. Paragraph 15 is denied as stated.

18. As to Paragraph 16, this Defendant admits only that after a judicial hearing, Plaintiff no longer allowed to serve on the board.

19. Paragraphs 17 and 18 are denied as stated.

20. As to Paragraphs 19 and 26, this Defendant reiterates each and every response and affirmative defense contained herein.

21. Paragraphs 21, 22, 23, 24 and 25 are denied.

22. Paragraphs 26, 27, 28, 29, 30 and 31 make no claims against this Defendant and therefore require no response. To the extent those allegations require a response, those allegations are denied.

FOR A THIRD DEFENSE

23. There is no separate suable entity known as the Richland-Lexington School District 5 Board of Trustees and therefore this case must be dismissed.

FOR A FOURTH DEFENSE

24. This Defendant is entitled to sovereign immunity.

FOR A FIFTH DEFENSE

25. This Defendant is entitled to immunity pursuant to the South Carolina Tort Claims Act.

FOR A SIXTH DEFENSE

26. This Defendant is immune from suit pursuant to the South Carolina Tort Claims Act, including but not limited to S.C. Code Section 15-78-60(1), (2), (4), (5) and (23).

FOR A SEVENTH DEFENSE

27. The Defendant is entitled to the statutory caps upon money damages contained in the South Carolina Tort Claims Act.

FOR AN EIGHTH DEFENSE

28. To the extent the Plaintiff is claiming to be entitled to punitive damages, such damages are barred by the South Carolina Tort Claims Act.

FOR A NINTH DEFENSE

29. The Defendant is entitled to good faith qualified immunity.

FOR A TENTH DEFENSE

30. Any statements made by the Defendant or its agents about the Plaintiff were true, and truth operates as a complete defense to the Plaintiff's defamation cause of action.

FOR AN ELEVENTH DEFENSE

31. Any statements made by the Defendant or its agents are entitled to an absolute privilege, which acts as a bar, in whole or in part, to the Plaintiff's defamation cause of action.

FOR A TWELFTH DEFENSE

32. Any statements made by the Defendant or its agents are entitled to a qualified and/or conditional privilege which acts as a bar, in whole or in part, to the Plaintiff's defamation cause of action.

FOR A THIRTEENTH DEFENSE

33. This Defendant alleges that any remarks allegedly made were made within the course and scope of official duties of the speaker and Plaintiff's claims are barred as a matter of law.

FOR A FOURTEENTH DEFENSE

34. The Plaintiff has failed to exhaust her administrative remedies before filing her case in this Court, and therefore, the Plaintiff's claims against the Defendant should be dismissed.

FOR A FIFTEENTH DEFENSE

35. This Defendant alleges that the Plaintiff is a public official and any remarks allegedly made by this Defendant were made without constitutional malice or actual malice and were made in good faith and therefore Plaintiff's claims are barred.

FOR A SIXTEENTH DEFENSE

36. This Defendant alleges that any remarks allegedly made were made in good faith with a valid interest to be upheld, were limited to the scope of that valid interest and were made on a proper occasion, in proper manner and to proper parties and therefore Plaintiff's claims are barred as a matter of law and must be dismissed.

FOR A SEVENTEENTH DEFENSE

37. This Defendant alleges that any remarks allegedly made were a fair comment on the job performance or position of a public official and were made in good faith. Therefore, Plaintiff's claims are barred as a matter of law and must be dismissed.

FOR AN EIGHTEENTH DEFENSE

38. This Defendant alleges that any remarks made were made in discharging official duties and therefore Plaintiff's claims are barred by the public duty rule as a matter of law.

FOR A NINTEENTH DEFENSE

39. This Defendant is informed and believes that any acts or omissions complained of by the Plaintiff were pursuant to this Defendant acting as Board chair within the course and scope of his official duties; and this Defendant does plead judicial immunity as an affirmative defense and complete bar to recovery.

FOR A TWENTIETH DEFENSE

40. This Defendant is informed and believes that any acts or omissions complained of by the Plaintiff were pursuant to this Defendant acting as Board chair within the course and scope of his official duties; and this Defendant does plead legislative immunity as an affirmative defense and complete bar to recovery.

FOR A TWENTY-FIRST DEFENSE

41. This Defendant affirmatively alleges that his acts or omissions complained of by the Plaintiff were neither improper nor unjustified, and that he had no specific intent or purpose to injure the Plaintiff in carrying out his official duties; and this Defendant does plead such lack of intent or purpose to injure the Plaintiff as an affirmative defense to the Plaintiff's civil conspiracy claim.

FOR A TWENTY-SECOND DEFENSE

42. This Defendant is informed and believes that there can be no civil conspiracy where the acts complained of, and the means employed in doing the acts, are lawful, therefore, he is not liable for any merely incidental damage to the Plaintiff; and this Defendant does plead such lawful acts as an affirmative defense and complete bar to the Plaintiff's civil conspiracy claim.

FOR A TWENTY-THIRD DEFENSE

43. This Defendant is informed and believes that the Plaintiff has failed to adequately mitigate her damages, and does plead failure to mitigate damages as an affirmative defense and bar to recovery.

FOR A TWENTY-FOURTH DEFENSE

44. This Defendant is immune from suit pursuant to S.C. Code Ann. § 15-78-70.

WHEREFORE, having fully answered the Complaint of the Plaintiff, this Defendant prays that the Complaint be dismissed with prejudice, for the costs of this action, and for such other and further relief as the Court deems just and proper.

MORRISON LAW FIRM, LLC

By: _____

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ATTORNEYS FOR THE DEFENDANT
ROBERT GANTT

Columbia, South Carolina

October 24, 2014

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Kim Murphy,	)	
	)	C/A #: 14-CP-40-4666
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
Richland-Lexington School District 5 Board of Trustees, Robert Gantt and Bobby Merle Bowers, in their individual capacities,	)	
	)	
Defendants.	)	
	)	

The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendants, Richland-Lexington School District 5 Board of Trustees and Robert Gantt, does hereby certify that service of the **ANSWER OF DEFENDANT ROBERT GANTT** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 24th day of October, 2014, addressed as follows:

Patrick John Frawley, Esquire
Post Office Box 489
Lexington, South Carolina 29071

J. Lewis Cromer, Esquire
Ashley C. Story, Esquire
Post Office Box 11675
Columbia, South Carolina 29211

Callie M. Morrison

Callie M. Morrison

Columbia, South Carolina

Attachment - Plaintiff's Answer to Interrogatory No. 2:

1) Ed McMullin, Political Consultant to Meka Childs – It is believed that Witness has knowledge that the action by Defendants to remove Plaintiff was political in nature and an abuse of power.

2) Robert "RJ" May, Political Consultant to Meka Childs – It is believed that Witness has knowledge that the action by Defendants to remove Plaintiff was political in nature and an abuse of power.

3) Thomas Cooper, Retired Judge and District 5 Hearing Officer

4) Gary Thompson, Chief, NC Geodetic Survey – Has knowledge of the legal process for resolving county boundary disputes in North Carolina. Served on SC/NC Boundary Commission with Defendant Bobby Bowers.

5) Bobby Bowers, Director of Mapping and Census, Revenue and Fiscal Affairs Office (formerly Research & Statistics, SC B&CB) (letters and transcripts) - Defendant. Member (or former member) of the SC/NC Boundary Commission, former Board Chairman Lexington 1 and former President SC School Board Association.

6) Will Roberts (audio, emails), Program Manager, Revenue and Fiscal Affairs Office (formerly Research & Statistics, SC B&CB) – Defendant Bowers' right-hand man in action against Plaintiff. Present at the February 15, 2015 Hearing. Informed Lexington County officials in the February 20, 2013 email that their office (B&CB) did not have authority to move the lines. Witness's wife (Erin) is believed to be a teacher in District 5 and that both are District 5 residents.

7) Alan-Jon Zupan (audio, emails), Boundary Program, SC Geodetic under Revenue and Fiscal Affairs Office. Believed to be current Co-Chair, SC/NC Boundary Commission. Directly involved in determining alleged boundary and present at February 15, 2013 Hearing. Believed to be involved with boundary dispute involving GIS between Paige

Lee of Cherokee County and Spartanburg County. Visited areas on Wateree Creek in 1995 searching for the Rocky Ford corner.

8) Sid Miller, SCGS Surveyor (transcript) – Defendant District 5 Expert Witness at February 15, 2013 Hearing. It is believed that Witness is the former Co-Chair, SC/NC Boundary Commission.

9) David Ballard, Boundary Program, SC Geodetic under Revenue and Fiscal Affairs Office - It is believed that Witness works with SCGS and Defendant Bowers, has knowledge as to the process used by Defendants and others in determining alleged county line, and is involved with the boundary dispute involving GIS between Paige Lee of Cherokee County and Spartanburg County.

10) Matt Wellslager, Program Manager, SC Geodetic Survey under Revenue and Fiscal Affairs Office - Present at February 15, 2013 Hearing. It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line, is a resident of District 5 and that wife (Debbie) is a teacher in District 5.

11) Lew Lapine, Former Chief, SC Geodetic - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and is a resident of Chapin, SC.

12) John Cloyd, Richland County Assessor (Retired)(letters) – It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and visited areas on Wateree Creek in 1995 searching for the Rocky Ford corner. Upon communicating with Lexington County in 1978 following Home Rule's requirement for adjoining Counties to reconcile their boundaries, the Witness sent a letter to the subject property's previous owner notifying them of correct acreage carried in Richland County.

13) Lee Harrell, Richland County, Manager of Mapping – It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and visited areas on Wateree Creek in 1995 searching for the Rocky Ford corner. It is also believed that Witness verified at the site the location of the stake (corner) noted in Statute on the neighboring Nichol's/Spott's property over a decade ago.

14) Larry Smith, Richland County Attorney – It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and actions by Defendant Bowers and others to have Plaintiff removed from voter rolls in Richland County.

15) Lillian McBride, Richland County, Deputy Director of Voter Registration (documents) – Witness helped provide Plaintiff's school board election information and voter history following claim made by Defendants that Plaintiff was not a resident of Richland County. It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and actions by Defendants and others to have Plaintiff removed from voter rolls in Richland County.

16) Jasper Salmond, Richland County, Former Acting Director of Richland County Election Commission (letter). It is believed that Witness has knowledge related to attempts from Defendants and others to have Plaintiff removed from voter rolls in Richland County.

17) Gloria Wilson, Former Richland County Voter Registration Board Chairwoman – It is believed that Witness will testify that several years ago she visited Plaintiff's home at subject property in Richland County to deliver an Absentee Ballot to Plaintiff.

18) Joe Mergo, Lexington County Administrator (FOIA's) – It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line.

19) Chris Folsom, Lexington County, Assistant to County Administrator - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line.

20) Dean Crepes (email and letters), Lexington County, Director of Registration and Elections - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts by Defendants and others to remove Plaintiff from Voter rolls of Richland County. It is also believed Witness can testify to defamation of Plaintiff by Defendant Board, Gantt, Bowers and others.

21) Eugene Wilbur, Lexington County, Former Board Chairman of Registration & Elections - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts by Defendants and others to remove Plaintiff from Voter rolls of Richland County.

22) Charles Compton, Lexington County, Director of Planning & GIS - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line.

23) Ralph Ford, Lexington County, Senior Cartographer, Planning & GIS - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line.

24) Jack Maguire, Lexington County Planning and GIS Manager, Retired – It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and previously worked with Defendant Bowers as GIS manager in Office of Research and Statistics, Budget and Control Board. Witness assisted Plaintiff in locating old tax maps identifying the county boundary and Plaintiff's property in relationship to the line.

25) Chris Harmon, Lexington County Auditor (documents) – Witness provided documentation to Plaintiff that showed taxing history for the past 40+ years on subject property. It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line

26) Rick Dolan, Lexington County Assessor (document) – Witness provided documentation to Plaintiff that had been sent to the subject property's owner in 1978 advising the owner that Act 208, 1975 had caused the Richland/Lexington county line to be reconciled resulting in a change that effected where the property was carried on the tax rolls.

27) Robert Gantt, Defendant and Former School Board Chairman now serving as Vice-Chairman (audios, videos, emails, documents) - Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and was involved in efforts to remove Plaintiff from School Board. Witness encouraged, supported and was involved with Plaintiffs in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and with promoting the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. Witness can testify to defamation of Plaintiff by Defendant Board, himself, Bowers and others and Defendant Board's and his aversion to Plaintiff's presence on the Board. It is believed that Witness will attest to his involved in writing and publishing in the local papers and throughout the community an "Open Letter to the Community" in 2003 defamatory of Plaintiff.

28) Ed White, Defendant, District 5 School Board Member (audios, videos, emails and documents) - Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and was involved in efforts to remove Plaintiff from School Board. Witness encouraged, supported and was involved with Plaintiffs in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the

Implementation of Referendum and with promoting the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. Witness can testify to defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

29) Beth Hutchison Burn Watson District 5 School Board Member and current Chairman (former Vice-Chairman) (audios, videos, emails, documents) - Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and involved in efforts to remove Plaintiff from School Board. Witness encouraged, supported and was involved with Plaintiffs in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and with promoting the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. Witness can testify to defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

30) Ellen Baumgardner, Defendant, District 5 School Board Member (former Secretary) (audios, videos, emails, documents) Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and involved in efforts to remove Plaintiff from School Board. Witness encouraged, supported and was involved Plaintiffs in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and with promoting the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. Witness can testify to defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

31) Jondy Lovelace, Defendant, District 5 School Board Member and current Secretary (audios, videos, emails, documents) - Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and involved in

efforts to remove Plaintiff from School Board. Witness was one of the original Plaintiffs in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and was involved with promoting the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. Witness can testify to defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

32) Jim Turner, Defendant, Former School Board Member (Term ended November 2014) (audios, videos, emails, documents) - Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board. Witness, by voting on Motions offered by Defendant White, supported Plaintiffs in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum. Witness can testify to defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

33) Jan Hammond, School Board Member (Term began November 2014 and was elected after Defendants vote to remove Plaintiff) (audios, videos, emails, documents) - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board. Witness, by voting on Motions offered by Defendant White, supported Plaintiffs in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum. Witness can testify to defamation of Plaintiff by Defendant Board, Gantt, Bowers and others, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

34) Scott Andersen, Former Superintendent – It is believed that Witness can attest to threatening, bullying, and underhanded tactics used by some members of Defendant

Board, Gantt and others towards him, other employees and that members of Defendant Board and Gantt were "out to get Kim Murphy."

35) Dennis McMahan, Former Superintendent (Open Letter to Community) – It is believed that Witness will can attest to his involved in writing and publishing in the local papers and throughout the community an "Open Letter to the Community" in 2003 defamatory of Plaintiff.

36) Herb Berg, Former District 5 Superintendent (August 2008 –December 2010) (audio, documents, emails) - It is believed Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line. It is believed that Witness can testify to facts surrounding the Chapin High wetlands issue and Witness' statement at a public Board meeting that there were "no protected wetlands", the accusation that Plaintiff delayed construction and cost District 5 millions, defamation of Plaintiff by Defendant Board, Gantt and others, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

37) Stephen Hefner, District 5 Superintendent (January 2011 - present) - Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board, can testify to facts surrounding the Chapin High wetlands issue, the accusation that Plaintiff delayed construction and cost District 5 millions, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed that Witness can testify that Defendant Board, Gantt and others to rearranged and altered statements or documents within Board meeting Minutes to cast a negative light on Plaintiff. It is believed that Witness along with Defendant Board and others crafted material to be distributed, which was designed to defame Plaintiff.

38) Sybil Stowers, District 5 Secretary to Board and Superintendent - Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board. It is believed that the witness can testify to facts surrounding the Chapin High wetlands issue, the accusation that Plaintiff delayed construction and cost District 5 millions, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed Witness can testify that audio tapes were altered and comments made at Public Participation by Plaintiff, prior to her election to the board, were deleted. It is also believed that Witness can testify that audio tapes of board meetings were altered and comments made by Plaintiff while she was serving as a board member, as well as, comments by other board members were deleted or withheld. It is believed that Witness can testify that she was directed by Defendant Board and Gantt and others to rearrange and alter statements or documents within Board meeting Minutes to cast a negative light on Plaintiff. It is believed that Witness along with Defendant Board and others crafted material to be distributed, which was designed to defame Plaintiff.

39) Karl Fulmer, District 5 Chief Financial Officer, Retired (audio, video, documents) - Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line, can testify to facts surrounding the Chapin High wetlands issue, the accusation that Plaintiff delayed construction and cost District 5 millions, defamation of Plaintiff by Defendant Board, Gantt, Bowers, himself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed that Witness along with Defendant Board and others crafted material to be distributed, which was designed to defame Plaintiff.

40) Brock Heron, Former District 5 Chief Financial Officer – Witness has knowledge as the defamation of Plaintiff by Defendant Board and Gantt, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed that Witness can testify to facts surrounding the Chapin High wetlands issue, the accusation that Plaintiff delayed construction and cost District 5 millions, defamation of Plaintiff by Defendant Board, Gantt and others, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

41) Len Richardson, District 5 Chief Financial Officer (January 2013 – present) - It is believed Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line. It is believed that Witness can testify to facts surrounding the Chapin High wetlands issue, the accusation that Plaintiff delayed construction and cost District 5 millions, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

42) Trisha Larkin, Administrative Secretary to District 5 CFO Len Richardson and retired District 5 CFO Karl Fulmer (emails) - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board. It is believed that Witness can testify to facts surrounding the Chapin High wetlands issue, the accusation that Plaintiff delayed construction and cost District 5 millions, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

43) Buddy Price, Former District 5 Communications Director (emails, documents) - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School

Board. It is believed that Witness can testify to facts surrounding the Chapin High wetlands issue, the accusation that Plaintiff delayed construction and cost District 5 millions, defamation of Plaintiff by Defendant Board, Gantt, himself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed Witness can testify that audio tapes were altered and comments made at Public Participation by Plaintiff, prior to her election to the board, were deleted. It is also believed that Witness can testify that audio tapes of board meetings were altered and comments made by Plaintiff while she was serving as a board member as well as comments by other board members deleted or withheld. It is believed that Witness can testify that along with Defendant Board, Gantt and others crafted material to be distributed through various means, which was designed to defame Plaintiff and that Witness will can attest to his involved in writing and publishing three local papers an "Open Letter to the Community" in 2003 defamatory of Plaintiff.

44) Mark Bounds, District 5 Communications Director (audio) - Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board. It is believed that Witness can testify that audio tapes of board meetings were altered and comments made by Plaintiff while she was serving as a board member, as well as, comments by other board members were deleted or withheld. It is also believed that Witness can testify to defamation of Plaintiff by Defendant Board, Gantt, Bowers, himself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed that Witness along with Defendant Board, Gantt and others crafted material to be distributed through various means, which was designed to defame Plaintiff.

45) Michelle Foster, Assistant to District 5 Communications Director Buddy Price (emails, automated call, documents) - It is believed Witness can testify that audio tapes were

altered and comments made at Public Participation by Plaintiff, prior to her election to the board, were deleted. It is also believed that Witness can testify that audio tapes of board meetings were altered and comments made by Plaintiff while she was serving as a board member, as well as, comments by other board members were deleted or withheld. It is also believed that Witness can testify to defamation of Plaintiff by Defendant Board, Gantt, herself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed that Witness along with Defendant Board, Gantt and others crafted material to be distributed through various means, which was designed to defame Plaintiff.

46) Amee White, Administrative Assistant to Communications Director Mark Bounds and former Director of Communications Buddy Price – It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board. It is believed that Witness can testify that audio tapes of board meetings were altered and comments made by Plaintiff while she was serving as a board member, as well as, comments by other board members were deleted or withheld. It is also believed that Witness can testify to defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed that Witness along with Defendant Board, Gantt and others crafted material to be distributed through various means, which was designed to defame Plaintiff.

47) Allen "Keith" McAllister, Director of New Design and Construction (audio, videos, emails, documents, transcript) - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others. It is believed that Witness can testify to facts

surrounding the Chapin High wetlands issue, the accusation that Plaintiff delayed construction and cost District 5 millions and his public remarks, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed that Witness along with Defendant Board, Gantt and others crafted material to be distributed through various means, which was designed to defame Plaintiff.

48) Tracie Covey, Accountant for Director of New Design and Construction - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board and efforts to remove Plaintiff from School Board, and defamation of Plaintiff by Defendant Board, Gantt and others. It is believed that Witness can testify to facts surrounding the Chapin High wetlands issue, the accusation that Plaintiff delayed construction and cost District 5 millions, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

49) Mike Satterfield, District 5 Physical Education Teacher and Former Chapin High Principal (emails) – It is believed that Witness can attest to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions, defamation of Plaintiff by Defendant Board, Gantt and others, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

50) Akil Ross , Chapin High Principal (automated call) - It is believed that Witness can attest to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed that Witness along with Defendant Board, Gantt and others crafted material to be distributed through various means, which was designed

to defame Plaintiff including the use of the school marque and intercom system at Plaintiff's child's school.

51) Ashlon Langley, Media Technology Teacher and School Board Meeting Videographer – It is believed that Witness can attest to defamation of Plaintiff by Defendant Board, Gantt, Bowers and others, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

52) Helen Anderson, former District 5 Chief Instructional Officer (audio) - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board. It is believed that Witness can attest to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others, and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

53) Jeff Patterson, Former District 5 Director of Purchasing - It is believed that Witness can testify to procurement violations.

54) Paula Hite, Former Board Chairman - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others, and Band Gantt's aversion to Plaintiff's presence on the Board.

55) Carol Sloop, Former School Board Member - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

56) Laura Gantt, Wife of Defendant Robert Gantt - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

57) Elizabeth Gantt Perla, District 5 Teacher and daughter of Defendant Robert Gantt (Facebook) - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed that Witness supported and was involved in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum.

58) Bea White, Wife of Defendant Ed White (emails) - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed that Witness supported and was involved in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum.

59) Steve Baumgardner, Husband of Defendant Ellen Baumgardner (emails) - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is

believed that Witness supported and was involved in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum.

60) Ken Lovelace, Husband of Jondy Lovelace - It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board, defamation of Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. It is believed that Witness was one of the original Plaintiffs in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum.

61) Stan Shealy, Former Town of Chapin Mayor – It is believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

62) Alan Grimsley, Contracted Auditor for District 5 - It is believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

63) Brice McCoy, Regulatory Branch Chief, Columbia US Corps of Engineers – It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials.

64) Chris Whitley, Project Manager, Cumming Corp (emails, documents) - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board,

Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

65) Jeff Holstein, Executive Vice President , Cumming Corp - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

66) Paul Moscati, Executive Vice President , Cumming Corp (audio) - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

67) Adam Whitley, Senior Project Manager, McCory Construction (formerly with China Construction) - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

68) John Miller, Project Manager, China Construction - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed

construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

69) Forrest King, Project Manager, Cumming Corp (emails, documents) - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

70) Ed Strack, Project Manager, Cumming Corp (emails, documents) - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

71) Howard Coogler, Engineer, Office of School Facilities, SC Department of Education (documents) - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation

against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

72) Ashby Gresette, President, Stevens & Wilkinson Architecture - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

73) Bill Flemming, Architect, , Stevens & Wilkinson Architecture (audio, documents) - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

74) Luke McCary, Architect, Lambert Architect and Construction Services (Formerly with Stevens and Wilkinson)(emails) (emails, documents) - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

75) Keith "Kevin" Eubanks, Engineer, Stevens and Wilkinson - Stevens and Wilkinson Architecture - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

76) Holly Lathrup, Director of Marketing, Stevens and Wilkinson Architecture - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

77) P. "Josh" Boltinhouse, Architect, Lambert Architect and Construction Services (Formerly with Stevens and Wilkinson) (emails) - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

78) John Collum, Tidewater Environmental Services (emails, documents) - It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and

misrepresentations made by Defendant Board, Gantt and other District officials. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

79) Michael Gallagher, Director, Compass Municipal Advisors, LLC (affidavit)- It is believed that Witness can testify to facts surrounding Chapin High Wetlands' issue, the accusation that Plaintiff delayed construction and cost District 5 millions and other errors, omissions and misrepresentations made by Defendant Board, Gantt and other District officials.

80) Ray Hunt, Insurance, Dixon Wells (email) – It is believed that Witness has knowledge as to the process used by Defendants and others in the determination of the alleged county line and efforts to remove Plaintiff from School Board. It is believed that Witness is a resident of Chapin with his wife, Julie, who is a District 5 employee. It is also believed that witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board. Witness served or has served on the Board of Lander College with Defendant Bowers.

81) Maggie Stroud, former Chapin High student (documents, audio, documents) - Witness was one of the original Plaintiffs in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and was involved with the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. It is believed that Witness can testify to the defamation of Plaintiff by Defendant Board, Gantt, herself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

82) Logan Shumpert, former Chapin High student – It is believed that Witness was involved in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation

of Referendum and with the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. It is believed that Witness can testify to the defamation of Plaintiff by Defendant Board, Gantt, and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

83) Albert Bueno, Chapin resident (audio, video, email, article) – Witness has threatened Plaintiff with a lawsuit to cause her to spend money and was allowed by Defendant Board and Gantt to speak at Public Participation about Plaintiff in a very threatening manner. It is believed that Witness was involved in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and with the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. It is believed that Witness can testify to the defamation of Plaintiff by Defendant Board, Gantt, Bowers, himself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

84) Scott Murray, computer programmer, Chapin resident (emails, audio, documents) - Witness has published disparaging material against Plaintiff. It is believed that Witness was involved in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and with the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. It is believed that Witness can testify to the defamation of Plaintiff by Defendant Board, Gantt, Bowers, himself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

85) Julie Murray, Chapin resident - It is believed that Witness was involved in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and with the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. It is believed that Witness can testify to the defamation of Plaintiff by

Defendant Board, Gantt, Bowers, herself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

86) Susan Baker, Chapin resident (audio, video) – Witness was allowed by Defendant Board and Gantt to speak at Public Participation and demean Plaintiff by her by mocking her. It is believed that Witness was involved in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and with the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. It is believed that Witness can testify to the defamation of Plaintiff by Defendant Board, Gantt, Bowers, herself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

87) Matteo Macaloso, former Chapin High student (audio, video) – Witness was allowed by Defendant Board and Gantt to speak at Public Participation in a very threatening manner towards Plaintiff. It is believed that Witness was involved in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and with the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. It is believed that Witness can testify to the defamation of Plaintiff by Defendant Board, Gantt, Bowers, himself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

88) Terry Macaloso, Engineer, Chapin resident - It is believed that Witness was involved in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and with the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. It is believed that Witness can testify to the defamation of Plaintiff by Defendant Board, Gantt, Bowers, himself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

89) Bill Wolfe, Chapin resident (documents) - Witness was one of the original Plaintiffs in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of

Referendum and with the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. It is believed that Witness can testify to the defamation of Plaintiff by Defendant Board, Gantt, Bowers, himself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

90) Jack Wolfe, Chapin resident - It is believed that Witness was involved in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and with the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. It is believed that Witness can testify to the defamation of Plaintiff by Defendant Board, Gantt, Bowers, himself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

91) David Knight, former Town of Chapin attorney - It is believed that Witness was involved in the civil lawsuit Kim Murphy v. Margaret Stroud and D5 Ensuring the Implementation of Referendum and with the student group themed STOP THE LAWSUIT, BUILD OUR SCHOOLS. It is believed that Witness can testify to the defamation of Plaintiff by Defendant Board, Gantt, Bowers, himself and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

92) Lucius Cobb, Surveyor (documents) – Performed surveys on subject property and placed the county line as directed by Lexington County.

93) John Terry, Surveyor – Preliminary research of county line on Plaintiff's property. It is believed that Witness is communicating with Defendant Bowers and other Witness to help solve a boundary dispute between Paige Lee, Cherokee County and Spartanburg County.

94) Page Lee, Cherokee County – It is believed that Defendant Bowers and other Witnesses listed are involved with settling a boundary dispute between the property owner and

Cherokee and Spartanburg Counties. Hired Witness John Terry to perform survey and identify county boundary.

95) Moffatt Burriss, Richland County resident and co-Developer along with Plaintiff's husband of subject property and original 60-acre tract (documents, map) – Witness' address is listed in Defendants' documents in action to remove Plaintiff from board as a voter who would be impacted by the alleged county line established by Defendant Bowers and other Witnesses. It is believed that Witness will attest that he has not received notifications from any authority that there is an issue with his residency. It is also believed that Witness can testify to the defamation of Plaintiff by Defendant Board, Gantt, Bowers and others.

96) Suzanne Burriss, Richland County resident and wife of co-Developer along with Plaintiff's husband of subject property (documents, map) – Witness' address is listed in Defendants' documents in action to remove Plaintiff from board as a voter who would be impacted by the alleged county line established by Defendant Bowers and other Witnesses. It is believed that Witness will attest that she has not received notifications from any authority that there is an issue with her residency. It is also believed that Witness can testify to the defamation of Plaintiff by Defendant Board, Gantt, Bowers and others.

97) Richard Lindler, Neighbor – Witness assisted Plaintiff in attempting to locate county boundary.

98) Ann Spotts, Neighbor (documents, map, photo) – The Witness' deeds and plats show the county line and the county line corner on their property. It is believed that Witness will testify (and produce deeds) that Lee Harrell with Richland County Mapping verified at the site over a decade ago that the iron stake on her family's property is the same stake

(corner) noted in Statute and is also the same iron stake (I.P. OM) shown on their deeds and plats.

99) Harriett Nichols, Ann Spotts mother (documents, map, photo) - The Witness' deeds and plats show the county line and the county line corner on their property. It is believed that Witness will testify (and produce deeds) that Lee Harrell with Richland County Mapping verified at the site over a decade ago that the iron stake on her family's property is the same stake (corner) noted in Statute and is also the same iron stake (I.P. OM) shown on their deeds and plats.

100) Betty Monts, Next Door property owner (map)– It is believed that Witness will testify (and produce deeds) showing the location of the county line crossing her property.

101) Thurston Chavis, Neighbor in Plaintiff's subdivision (RC website, map) – It is believed that Witness will attest they he is a Richland County voter and taxpayer and would be impacted by the alleged county line established by Defendant Bowers and other Witnesses.

102) Judy Chavis, Neighbor in Plaintiff's subdivision (RC website, map) – It is believed that Witness will attest they she is a Richland County voter and taxpayer and would be impacted by the alleged county line established by Defendant Bowers and other Witnesses.

103) Lynn Koon, Neighbor (RC website, map) - It is believed that Witness will attest they she is a Richland County voter and taxpayer and would be impacted by the alleged county line established by Defendant Bowers and other Witnesses.

104) Senator Wes Hayes, Representative from the York County Area who serves on the NC/SC Boundary Commission – It is believed that the Witness would attest to the process to follow to determine the location of boundary line.

105) Rick Quinn – Representative from the Lexington County area and former representative from the Richland County area – It is believed that Witness will attest to having conversation with Defendant Bowers and that Witness stated Defendant Bowers had no authority to remove a voter. It is also believed that Witness will attest to Plaintiff being bullied, berated and defamed by Defendant Board, Gantt and others even before her election to the board and to their aversion of Plaintiff's presence on the Board.

106) Kevin Dietrich, Investigative news reporter (articles, video) – Witness attended several board meetings, wrote articles about them and published videos recordings. It is believed that Witness can attest to several years of Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

107) Al Dozier, New reporter - It is believed that Witness will testify to defamation of Plaintiff by Defendant Board and Gantt and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

108) Shireese Bell, News reporter - It is believed that Witness will testify to years of Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and to Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

109) Rod Shealy, News reporter and political consultant - It is believed that Witness will testify to years of Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

110) Ron Kelderman – Videotaped several board meetings. It is believed that Witness will testify to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt, and others and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

111) Col. Tom Fincher, Chapin resident – Witness attended January 14, 2013 board meeting. It is believed that Witness will attest to Defendant Gantt prohibiting Plaintiff to respond to his statement regarding Plaintiff's residency.

112) Pat Donlon (emails) - Witnesses is involved in the community and has attended many board meetings. It is believed that Witness will attest to what he believes are years of mis-management and misrepresentations by Defendant Board, Gantt and others. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board.

113) George Burbach, Chapin Resident (audio) - Witnesses is involved in the community and has attended many board meetings, including prior to Plaintiff's election to the board. It is believed that Witness will attest to what he believes are years of mis-management and misrepresentations by Defendant Board, Gantt and others. It is also believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board. It is also believed that Witness will testify that community members attending board meetings were berated and talked down to by members of Defendant board and Gantt.

114) Sue Burbach, Chapin Resident (audio) – Witnesses is involved in the community and has attended many board meetings, including prior to Plaintiff's election to the board. It is believed that Witness will attest to what she believes are years of mis-management and misrepresentations by Defendant Board, Gantt and others. It is also believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and their aversion to her presence on the Board. It is also believed that Witness

will testify that community members attending board meetings, including herself were berated and talked down to by members of Defendant board and Gantt.

115) Al Billings, Chapin Resident (audio)- Witnesses has attended many board meetings. It is believed that Witness will attest to what he believes are years of mis-management and misrepresentations by Defendant Board, Gantt and Others. It is also believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board. It is also believed that Witness will testify that community members attending board meetings were berated and talked down to by members of Defendant board and Gantt.

116) Jean Threatt – Witness has attended several board meetings. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board. It is also believed that Witness will testify that community members attending board meetings were berated and talked down to by members of Defendant board and Gantt.

117) Wayne Duncan, Chapin resident – Witness is involved in the community and has attended many board meetings, including prior Plaintiff's election to board. It is believed that Witness will attest to what he believes are years of mis-management and misrepresentations by Defendant Board, Gantt and others. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board. It is also believed that Witness will testify that community members attending board meetings were berated and talked down to by members of Defendant board and Gantt.

118) Ed Yates (audio, letter) - Witness is involved in the community and has attended many board meetings, including prior Plaintiff's election to board. It is believed that Witness will attest to what he believes are years of mis-management and misrepresentations by

Defendant Board, Gantt and others. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board. It is also believed that Witness will testify that community members attending board meetings, including himself were berated and talked down to by members of Defendant Board and Gantt.

119) Sam Delaney, Chapin resident (email) - Witness is involved in the community and has attended many board meetings, including prior Plaintiff's election to board. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board. It is also believed that Witness will testify that community members attending board meetings were berated and talked down to by members of Defendant board and Gantt.

120) Don Byers, Chapin resident – Witness is involved in the community and has attended many board meetings, including prior Plaintiff's election to board. It is believed that Witness will attest to what he believes are years of mis-management and misrepresentations by Defendant Board, Gantt and others. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board.

121) Stuart Stout - Witness is involved in the community and has attended many board meetings, including prior Plaintiff's election to board. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, and others and Defendant Board's and Gantt's aversion to her presence on the Board.

122) Don Carlson, Chapin resident – Witness is involved in the community and has attended many board meetings, including prior Plaintiff's election to board. It is believed that Witness will attest to what he believes are years of mis-management and

misrepresentations by Defendant Board, Gantt and others. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board.

123) Lilyan Carlson, Chapin resident - Witness is involved in the community and has attended many board meetings, including prior Plaintiff's election to board. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board.

124) Preston Baines, Chapin resident - Witness is involved in the community and has attended several board meetings. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board.

125) Lil Mood, Chapin resident - Witness is involved in the community and has attended several board meetings. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board.

126) Kyle Matheny, Former Chapin High student - Witness has attended several board meetings. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board.

127) Justin Snowden, Former Chapin High Student - Witness has attended several board meetings. It is believed that Witness will attest to Plaintiff being berated, defamed and bullied by Defendant Board, Gantt and others and Defendant Board's and Gantt's aversion to her presence on the Board.

128) Marissa Hutton, Former Chapin High Student and Mascot – Witness can testify that during the groundbreaking ceremony at the school, one of the Defendant Board members intentionally reached over and took shovels that were placed in front of Plaintiff and Mascot and moved them to her other side, so that Plaintiff would not have a shovel.

129) Bill Chao, District 5 Resident (emails, documents) – It is believed that Witness will testify that action by Defendant Board, Gantt and others used bullying tactics and were under-handed when they threatened condemnation of Witness' property. .

130) Roger Upchurch (email) - It is believed that Witness will testify that action by Defendant Board, Gantt and others used bullying tactics and were under-handed when they threatened condemnation of Witness' parents property.

131) Toby Ward, Attorney – It is believed Witness will testify to facts surrounding Defendant Board's, Gantt's and other's action to construct a school on top off the adjoining property owner's easement.

132) Roger Hall – It is believed Witness will attest to facts surrounding Defendant Board's, Gantt and others action and mis-representations relating to construction of a school on property adjacent to Witness' property causing damage.

133) Jimmy Aycock, Procurement Services, SC Budget and Control Board (emails) – It is believed Witness will attest to Defendant Board, Gantt and others relating to a multitude of procurement violations.

134) Stewart Mungo – It is believed that Witness will testify that he had discussion with former Board member Carol Sloop in regard to Plaintiff's residency when she ran for school board in 2004.

135) Michael Bishop (emails) – Witness has sent emails to Plaintiff that defend Defendant Board and Gantt and have been threatening in nature, including relating to Plaintiff's residency.

136) Jay Murphy, Plaintiff's husband – Witness can attest to information related to his and the Plaintiff's residency. Witness can also attest to the defamation of Plaintiff, the humiliation, bullying, stress and anxiety placed on him, his children and the Plaintiff due actions of Defendant Bowers and Gantt and actions of Defendant Board and others.

137) Kathleen Wood, Chapin Resident – It is believed that Witness will attest that she informed Plaintiff that Witness and two former board members now acknowledge that information Plaintiff had been representing in regard to the bond referendum and school facilities had been accurate and now see that Defendant Board and Gantt were trying to shift the blame of the their wrongdoings and mis-representations to Plaintiff.

138) Bill Morgan, Chapin resident – Witness has a daughter-in-law who works for the District. It is believed that Witness will testify that actions by the Defendant Board and Gantt and actions Defendant Board allowed "crucified" Plaintiff's children.

139) Jeff Herring, Chapin resident and former school board candidate – Witness witnessed how Defendant Board, Gantt and Gantt's daughter, Elizabeth Perla attacked Plaintiff in order to discredit Witness. Witness attended a school board candidate orientation where Plaintiff was asked to leave the meeting and escorted out by a resource officer.

140) Melissa Cole, Chapin resident and former school board candidate – Witness witnessed how Defendant Board, Gantt and Gantt's daughter, Elizabeth Perla attacked Plaintiff in order to discredit Witness. It is believed that Witness will testify to similar attacks and defamation on Witness' character by Defendant Board Gantt and others.

141) Bob Kuenzli, District 5 Resource Officer (audio) – Witness escorted Plaintiff out of a school board candidate orientation.

142) Eddie Wilder, Chapin resident and real estate salesman – In a phone conversation in regard to the Wetlands appeal, Witness called Plaintiff derogatory names and stated that Witness had "cost me a lot of money."

143) Dan Neal, Program and Construction Consultant – It is believed Neal can testify to construction issues at Chapin High and other District 5 schools and additional cost alleged to have been caused by Plaintiff. It is also believed that Witness can attest to defamation against Plaintiff by Defendant Board, Gantt, Bowers and others and Gantt and Defendant Board's and Gantt's aversion to Plaintiff's presence on the Board.

144) Lexington-Richland District Employee(s) responsible uploading documents to District 5 website and/or broadcasting them to the media, schools, parents, community members, students or other parties.

145) District 5 Employee(s) who compiles, edits, broadcasts and/or uploads Board meeting audio tapes and/or videos to the District 5 website – It is believed that Witness(es) can attest to audio/video tapes of Board meetings being altered to delete comments, questions or other remarks made by Plaintiff and Defendant Board and Gantt.

146) Lexington-Richland District 5 Custodian(s) of Records.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kim Murphy, Plaintiff, v. Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Robert Bowers, in their individual capacities, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No.: 2014-CP-40-4666 **PLAINTIFF'S SUPPLEMENTAL ANSWERS TO DEFENDANT BOBBY MERLE BOWERS'S INTERROGATORIES**

TO: PATRICK J. FRAWLEY, ESQ., ATTORNEYS FOR DEFENDANT BOBBY MERLE BOWERS.

Plaintiff through her undersigned counsel responds as follows:

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to have knowledge concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Answer to Interrogatory No. 1:

1) Michael Cinnamon- former Director of Richland County Election Commission.

2) Chelle Epps- works as the Manager of Richland County Voter Registration.

2. For each person known to the parties or counsel to have knowledge concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements taken from such witnesses.

Answer to Interrogatory No. 2:

Upon information and belief, Mr. Cinnamon and Mrs. Epps have general knowledge as to the events surrounding the Plaintiff's boundary dispute, her communications with their respective offices, and any decisions that were made by Richland County as it relates to the boundary dispute.

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

BY: _____

J. Lewis Cromer (#1470)
Ashley C. Story (#100578)
1418 Laurel Street, Suite A (29201)
Post Office Box 11675
Columbia, South Carolina 29211
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Fax 803-799-9533

Attorneys for Plaintiff

January 6, 2016

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 only.

_____
Chelsea Rikard

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

- -

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APPEARANCES:

ATTORNEYS FOR THE LEXINGTON RICHLAND SCHOOL DISTRICT FIVE:

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(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

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

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.

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.

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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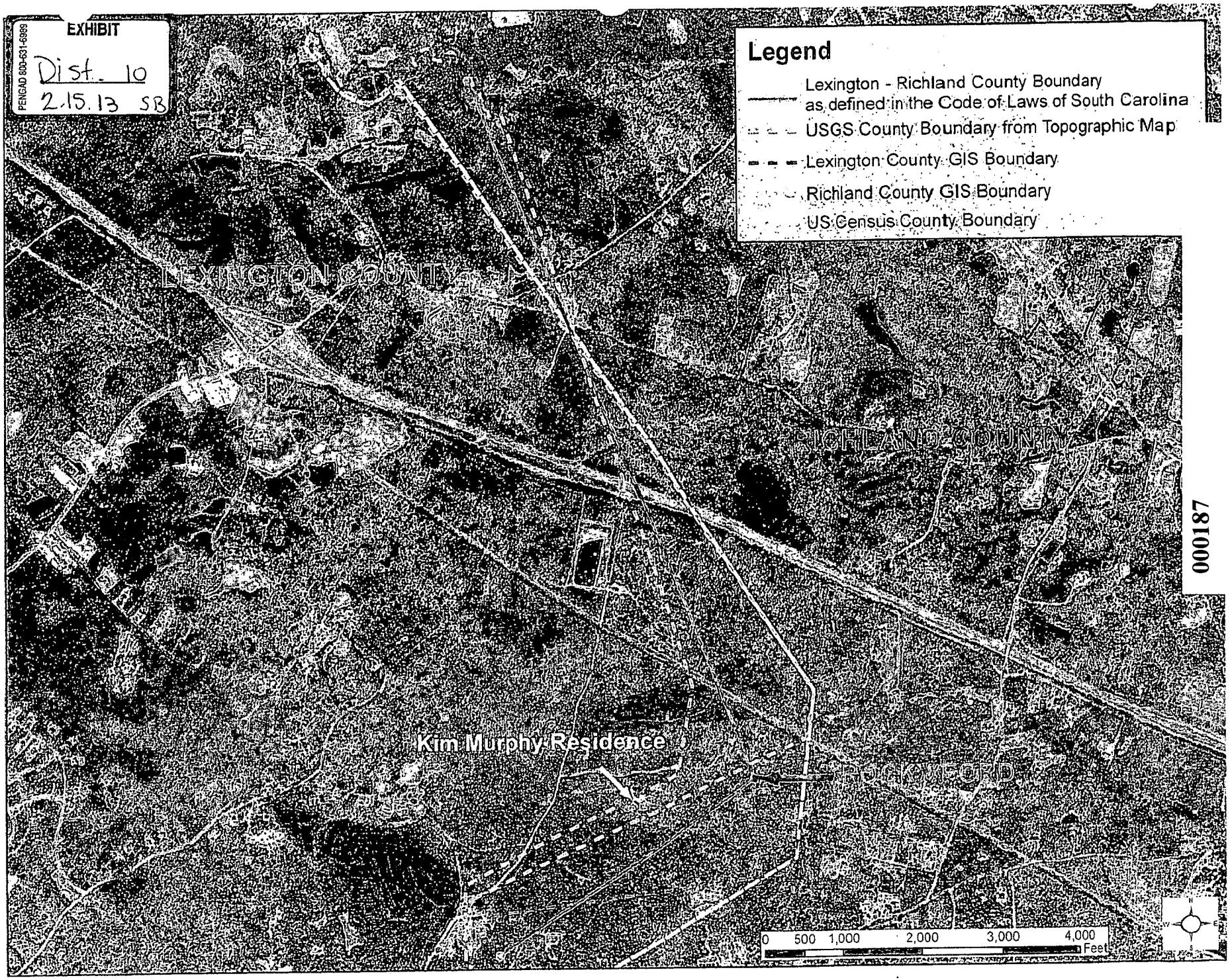

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Exhibit 10 from February 15, 2013 Hearing

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

Kim Murphy,)
Plaintiff,)

vs.)

Richland Lexington School District No. 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers, in their individual capacities,)
Defendants.)

COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2014-CP-40-4666

MOTION AND ORDER INFORMATION FORM AND COVERSHEET

Plaintiff's Attorneys: J. Lewis Cromer, Bar No. 1470 Chelsea R. Rikard, Bar No. 102355 J. Lewis Cromer & Associates, LLC P.O. Box 11675, Columbia, SC 29211 **Defendant Bower's Attorney:** Patrick J. Frawley Davis Frawley, LLC 140 E. Main Street, Lexington, SC 29072	**Defendant Board's Attorney:** David L. Morrison Morrison Law Firm, LLC 7453 Irmo Drive, Suite B, Columbia, SC 29212 **Defendant Gantt's Attorney:** Michael H. Montgomery Montgomery Willard, LLC P.O. Box 1186, Columbia, SC 29211

☒ **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: Plaintiff's Notice and Motion to Reconsider Judgment on Appeal
Estimated Time Needed: 30 minutes 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.

J. Lewis Cromer
Signature of Attorney for ☒ Plaintiff /☐ Defendant

April 26, 2016
Date submitted

SECTION III: Motion/Order Fee

☒ PAID – AMOUNT: $25.00

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, v. Richland-Lexington School District No. 5, Board of Trustees, Robert Gantt, and Robert Bowers, in their individual capacities Defendants.	IN THE COURT OF COMMON PLEAS CASE NO. 2014-CP-40-4666 **PLAINTIFF'S NOTICE AND MOTION TO RECONSIDER JUDGMENT ON APPEAL**

PLEASE TAKE NOTICE that Plaintiff, by and through her undersigned counsel, hereby moves pursuant to Rule 59(e), SCRCP, for an order altering or amending the Order granting the Defendants' Motions for Summary Judgement in the above-captioned matter. This motion for reconsideration is based on the following grounds:

PROCEDURAL HISTORY

Plaintiff filed the current action in the Richland County Court of Common Pleas on July 28, 2014. Plaintiff brought a cause of action for Defamation against Defendant Richland – Lexington School District No.5 Board of Trustees, and a cause of action for Civil Conspiracy against Robert Gantt and Robert Bowers. Defendants separately filed Motions after discovery was complete pursuant to Rules 12(b)(6) and 56 of the South Carolina Rules of Civil Procedure, seeking dismissal as to all of Plaintiff's claims. A hearing was held before the Honorable Doyet A. Early, III, Circuit Court Judge, on February 29, 2016. Judge Early entered an Order granting Defendant's Motions for Summary Judgment, which was filed with the Clerk of Court on or about April 13, 2016.

ARGUMENT FOR RECONSIDERATION

The Plaintiff is now seeking reconsideration of this Order by way of this motion and any additional arguments that may be supplemented to the Court. The Plaintiff intends to rely on the pleadings, the memorandum in support previously filed with the Court, arguments raised in the hearing, and any additional arguments as set forth herein or provided in additional memorandum in support to be filed with the Court.

I. Plaintiff provided ample evidence demonstrating her claim for civil conspiracy against Defendants Gantt and Bowers.

Plaintiff's Memorandum in Opposition to Defendants' Motions to Dismiss and for Summary Judgment presented an abundance of evidence supporting her claim that the Defendants Gantt and Bowers combined together with the intent to cause her harm, including special damages. Moreover, Plaintiff's Memorandum and arguments in the hearing identified genuine issues of material facts, thus demonstrating the existence of triable issues.

Plaintiff offered evidence proving that Gantt intentionally waited to raise the issue of Plaintiff's 'qualifications' as a Board member, until it was most advantageous for him, evincing that Gantt viewed Plaintiff's actions in promoting transparency and insuring efficiency as problematic and an impediment to his agenda. Ultimately, the evidence presented in her memorandum and at the hearing supports that Gantt and Bowers met well prior to taking 'official' action, and planned their course of action against Plaintiff. Plaintiff offered that this conduct qualified as star chamber meetings due to the fact that Gantt failed to include or notify his fellow Board members of his actions for approximately 4 months; thus demonstrating that Gantt engaged in conduct that fell outside the proper exercise of his public position. The evidence further proves that Bowers subsequently accepted Gantt's request and performed what amounted to a substandard investigation, which resulted in an uncorroborated determination. Gantt then used that

determination to effectuate his plan of removing Plaintiff from the Board of Trustees. Bowers even took the conspiracy one step further by attempting to have Plaintiff removed from tax and voter rolls in Richland County. Plaintiff offered sufficient evidence that she suffered special damages as a result of Gantt and Bowers' actions. Plaintiff specifically discussed that she has been ostracized and black listed in that she was singled out from her fellow board members for an investigation in which she was unable participate, and she has been placed on a political black list in that she cannot conduct a successful campaign in either county. *See, Austin v. Torrington Co.*, 810 F.2d 416 (4th Cir. 1987).

Additionally, Plaintiff's arguments presented triable issues, including severe inconsistencies in the testimony of Gantt, Bowers, and William Roberts, as well as whether the actions of Bowers and his office in failing to adhere to appropriate surveying standards or perform an adequate survey of Plaintiff's property were done for the purpose of causing Plaintiff harm. Specifically, Plaintiff's Memorandum identified that Bowers, Gantt, and William Roberts each testified differently in regards to how the issue of Plaintiff's residency was brought to the attention of the other. This fact is material because the manner in which Plaintiff's residency was brought to the attention of Gantt and Bowers evinces their 'acting in combination' as well as their intent in so combining with one another; such dispute is one that ought to be resolved by a jury.

Plaintiff also identified the genuine issue of Bowers' and his offices' deviation from standard practice in their treatment or conduct towards Plaintiff and her property. Plaintiff's expert offered a written report and testimony, which succinctly outlined the standards and practices that Bowers failed to use when identifying in which County Plaintiff resides. These facts support Plaintiff's contention that Bowers' deviations and failures are actions that fall outside of the course and scope of his duties.

Based on the foregoing, Plaintiff avers that she offered sufficient evidence from which a jury could circumstantially conclude that Defendants Gantt and Bowers acted in combination for the intent to cause her harm. *See, Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 358 S.E.2d 150, (Ct. App. 1987) Therefore, Plaintiff respectfully requests that the grant of Summary Judgement as to her claim for civil conspiracy should be reversed.

II. Plaintiff provided ample evidence demonstrating that Defendant Gantt defamed her.

Plaintiff's Memorandum in Opposition and her arguments at the hearing offered sufficient evidence demonstrating that Defendant Gantt defamed her.

Most important to her claim for defamation is that Plaintiff is not a resident of Lexington County, and any statement or conduct insinuating otherwise is patently false. Currently, Plaintiff is treated by all appropriate offices and agencies as a resident of Richland County. Plaintiff offered evidence that while she is a public official, Defendant Gantt's statements were false and were made with actual malice. Specifically, Plaintiff did not contend that Gantt uttered a false statement by merely raising the concern of Plaintiff's residency; rather she contends that Gantt's publication that Plaintiff does not reside in Richland County is false. Plaintiff offered evidence supporting that Gantt made these statements with a high degree of awareness that they were false, including that he was aware that Bowers' office failed to sufficiently and appropriately determine Plaintiff's county of residence. Specifically, Gantt should have doubted the truth of his words because he knew the basis for his statements – the report by Bowers- was rooted in their conspiracy.

Moreover, Plaintiff offered sufficient evidence establishing that Gantt's statements qualified as defamatory *per se*. Specifically, Gantt's comments regarding Plaintiff's lack of qualifications to serve as a representative of Richland County and his "hope that she would do the right thing and resign," charged Plaintiff with a commission of a crime of moral turpitude and

unfitness in her profession. Gantt's statement created the inference that by failing or refusing to resign Plaintiff would in essence be doing the *wrong* thing and would be defrauding her constituents of a 'qualified' Board member. Further, the statement charges Plaintiff with being unfit for her profession because by accusing her of being unqualified to serve on the Board as result of being a resident of Lexington County - a statement that is also false – Gantt is charging her with being unfit to serve. *See, Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 511, 506 S.E.2d 497, 502 (1998); *see also, Tyler v. Macks Stores of South Carolina*, 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980). The terms unfit and unqualified are synonymous.

Lastly, Gantt's comments were not made under a cloak of privilege; rather, his comments were beyond the scope of the occasion or his duty as Chairman of the Board. Plaintiff highlighted in her memorandum and arguments at the hearing that Gantt did not limit his comments to those made in the course of any Board hearing. Instead, Gantt made comments to the attending media. His comments to the media were extraneous, voluntary, and were not made in the purview of the School Board meeting. While Gantt does have a duty to openly communicate with his Board – a duty which he violated by failing to inform them of his investigation with Bowers – he has no similar duty to communicate with the media. Additionally, his comments made during the Board meeting, to the effect that Plaintiff should do the right thing, fall outside any necessity to inform the Board of Bowers' report. Rather than merely informing the Board and the attending public of Bowers' findings, Gantt took it upon himself to publically burden Plaintiff with the obligation to resign. Thus, Gantt unveiled himself of any privilege.

Based on the foregoing, Plaintiff avers that she presented sufficient evidence demonstrating that Defendant Gantt defamed her. Therefore, Plaintiff respectfully requests this Court to reverse the grant of Summary Judgement as to her claim for defamation.

CONCLUSION

This motion is requests the Court to reconsider the specific arguments made in Plaintiff's Memorandum in Support of Plaintiff's Motion for Summary Judgment and in Opposition to Defendant's Motion for Summary Judgment and other documents provided to the Court at the hearing. This motion is further made pursuant to the South Carolina Rules of Civil Procedure, the pleadings, and all applicable statutory law and common law. This motion is made in good faith, supported by the sworn testimony and documents discovered in this case, supporting memoranda of law to be filed by plaintiffs' counsel prior to the hearing, and any memoranda or affidavits which they may file with the Court in support of this Motion or any arguments they may advance at any hearing.. Plaintiff respectfully requests the Court reconsider its Order and permit this action to proceed to a jury.

Respectfully Submitted,

J. LEWIS CROMER & ASSOCIATES, LLC

BY: _____

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Attorneys for Plaintiff

April 24, 2016
Columbia, South Carolina

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-40-004666

Kim Murphy

PLAINTIFF(S)

Richland Lexington School District 5 Board of Trustees, Bobby Merle Bowers and Robert Gantt

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. ☒ See Page 2 for additional information.

☐ **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.

RICHLAND COUNTY FILED 2015 APR 13 AM 8:52 C.C.P. & G.S. RICHLAND CO. S.C.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: The Court GRANTS each of the Defendant's Motions for Summary Judgment. Plaintiff's Complaint is dismissed in its entirety with prejudice.

RECEIVED APR 20 2015 J. Lewis Cromer & Associates, L.L.C.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		$
		$
		$

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**

SCANNED

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 13 day of April 20 16 to attorneys of record or to parties (when appearing pro se) as follows:

J. Lewis Cromer #1470
Ashley C. Story #100578
Chelsea R. Rikard #102355
ATTORNEY(S) FOR THE PLAINTIFF(S)

David L. Morrison #4101
Patrick J. Frawley #2118
Michael H. Montgomery #4034
ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Jeanette W. McBride

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Refer to attached Order for the Court's complete decision.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	CIVIL ACTION NO: 2014-CP-40-004666
Kim Murphy,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER GRANTING DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**
	)	
Richland Lexington School District 5 Board of Trustees, Bobby Merle Bowers, and Robert Gantt,	)	
	)	
Defendants.	)	
	)	

RICHLAND COUNTY
FILED
2016 APR 13 AM 9:52
JEANETTE W. WALKER
CLERK OF COURT

This matter is before the Court on Defendant Bobby Merle Bowers' Motion to Dismiss and Motion for Summary Judgment, Defendant Robert Gantt's Motion for Summary Judgment and Defendant Richland Lexington School District 5's Motion for Summary Judgment, pursuant to Rule 12 and Rule 56 of the South Carolina Rules of Civil Procedure. On February 29, 2016, this Court heard lengthy arguments on the above motions. For the reasons stated below, based upon the arguments of counsel, the lengthy written memoranda submitted by the parties, the deposition and other evidence submitted to the Court and the record in the case, this Court finds that each of the Defendants' Motions for Summary Judgment should be granted and, because evidence was submitted and reviewed, Bower's Motion to Dismiss is not ruled on but merged into his Motion for Summary Judgment.

I. BACKGROUND

Plaintiff Kim Murphy, a former Member of the Board of School District 5 of Lexington and Richland Counties (the "Board" or "School Board"), brings this suit against Defendants. In her Complaint, Mrs. Murphy alleges that Robert Gantt and Bobby Merle Bowers engaged in a

civil conspiracy designed to cause her to resign or be removed from her position on the School Board. She also alleges that Mr. Gantt and the Board of Trustees of School District 5 defamed her, by publishing that she was a resident of Lexington County, rather than Richland County from where she was elected. She further argues in her brief and during the motion hearing that Mr. Gantt and the Board acted in such a way as to create an innuendo or inference that she was engaging in misconduct or an illegal act or that she had been aware that she did not live in Richland County, but had acted deceptively to seek and obtain a Richland County seat on the School Board. Mrs. Murphy sought this seat on the School Board on two occasions.

During late 2012, the South Carolina Office of Research and Statistics (the "Office") discovered in a routine examination that Mrs. Murphy lived in Lexington County rather than Richland County, which was the seat to which she had been elected. Mr. Bowers was the Director of the Office at that time. The Office notified Mr. Gantt of this concern. Mr. Gantt consulted counsel for the School District. Under the guidance of the School District's attorneys, a request was made with the Office for a formal determination of Mrs. Murphy's residency. The Office formally determined that Mrs. Murphy lived in Lexington County. Mr. Gantt again sought the advice of counsel for the District, who created a process designed to fully afford Mrs. Murphy due process on the issue. This resulted in two separate proceedings where Mrs. Murphy and her attorneys had the opportunity to appear and present whatever evidence she had supporting the fact that she resided in Richland County and challenging and refuting the methods and finding of the Office. The first proceeding was a hearing before the Hon. Thomas Cooper, serving as a special referee. Judge Cooper heard the issues and issued a report and recommendation to the Board. His findings were that Mrs. Murphy lived in Lexington County and was legally ineligible to serve on the Board as an elected representative of Richland County.

After his report and recommendation, a second hearing took place before the Board. Again, Mrs. Murphy was provided an opportunity to present evidence in opposition to the findings of the Office and its methods of making those findings. At the conclusion of this process, the Board found that Mrs. Murphy lived in Lexington County and was, therefore, ineligible to serve on the School Board as a Richland County representative. She was removed from the School Board as her residence disqualified her from holding a Richland County seat. She appealed the Board's decision to the Circuit Court, which affirmed the decision of the School Board. She later sought reconsideration from the Circuit Court which upheld its earlier decision. Her counsel informed the Court that they have filed a notice of appeal of the Circuit Court's findings.

After the Circuit Court upheld the School Board's decision, Mrs. Murphy filed this suit which alleges, *inter alia*, causes of action against Bobby Bowers and Robert Gantt for civil conspiracy and causes of action against Robert Gantt and the School Board for defamation. Mrs. Murphy alleges that Mr. Gantt and Mr. Bowers, who she admits were both acting in their official capacities, somehow engaged in a conspiracy to harm her by having her removed from the School Board. Mrs. Murphy also alleges that Mr. Gantt and the School Board defamed her by questioning her qualifications to serve on the School Board based upon the fact that she did not reside in the county from which she was elected.

Defendant Bowers moved to dismiss the case for failure to state a claim. All three defendants moved for summary judgment on multiple grounds alleging, *inter alia*, that there were no material questions of fact in dispute from which Mrs. Murphy could have a valid cause of action against any of them.

II. STANDARD FOR SUMMARY JUDGMENT

Summary judgment is appropriate when there is no genuine issue of material fact such that the moving party is entitled to prevail as a matter of law. Rule 56(c), SCRCP; *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *David v. McLeod Reg'l Med. Ctr.*, 367 S.C. 242, 247, 626 S.E.2d 1, 3 (2006). The purpose of summary judgment is to "expedite the disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Pye v. Aycock*, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997).

The party seeking summary judgment has the initial responsibility of demonstrating the absence of a genuine issue of material fact. With respect to an issue upon which the non-moving party bears the burden of proof, as in this case, this initial responsibility "may be discharged by 'showing' - that is, pointing out to the district court - that there is an absence of evidence to support the nonmoving party's case." *Celotex Corporation v. Catrett*, 477 U.S. 317, 325, 106 S.Ct. 2548, 2554, 91 L.Ed.2d 265, 275 (1986). The moving party need not support its motion with affidavits or other similar materials negating the opponent's claim.

Once the moving party carries its initial burden, the opposing party must, under Rule 56(e), "do more than simply show that there is some metaphysical doubt as to the material facts" but "must come forward with 'specific facts showing that there is a genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87, 106 S.Ct. 1348, 1356, 89 L.Ed.2d 538, 552 (1986) (emphasis in original). The opposing party must "go beyond the

pleadings and by. . . affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Celotex*, 477 U.S. at 324, 106 S.Ct. at 2553.

[T]he plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. *Celotex*, 477 U.S. at 322, 106 S.Ct. at 2552, 91 L.Ed.2d at 273.

Accordingly, once Defendant shows the absence of proof on an essential fact of Plaintiff's case, Plaintiff has the burden of presenting evidence of that fact to the Court. If Plaintiff fails to present any competent, admissible evidence that will prove that fact, Defendant is entitled to summary judgment.

III. DISCUSSION

A. Mr. Bowers' Motions to Dismiss and for Summary Judgment

The Plaintiff's claim against Defendant Bobby Bowers is her second cause of action sounding in civil conspiracy. *See* Complaint, pp. 6-8, ¶¶26-31.

A civil conspiracy is a combination of two or more persons joining for the purpose of injuring and causing special damage to the plaintiff. *McMillan v. Oconee Mem'l Hosp., Inc.*, 367 S.C. 559, 564, 626 S.E.2d 884, 886 (2006). Civil conspiracy consists of three elements: 1) a combination of two or more persons, 2) for the purpose of injuring the Plaintiff, 3) which causes the Plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989). *Cf., Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 117, 682 S.E.2d 871, 875

(Ct. App. 2009) (If a Plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed). It is essential that a plaintiff prove all of these elements in order to recover. *Lyon v. Sinclair Refining Co.*, 189 S.C. 136, 200 S.E. 78 (1938). "[I]n order to establish a conspiracy, evidence, direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987); *accord. Cowburn v Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct. App. 2005).

Defendant Bowers initially argues that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against him upon which relief can be granted, relying upon SCRCP Rule 12(b)(6) and *S.C. Code Ann.* §15-78-70 of the South Carolina Tort Claims Act, asserting that Bowers should not be named individually as a Defendant unless the Plaintiff alleged that Bowers acted outside his official duties, with actual fraud, actual malice, intent to harm, or a crime of moral turpitude, which are the five exceptions set forth in §15-78-70. However, Bowers conceded at oral argument that the requisite elements for civil conspiracy include an intent to harm; and since the sole cause of action against Bowers includes an allegation meeting one of the five exceptions, Defendant's argument for 12(b)(6) dismissal fails.

Bowers further argues that, for summary judgment purposes, there is no genuine issue of material fact. At all times relevant to the matters alleged in the Complaint, Bowers acted within the course and scope of his official duties as Director of Mapping Services for the South Carolina Revenue and Financial Affairs Office, in good faith and without conduct constituting actual fraud, actual malice, intent to harm, or a crime of moral turpitude. Bowers had no specific intent

or purpose to injure the Plaintiff, and the Plaintiff has no evidence establishing the requisite elements of her civil conspiracy claim against Bowers.

Having considered the material submitted by Plaintiff in opposition to Bowers' Motion for Summary Judgment, I find and conclude that there is no genuine issue of material fact but that Bowers had no prior relationship or alliance with Defendant Robert Gantt for purposes of conspiring against Plaintiff, and that there is no evidence of prior conflict or animus between Bowers and Plaintiff that could reasonably be interpreted as leading to an intent to harm Plaintiff. I further find and conclude that there is no evidence that Plaintiff has suffered special damages which she attributes to a civil conspiracy, which is a requisite element of the cause of action. Finally, I further find and conclude from the un-contradicted deposition testimony of Will Roberts and Alan-Jon Zupan, both of whom worked for Bowers' agency and actually did the work resulting in the finding that Plaintiff resided in Lexington County, which finding was only published by Bowers as the Director of the agency, that Roberts and Zupan did their work correctly, with no one instructing them to do anything in the process improperly or with a particular end result in mind.

I, therefore, find and conclude that Defendant Bobby Bowers' Motion for Summary Judgment should be granted, and Plaintiff's claim against him dismissed with prejudice.

B. Mr. Gantt's Motion for Summary Judgment

Plaintiff's claims against Defendant Robert Gantt are included in her first cause of action for defamation, *see* Complaint, pp. 5-6, ¶¶19-25, and her second cause of action alleging civil conspiracy involving Robert Gantt and Bobby Bowers, *see* Complaint, pp. 6-8, ¶¶26-31.

i. Plaintiff's Claim for Civil Conspiracy against Robert Gantt

Mr. Gantt moves for summary judgment on multiple grounds, including that Plaintiff is unable to adduce evidence sufficient to create a genuine issue of material fact such that a trier of fact might conclude that he was engaged in a civil conspiracy with Mr. Bowers as a matter of law and that the Plaintiff has no evidence establishing the requisite elements of her civil conspiracy claim against Gantt. Gantt further argues that each of his activities in this case was undertaken solely in his capacity as the School Board Chairman and that he cannot be liable as a result of the fact that he was acting in his official capacity. He points out that Plaintiff has been unable to identify any action on his part that was done outside his role as School Board Chairman.

The elements of civil conspiracy and discussion, *supra*, in relation to Bowers' motion are equally applicable as it relates to Mr. Gantt. Moreover, it is significant that neither Mrs. Murphy, nor any other witness, has offered any evidence whatsoever that Mr. Gantt and Mr. Bowers engaged in any conduct except for the proper exercise of their legitimate public positions in the handling of the determination of the location of her residence. Moreover, their own uncontradicted testimonies clearly indicate that they had no relationship, no mutual desire or even any reason to act jointly to cause her harm.

Having considered the material submitted by Plaintiff in opposition to Gantt's Motion for Summary Judgment on Plaintiff's civil conspiracy claims against him, I find and conclude that there is no genuine issue of material fact that Gantt had a prior relationship or alliance with Defendant Bobby Merle Bowers for purposes of conspiring against Plaintiff. I also find that Plaintiff cannot proffer any evidence of any combination between Mr. Gantt and Mr. Bowers for the purpose of injuring her. She has

failed to produce any evidence that there was communication between them other than a single telephone conversation, a meeting where they were present with counsel for the School District and members of Mr. Bowers' staff, and the official letter asking for a determination and the determination letter. There is nothing in these interactions from which a fact finder, as a matter of law, could even circumstantially conclude that they engaged in an alliance or combination for the purpose of causing injury to Plaintiff. Likewise, there is no evidence that Bowers and Gantt acted in any way with an animus or intent to harm Plaintiff or that Plaintiff has suffered special damages which she attributes to a civil conspiracy, all being the requisite elements of the cause of action.

Thus, she is unable to offer anything that creates even a circumstantial inference necessary to survive summary judgment as to any element of her cause of action for civil conspiracy against Mr. Gantt. I, therefore, find and conclude that Defendant Robert Gantt's Motion for Summary Judgment on Plaintiff's civil conspiracy cause of action should be granted, and Plaintiff's claim against him dismissed with prejudice.

ii. Plaintiff's Claim for Defamation against Robert Gantt

Mr. Gantt moves for summary judgment on multiple grounds, including that there is no material question of fact from which a trier of fact could conclude as a matter of law that Gantt made a false statement about Plaintiff with the knowledge of its falsity or with reckless disregard for its truth. He further asserts that his statements were made in his capacity as School Board Chairman and that, as such, they were subject to a qualified privilege.

1. Plaintiff is unable to establish that Robert Gantt had actual, Constitutional Malice in regard to any statement that he made as a matter of law.

The parties agree that Plaintiff is a public official. A public official is one who has a governmental role and whose "position in government has such apparent importance that the public has an independent interest in the qualifications and performance of the person who holds it." *Rosenblatt v. Baer*, 383 U.S. 75, 86, 86 S.Ct. 669, 15 L.Ed.2d 597 (1966). Such interest must go "beyond the general public interest in the qualifications and performance of all government employees." *Id.* "An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case." *Gertz v. Robert Welch, Inc.*, 418 U.S. 322, 344, 94 S.Ct. 2997, 3009, 41 L.Ed.2d 789, 808 (1974). For a public official, "society's interest . . . is not strictly limited to the formal discharge of official duties," but "extends to 'anything which might touch on an official's fitness for office.'" *Id.*. at 344-45 (quoting *Garrison v. Louisiana*, 379 U.S. 64, 77, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964). Here, whether or not Plaintiff is legally qualified to serve the citizens of Richland County if she lives in Lexington County fundamentally touches on her fitness for office. It is a matter of significant concern and statements about her residence and the qualifications emanating therefrom enjoy the highest level of constitutional protection.

Because she is a public official, Plaintiff has the burden to "prove by clear and convincing evidence" the Defendant made the statement with actual malice, which means "with the knowledge of its falsity or with reckless disregard for its truth." *Elder v. Gaffney Ledger*, 341 S.C. 108, 114, 533 S.E.2d 899, 902 (S.C. 2000) (citing *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S.Ct. 710, 726, 11 L.Ed.2d 686, 706 (1964). The courts have held not only that: A "reckless disregard: for the truth . . . requires more than a departure from reasonably prudent

conduct. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct. 1323, 1325, 20 L.Ed.2d 262, 267 (1968). There must be evidence the defendant had a "high degree of awareness . . . of probable falsity." *Garrison v. Louisiana*, 379 U.S. 64, 74 85 S.Ct. 209, 216, 13 L.Ed.2d 125, 133 (1964).

Our State Supreme Court has further held that "Whether the evidence is sufficient to support a finding of actual malice is a question of law." *Elder*, *supra* at 341 S.C. at 113, 533 S.E.2d at 901-902.

So, unlike a traditional libel or slander case where the defendant has the burden of proving the truth of the matter asserted, here, the Plaintiff has the burden of proving not only that the statements about which she complains were false, but that Mr. Gantt doubted the truth of his words or had a high degree of awareness that his statements were false. She must meet this burden of proof not by a mere preponderance of the evidence, but, rather, by clear and convincing evidence.

A person makes a defamatory statement if the statement tends to harm the reputation of another as to lower him in the estimation of the community or deter third persons from associating or dealing with him. *Fountain v. First Reliance Bank*, 398 S.C. 434, 730 S.E.2d 305 (S.C. 2012) (quoting *Fleming v. Rose*, 350 S.C. 488, 567 S.E.2d 857, 860 (S.C. 2002)). The tort of defamation, therefore, permits a plaintiff to recover for injury to his or her reputation as the result of the defendant's communications to others of a false message about the plaintiff. *Erickson v. Jones St. Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653, 664 (2006). A plaintiff must prove the following four elements to state a claim for defamation: (1) a false and defamatory statement was made; (2) the unprivileged publication was made to a third party; (3)

the publisher was at fault; and (4) either actionability of the statement irrespective of special harm or the existence of special harm caused by the publication. *Id.,* 629 S.E.2d at 664.

Mrs. Murphy is unable, as a matter of law, to sustain her burden of proof as it relates to Mr. Gantt. She cannot point to a false statement, an unprivileged utterance or any words that Mr. Gantt made that might tend to lower her in the estimation of the community. Furthermore, it is evident that any statements made by Mr. Gantt regarding Mrs. Murphy's residency were made with reliance on the findings of the Office within the State of South Carolina charged with making such determinations. With that reliance, it is impossible as a matter of law for Plaintiff to meet a burden of demonstrating that Mr. Gantt doubted the truth of his words or had a high degree of awareness that his statements were false. The efficacy of Mr. Gantt's conclusions has been bolstered by the fact that the Circuit Court for this Judicial Circuit has found that Mrs. Murphy resides in Lexington County. To survive this Motion for Summary Judgment, Plaintiff must point to evidence in the record from which the Court might infer that she is able to establish this set of facts. A review of the materials submitted by Plaintiff and the arguments of her counsel reveals that she is unable to meet this burden. Plaintiff cannot, as a matter of law, establish constitutional malice in this case. Mr. Gantt is entitled to summary judgment on her claim on that basis alone.

2. Plaintiff is unable to establish that Robert Gantt made any statement from which a finder of fact could determine that she might recover for defamation per se.

Plaintiff argues that words in statements made by Gantt to the effect that "he hoped she would do the right thing and resign" are somehow defamation *per se* also fail as a matter of law. Slander, which is involved here, "is actionable *per se* when the defendant's alleged defamatory statements charge the plaintiff with one of five types of acts or characteristics: (1) commission of

a crime of moral turpitude; (2) contraction of a loathsome disease; (3) adultery; (4) unchastity; or (5) unfitness in one's business or profession." *Goodwin v. Kennedy*, 347 S.C. 30, 552 S.E.2d 319, 322-23 (S.C. App. 2001). Mrs. Murphy's contentions in this realm somehow center around her desire to equate a statement reflecting that she is not qualified to serve on the School Board based upon her residency, with some criticism of the idea that she is, therefore, unfit in her business or profession. However, when asked specifically, "Has any board member (which includes Gantt) ever accused you of being unfit in your profession, in conjunction with this – this residency issue," she responded: "I can't recall at this time." She is, likewise, unable to point to any other statement that even hints, to a reasonable person, that she has been the victim of words that might constitute *per se* defamation.

A review of the materials submitted by Plaintiff and the arguments of her counsel relating to her claim of *per se* defamation reveals that she is unable, as a matter of law, to demonstrate a statement attributable to Robert Gantt which would provide evidence that she has a basis to recover against him for defamation *per se*. Mr. Gantt is, likewise, entitled to summary judgment on her claim on that basis alone.

3. **Robert Gantt's statements as board chair are privileged.**

A communication made in good faith on any subject matter in which the person communicating has an interest or duty is qualifiedly privileged if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable. *Constant v. Spartanburg Steel Prods., Inc.*, 316 S.C. 86, 447 S.E.2d 194 (1994); *Prentiss v. Nationwide Mut. Ins. Co.*, 256 S.C. 141, 181 S.E.2d 325 (1971). Communications between officers and employees of a corporation are qualifiedly privileged if made in good faith and in the usual course of business. *Conwell v. Spur Oil Co.*, 240 S.C. 170,

125 S.E.2d 270 (1962). The communications about which Plaintiff complains all occurred during a Board meeting and in Mr. Gantt's acting as Chair to conduct the Board's business. His correspondence about this matter and his statements to the public were prepared by the District's lawyers. He made them believing not only in their factual accuracy, but also having been assured that they were apropos to complete the business of the Board.

Moreover, Plaintiff is unable to demonstrate any statement made which goes beyond what a reasonable school board chair, in a similar situation, acting under the advice of counsel should publish. There is no evidence of defamation or unnecessary defamation of Plaintiff to overcome the qualified privilege attached to these communications. There is no evidence that Mr. Gantt "wandered beyond the scope of the occasion." *See, e.g. Woodward v. South Carolina Farm Bureau Ins. Co.*, 277 S.C. 29, 282 S.E.2d 599 (1981).

Mrs. Murphy has been unable to point to any statement made by Mr. Gantt outside of the purview of a School Board meeting or his duties as Chairman of the School Board. There is no fact, allegation or evidence that Mr. Gantt published any statement except in his capacity as Chair of the School Board. In essence, any statement that he published is, therefore, a statement of the Board and his statements were made in light not only of the necessary fact that as Chair he had a duty to communicate with the Board, but also in light of the fact that the Board must conduct its business in public.

A review of the materials submitted by Plaintiff and the arguments of her counsel relating to Mr. Gantt's assertion of a qualified privilege reveals that she is unable, as a matter of law, to demonstrate a statement attributable to Robert Gantt which would ordinarily be actionable, much less when considered in light of his qualified privilege. Mr. Gantt is entitled to summary judgment on her claim on that basis, as well.

I, therefore, find and conclude that Defendant Robert Gantt's Motion for Summary Judgment on Plaintiff's defamation claim should be granted, and Plaintiff's claim against him dismissed with prejudice.

Having found that Robert Gantt is entitled to Summary Judgment on each of Plaitniff's claims against him, all of Plaintiff's claims against him should be dismissed with prejudice.

C. School Board's Motion for Summary Judgment

Plaintiff's sole claim against the Richland Lexington School District 5 Board of Trustees is for defamation, see Complaint, pp. 5-6, ¶¶19-25.

The Board moves for summary judgment on grounds similar to Defendant Gantt. The Board contends that the Plaintiff has failed to prove the utterance or publication of a defamatory statement or innuendo, has failed to offer evidence of the falsity of any statement made and has failed to offer evidence of defamation *per se*. The Board's motion as to those matters is granted for the reasons stated above.

The Board also moves for summary judgment on the additional ground that it is immune from suit in an action alleging actual malice. The Board contends that it cannot be sued for defamation by Plaintiff because as a public figure, Plaintiff must prove actual malice, and the Board is immune from suit in an action asserting actual malice. The Court agrees and grants summary judgment to the Board.

As discussed above, Plaintiff Murphy must allege and prove constitutional actual malice in order to bring a defamation action. Whether the evidence supports a finding of actual malice is a question of law for the court. *Elder, supra* at 533 S.E.2d 901-902.

Actions against governmental entities such as the Board are governed by the South Carolina Tort Claims Act. Under the SCTCA, a governmental entity is immune from suit for actions involving actual malice:

> The governmental entity is not liable for a loss resulting from:
>
> (17) employee conduct outside the scope of his official duties or which constitutes actual fraud, ***actual malice***, intent to harm, or a crime involving moral turpitude;
>
> *South Carolina Code Ann.* § 15-78-60(17) (emphasis added).

A governmental entity is immune from suit for defamation by a public figure when actual malice is an element of the cause of action. Therefore, I grant the Board's motion for summary judgment on this additional ground as well.

The Board also contends that in the event that the Plaintiff intended to claim defamation for the Board's act of removing her from her seat, the Board is entitled to quasi judicial immunity. The Board argues that the Plaintiff cannot appeal the Board's decision and then also sue the Board for making that decision. The TCA also provides that:

> The governmental entity is not liable for a loss resulting from:
>
> (1) legislative, judicial, or quasi-judicial action or inaction;
>
> *South Carolina Code Ann.* § 15-78-60(1) (emphasis added).

It is well settled that School Boards act in a quasi-judicial capacity when holding hearings. *Laws v. Richland County School Dist. No.1*, 270 S.C. 492, 243 S.E.2d 192 (1978); *Calhoun v. Marlboro County School Dist.*, 2004 WL 6334910. Here, the Board referred the matter to a Special Referee for an evidentiary hearing and he issued a report and recommendation. The Board then held a hearing and made and exercised discretion in making a

determination based upon that report and recommendation and other evidence offered before the Board. Plaintiff Murphy was invited to participate at both proceedings.

Following the Board's decision, Plaintiff Murphy availed herself of the appellate remedy. She appealed the finding to the circuit court, which affirmed her removal. She has since appealed the circuit court order to the appellate courts. I find that the Board was acting in a quasi-judicial capacity, exercising reason and discretion in the adaptation of a means to an end and therefore the Board is entitled to quasi- judicial immunity for the act of determining that the Plaintiff was a resident of Lexington County and removing her from her seat on the Board. Therefore, summary judgment is granted to the Board with regard to its action of removing the Plaintiff from the Board.

D. CONCLUSION

For the foregoing reasons, the Court grants each of the Defendants' Motions for Summary Judgment. Accordingly, Plaintiff's Complaint is dismissed in its entirety with prejudice.

IT IS SO ORDERED.

Doyet A. Early, III, Judge
Court of Common Pleas
for the Fifth Judicial Circuit

Bamberg, South Carolina

~~March~~ April 8, 2016

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	OF THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND)	
)	
)	Docket No. 2014-CP-40-4666
Kim Murphy,)	
Plaintiff,)	
)	**NOTICE OF MOTION AND**
)	**MOTION TO DISMISS**
vs.)	**FOR FAILURE TO STATE A CLAIM AND**
)	**FOR SUMMARY JUDGMENT**
Richland-Lexington School District 5)	**ON BEHALF OF DEFENDANT**
Board of Trustees, Robert Gantt, and)	**BOBBY MERLE BOWERS**
Bobby Merle Bowers, in their individual)	
capacities,)	
)	
Defendants.)	
)	

TO: J. LEWIS CROMER, ESQUIRE, AND ASHLEY C. STORY, ESQUIRE, ATTORNEYS FOR PLAINTIFF KIM MURPHY:

YOU WILL PLEASE TAKE NOTICE that the Defendant Bobby Bowers, by and through his undersigned attorneys, will move before the presiding judge of the Court of Common Pleas of the Fifth Judicial Circuit on the tenth day after service hereof, or as soon thereafter as counsel may be heard, at the Richland County Judicial Center, 1701 Main Street, Columbia, South Carolina, for an Order dismissing the Plaintiff's claims against the Defendant Bowers for failure to state facts sufficient to constitute a cause of action upon which relief can be granted against this Defendant, individually, or, in the alternative, for an Order granting the Defendant Bowers Summary Judgment and dismissing the Plaintiff's claims against this Defendant. This Motion is made on the following grounds:

A. That the Plaintiff's Complaint fails to allege sufficient facts against the Defendant Bowers, in his individual capacity as an employee of an agency of the State of South Carolina, to constitute a cause of action against him individually;

B. That the Plaintiff's civil conspiracy cause of action against the Defendant Bowers fails to state facts sufficient to support the claim;

C. That there is no genuine issue of material fact but that the Defendant Bowers, at all times relevant to the matters alleged in the Complaint, acted within the course and scope of his official duties as Director of Mapping Services for the South Carolina Revenue and Financial Affairs Office, an agency of the State of South Carolina, in good faith and without conduct constituting actual fraud, actual malice, intent to harm, or a crime of moral turpitude;

D. That there is no genuine issue of material fact but that the Defendant Bowers had no specific intent or purpose to injure the Plaintiff;

E. That there is no genuine issue of material fact but that the Plaintiff has no evidence establishing the requisite elements of her civil conspiracy claim against the Defendant Bowers;

F. That there is no genuine issue of material fact but that all matter claimed by the Plaintiff in her Complaint to be published by this Defendant as defamatory was, in fact, truthful;

G. That there is no genuine issue of material fact but that any remarks made by the Defendant Bowers and complained of by the Plaintiff were made in good faith, without actual malice, with a valid interest to be upheld and were limited in scope to that valid interest, and were made on proper occasion, in a proper manner and to proper parties, and were thus absolutely privileged or qualifiedly and conditionally privileged;

H. That there is no genuine issue of material fact but that any act or remarks made by the Defendant Bowers and complained of by the Plaintiff were made in good faith, without actual malice, in discharging this Defendant's official duty as Director of Mapping Services for the South Carolina Revenue and Financial Affairs Office, and do not give rise to a private right of action by the Plaintiff under the Public Duty Doctrine;

I. That there is no genuine issue of material fact but that any acts or omissions by the Defendant Bowers complained of by the Plaintiff were pursuant to this Defendant being called to investigate, and then to provide testimony incident to matters within the scope of his agency's statutorily-authorized purpose in an administrative or judicial hearing, and this Defendant is entitled to judicial immunity;

J. That there is no genuine issue of material fact but that the acts and the means employed by the Defendant Bowers in doing such acts complained of by the Plaintiff were lawful, with this Defendant seeking only to fulfill his official duties, with any damage to the Plaintiff being merely incidental; and

K. That there is no genuine issue of material fact that punitive damages sought by the Plaintiff against this Defendant are not allowed under the South Carolina Tort Claims Act.

This Motion is based upon the pleadings in this matter, discovery that has occurred in this case thus far, statutes, affidavits, if submitted, case law, Rules of Court, memoranda submitted by counsel, arguments of counsel, and such other and further authority as the Court may deem appropriate.

DAVIS FRAWLEY, LLC

Patrick J. Frawley
140 East Main Street (29072)
PO Box 489
Lexington SC 29071-0489
pat@oldcourthouse.com

Lexington, South Carolina
December 31, 2015

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	OF THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
Kim Murphy,	)	Docket No. 2014-CP-40-4666
Plaintiff,	)	
	)	
vs.	)	**CERTIFICATE OF SERVICE**
	)	
Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers, in their individual capacities,	)	
	)	
Defendants.	)	
	)	

I, Rachelle G. Brown, paralegal at the Davis Frawley Law Firm, do hereby certify that I have this date served a copy of the following documents upon the counsel named below, by placing a copy in the United States Mail, postage prepaid and return address clearly indicated to the address below.

COUNSEL SERVED:

Ashley C. Story, Esquire
J. LEWIS CROMER & ASSOCIATES, LLC
PO Box 11675
Columbia SC 29211

David L. Morrison, Esquire
MORRISON LAW FIRM, LLC
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212

Michael H. Montgomery, Esquire
MONTGOMERY WILLARD, LLC
PO Box 1186
Columbia SC 29211-1886

DOCUMENTS:

Notice of Motion and Motion for Summary Judgment on behalf of Defendant Bobby Bowers

Rachelle G. Brown

Lexington, South Carolina
December 31, 2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Kim Murphy,
☐ Plaintiff

v.

Richland-Lexington School District 5 Board Of Trustees, Robert Gantt, And Bobby Merle Bowers, In Their Individual Capacities,.
☒ Defendant.

CASE NO.
2014-CP-40- 04666

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney:	Defendant's Attorney:
Ashley C. Story, Bar No. Address: J. LEWIS CROMER & ASSOCIATES, LLC PO Box 11675, Columbia SC 29211 phone: 803-799-9530 fax: 803-799-9533 e-mail: astory@jlewiscromerlaw.com other:	Patrick J. Frawley, Bar No. 2118 Address: Davis Frawley, LLC PO Box 489, Lexington SC 29071-0489 phone: 803-359-2512 fax: 803-359-7478 e-mail: pat@oldcourthouse.com other:

☒ **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: Motion for Summary Judgment on Behalf of Bobby Bowers
Estimated Time Needed:30 MINUTES 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.

_____ December 31, 2015
Signature of Attorney for ☐ Plaintiff / ☒ Defendant Bowers 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

Date Filed:

Collected by: _____

SCCA/233 (11-03)

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

MONTGOMERY WILLARD, LLC
ATTORNEYS AND COUNSELORS AT LAW
1002 CALHOUN STREET
COLUMBIA, SOUTH CAROLINA 29201

(803) 779-3500

MELANIE K. FARNHAM
MFARNHAM@MONTGOMERYWILLARD.COM
DIRECT DIAL NO. (803) 753-6483

POST OFFICE BOX 11886
COLUMBIA, SOUTH CAROLINA 29211-1886

FACSIMILE (803) 799-2755
WORLD WIDE WEB HTTP://WWW.MONTGOMERYWILLARD.COM

January 8, 2016

J. Lewis Cromer, Esq.
Ashley C. Story, Esq.
J. Lewis Cromer & Associates, LLC
P.O. Box 11675
Columbia, SC 29211

Re: Kim Murphy v Richland Lexington School District 5 Board of Trustees, Bobby Merle Bowers, and Robert Gantt
Case No: 2014-CP-40-004666
Our File No: 2155804

Dear Mr. Cromer and Ms. Story:

Enclosed and served upon you please find Robert Gantt's Motion for Summary Judgment, along with the related Motion Cover Sheet and Certificate of Service in the above matter.

Please feel free to contact me if you have any questions or concerns.

With kind regards, I am

Very truly yours,

MONTGOMERY WILLARD, LLC

Melanie K. Farnham
Legal Assistant to Michael H. Montgomery

Enclosures
cc w/ encl: David L. Morrison, Esq.
Patrick J. Frawley, Esq.

RECEIVED
JAN 11 2016
J. LEWIS CROMER
& ASSOCIATES, L.L.C.

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT
)
) CASE NO.: 2014 -CP- 40 - 4666
)
Kim Murphy)
Plaintiff,) **MOTION AND ORDER INFORMATION FORM AND COVERSHEET**
vs.)
Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers, In Their Individual Capacities)
Defendant.)

Plaintiff's Attorney:	Defendant's Attorney:
Ashley C. Story, Bar No.	Michael H. Montgomery, Bar No 4034
Address: J. Lewis Cromer & Associates, LLC P.O. Box 11675, Columbia, SC 29211	Address: Montgomery Willard, LLC P.O. Box 11886, Columbia, SC 29211
Phone: 803-799-9530 Fax 803-799-9533	Phone: 803-779-3500 Fax 803-799-2755
E-mail: astory@jlewiscromerlaw.com Other:	E-mail: mhm@montgomerywillard.com Other:

[x] **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)**

RICHLAND COUNTY FILED 2015 JAN -8 PM 2:25 BEVERLY E. HARRIS CLERK OF COURT

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment on behalf of Defendant Robert Gantt
Estimated Time Needed: 30 minutes Court Reporter Needed: [x] YES/ [ ] NO

SECTION II: Motion/Order Type

[x] Written motion attached
[ ] Form Motion/Order
I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for [ ] Plaintiff / [x] Defendant — January 8, 20 16 Date submitted

SECTION III: Motion Fee

[x] PAID – AMOUNT: $ 25
[ ] 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: _____, 20

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____, 20____

[ ] MOTION FEE COLLECTED: $ _____
[ ] CONTESTED – AMOUNT DUE: $

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2014-CP-40-4666
KIM MURPHY,	)	
Plaintiff,	)	
vs.	)	ROBERT GANTT'S
	)	MOTION FOR SUMMARY JUDGMENT
RICHLAND-LEXINGTON SCHOOL DISTRICT 5 BOARD OF TRUSTEES, ROBERT GANTT, and BOBBY MERLE BOWERS, IN THEIR INDIVIDUAL CAPACITIES,	)	
Defendants.	)	

RICHLAND COUNTY FILED
16 JAN -8 PM 2:25
CLERK OF COURT

TO: J. LEWIS CROMER, ESQUIRE AND ASHLEY C. STORY, ESQUIRE, ATTORNEYS FOR PLAINTIFF KIM MURPHY

YOU WILL PLEASE TAKE NOTICE THAT ROBERT GANTT ("Gantt"), by and through his undersigned Counsel, will move before the presiding judge of the Court of Common Pleas for the Fifth Judicial Circuit, on the tenth day after service hereof, or a soon thereafter as counsel may be heard for Summary Judgment against the Plaintiff on all causes of action contained in the Plaintiff's Complaint. This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure. Gantt seeks Summary Judgment on the issue of the claims by Murphy that he was engaged in a Civil Conspiracy with Defendant Bobby Merle Bowers and that he defamed the Plaintiff. He requests that this Court enter an Order granting Gantt Summary Judgment on all of the Plaintiff's claims.

This Motion is made on the following grounds:

1. There has been no evidence adduced and there is no evidence sufficient to create a genuine issue of material fact such that a party may reasonably infer the assent of the minds of Mr. Gantt and Mr. Bowers to an action for the purpose of causing injury or harm to Kim Murphy.

2. There has been no evidence adduced and there is no evidence sufficient to create a genuine issue of material fact such that a reasonable juror might conclude that Mr. Bowers and Mr. Gantt acted together as a combination for the purpose of injuring Kim Murphy. Kim Murphy's own testimony affirms this fact:

Murphy, Kim, (Pages 56:20 to 57:3)

56

Q. Okay. But that really wasn't an answer to my question, was it? Because that's what you believe. My question is do you have a document or a witness that you have identified since we last spoke in August of 2015 that gives any evidence or testimony that would support your belief that Mr. Gantt and

57

Mr. Bowers communicated in some way so as to try to do harm to you in this circumstance?
A. At the moment I don't believe I do.

3. There has been no evidence adduced and there is no evidence sufficient to create a genuine issue of material fact such that a reasonable juror might conclude that Kim Murphy suffered damages of any kind as a result of some acts of Mr. Gantt and Mr. Bowers.

4. There has been no evidence adduced and there is no evidence sufficient to create a genuine issue of material fact that Mr. Gantt had any role in the conduct alleged to have caused Kim Murphy harm, to wit, the location of the Richland – Lexington County line such as her residence was determined to be in Lexington County. In fact, Kim Murphy's own testimony affirms this:

Murphy, Kim, (Page 141:12 to 141:18)

141

Q. But as we sit here today you have no evidence that you can produce or no witness that you can tell me who is going to testify that Mr. Gantt had any role in the location of the county line which placed your house in Lexington County; is that correct?
A. I think -- I -- at the moment -- not at the moment, we don't.

5. There has been no evidence adduced and there is no evidence sufficient to create a genuine issue of material fact that Mr. Gantt ever acted in his individual capacity in any circumstance about which Kim Murphy complains. The only evidence in the record is that at all times relevant to Kim Murphy's complaint, Mr. Gantt acted ONLY in his official capacity as a member of and Chairman of the School Board of District 5 of Lexington and Richland Counties. Kim Murphy affirms the lack of evidence of this fact in her own testimony. She states:

Murphy, Kim, (Pages 111:3 to 112:5)

111

Q. Okay. So again, how does the location of the line have any effect on whether there was a conspiracy or not?
A. It's the -- they conspired to create a false line and to set it up to make it look like I was in another county and in a way to make it look like I've done something -- had some -- I've -- I've violated the public's trust.
Q. Okay. And what did they do to make it look like you violated the public's trust?
A. Beginning with Mr. Gantt's statement in his December 2012 letter that says, "As you may be aware, it's been rumored for years." And Mr. Bowers' overreaching letter saying that if I want to run for school board in Lexington County, I can the next go around and, you know, it's conclusive. And it's not conclusive where my county of residence is. Mr. Gantt's statements at board meetings when it was first announced, and the next

meeting after that his refusal to allow me to comment and to respond. You know, the statements made at hearings that you know, any -- any respectable (as spoken) -- I can't talk -- I can't

112

say that word. That I should have resigned back in January. You know, statements made to the media.
Q. Any of those things again done outside his role as chairperson of the school board at the time?
A. I can't answer that.

6. There has been no evidence adduced and there is no evidence sufficient to create a genuine issue of material fact that Kim Murphy sustained any special damages required to sustain a civil conspiracy claim. Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action. *Vaught v. Waites*, 300 S.C. 201, 387 S.E.2d 91 (Ct. App. 1989). Again, Kim Muphy's own testimony clearly reflects that she suffered no special damages and she has no ability to causally relate her claimed damages to the alleged acts of Mr. Gantt.

Murphy, Kim, (Page 59:9 to 59:16)

59

Q. Okay. Now, what -- and I want to make sure I understand. You said you've incurred physical therapy expenses from medical doctors. What medical doctors have you seen for any condition that you attribute to this conspiracy?
A. Just the -- the stress and the anguish and the muscle spasms and -- I'm not sure if I got your question.

Murphy, Kim, (Pages 62:24 to 63:6)

62

Q. Now, has any physician given you any kind of written medical opinion that ties these conditions

63

to what you allege to be the conspiracy by Mr. Gantt and Mr. Bowers?
A. I don't think I've asked for that.
Q. Has any physician told you that this is a direct result of that issue?
A. No. It's been coming on since it happened, and it

Murphy, Kim, (Pages 63:19 to 65:4)

63

Q. Okay. Now, any other medical conditions or medical issues that you attribute to Mr. Gantt and Mr. Bowers's conspiracy?
A. When I had to work with a mouse for a good bit of time for the discovery for the ten million dollar counterclaim, I have sort of like computer elbow that comes and goes.

64

Q. And that you're not saying though arises from anything that Mr. Gantt or Mr. Bowers did in this alleged conspiracy, because you're saying that relates to your doing work in another case you're involved in, correct?
A. Yeah.
Q. Okay.
A. It's aggravated by.
Q. All right. Now, you indicated that you're having a problem of focus or attention. Have you seen any specialist with regard to that condition?
A. Only the family doctor.
Q. Okay. Has the family doctor given you any diagnosis -- any medical diagnosis of that condition?
A. Not really. Just that I have a deficiency.
Q. All right. Does he attribute any of that to age or any other factor that might be an explanatory case for it?
A. I have not heard him say.
Q. Has he indicated to you in any kind of formal medical belief that he believes that relates from stress that directly proceeds from this complaint?
A. Only that I've told him that it's --
Q. Now, are there any other physical issues that

you've had that you attribute to the actions of Mr. Gantt and Mr. Bowers in conspiring against you that we haven't talked about?
A. I don't -- I think that's it.

7. There has been no evidence adduced and there is no evidence sufficient to create a genuine issue of material fact that Mr. Gantt had any intent or purpose to injure Kim Murphy.

8. There has been no evidence adduced and there is no evidence sufficient to create a genuine issue of material fact that Robert Gantt at all times relevant to the matters alleged in the Complaint was acting and acted within the course and scope of his official duties as a member of and Chairman of the School Board for District 5 of Lexington and Richland Counties.

9. There has been no evidence adduced and there is no evidence to create a genuine issue of material fact that Robert Gantt made any statement or published any material relating to Kim Murphy that was allegedly defamatory in his individual capacity.

10. There has been no evidence adduced and there is no evidence to create a genuine issue of material fact that any matter claimed by Kim Murphy to be published in her Complaint to be defamatory was, in fact, false.

11. There has been no evidence adduced and there is no evidence to create a genuine issue of material fact that any statements attributed by Kim Murphy to Robert Gantt were other than fair comment on a matter of public interest. Those statements are therefore legally privileged.

12. There has been no evidence adduced nor is there any evidence to create a genuine issue of material fact of constitutional malice in any statement made or document published by Robert Gantt as alleged by Kim Murphy. As Kim Murphy was an elected official and public figure, the failure of this requirement alone is sufficient for the Court to grant Summary Judgment to Gantt.

13. There is no genuine issue of material fact but that any act or remarks made by Robert Gantt and complained of by Kim Murphy was made in good faith, without actual malice, in discharging Robert Gantt's official duties as a Member and Chairman of the School Board for District 5 of Lexington and Richland Counties, and as such no statement, remark or publication by Robert Gantt gives rise to a private right of action by Kim Murphy pursuant to the Public Duty Doctrine.

14. There is no genuine issue of material fact but that any act or remarks made by Robert Gantt and complained of by Kim Murphy was made in good faith, without actual malice, in discharging Robert Gantt's official duties as a Member and Chairman of the School Board for District 5 of Lexington and Richland Counties, and as such no statement, remark or publication by Robert Gantt gives rise to a private right of action by Kim Murphy pursuant to S. C. Code Ann. Section 15-78-70(b).

15. There is no evidence or genuine issue of material fact but that all of Robert Gantt's actions regarding Kim Murphy's residency and status on the School Board of School District 5 of Lexington and Richland Counties were lawful, undertaken in his official capacity and with the advice of counsel pursuant to his being notified by an official agency of the State of South Carolina of an issue dealing with her residency and eligibility to serve in her elected role.

16. There is no evidence or genuine issue of material fact that Kim Murphy suffered any cognizable damage as a result of any alleged statement or the publication of any statement by Robert Gantt in his individual capacity.

17. There is no evidence or genuine issue of material fact that Robert Gantt made or published any untruthful statement about Kim Murphy in his individual capacity. Kim Murphy's own testimony makes this clear:

Murphy, Kim, (Page 228:5 to 228:14)

228

Q All right. And I understand your allegation, but that wasn't my question. My question was: Did anybody say that you had committed a fraudulent crime to seat yourself on the board, orally or in writing?
A I can't recall right now.
Q So you can't point me to any such statement made by any board member at this point in time, correct?
A Not at the moment.
Q Okay. All right.

18. No evidence has been adduced and there is no evidence to create a genuine issue of material fact that Robert Gantt made or published any statement with knowledge of falsity or reckless disregard for the truth as required in a public official defamation case. Robert Gantt served as Board Chair; commented upon matters of great public interest in informing the public about the issue concerning Plaintiff's residency; spoke only after the State Budget and Control Board had made an official determination that Plaintiff did not run for office in the county of her residency; followed proper procedure in allowing an evidentiary hearing after that determination by the Budget and Control Board; allowed Plaintiff to be represented by counsel, participate and present evidence in the evidentiary hearing before retired Circuit Court Judge Tommy Cooper; and allowed Plaintiff to be represented by counsel, participate and present evidence in a hearing before the School Board; all of which was the proper procedure for handling this matter both legally and pursuant to the recommendations of the School District's general counsel.

19. There is no genuine issue of material fact that punitive damages sought by the Plaintiff against this Defendant are not allowed under the South Carolina Tort Claims Act.

This Motion is based upon the pleadings in this matter, written discovery and testimony which has been taken in this case, applicable statutory and case law, rules of Court, such affidavits and memoranda as may be submitted by Counsel pursuant to the South Carolina Rules of Civil Procedure, arguments of counsel and such other and further authority as the Court deems appropriate.

Respectfully Submitted,

MONTGOMERY WILLARD, LLC

Michael H. Montgomery, SC Bar No. 4034
1002 Calhoun Street
Post Office Box 11886
Columbia, South Carolina 29211-1886
(803) 779-3500 (telephone)
(803) 799-2755 (facsimile)
mhm@montgomerywillard.com

Columbia, South Carolina
January 8, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2014-CP-40-4666
KIM MURPHY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
RICHLAND-LEXINGTON SCHOOL DISTRICT 5 BOARD OF TRUSTEES, ROBERT GANTT, and BOBBY MERLE BOWERS, IN THEIR INDIVIDUAL CAPACITIES,	)	
	)	
Defendants.	)	

RICHLAND CO. C.P.
FILED
2016 JAN -8 PM 2:25
JEANNETTE W. McBRIDE
C.C.P. & G.S.

CERTIFICATE OF MAILING/SERVICE

I, Melanie K. Farnham, employee with the law firm of MONTGOMERY WILLARD, LLC, do hereby certify that I have served counsel of record with *Robert Gantt's Motion for Summary Judgment* and corresponding *Motion Cover Sheet* by mailing a copy of the same via First Class Mail with the proper postage affixed thereto to the addresses below:

J. Lewis Cromer, Esq.
Ashley C. Story, Esq.
J. Lewis Cromer & Associates, LLC
P.O. Box 11675
Columbia, SC 29211

David L. Morrison, Esq.
Morrison Law Firm, LLC
7453 Irmo Drive, Suite B
Columbia, SC 29212

Patrick J. Frawley, Esq.
Davis Frawley, LLC
P.O. Box 489
Lexington, SC 29071

Melanie K. Farnham

Columbia, South Carolina
January 8, 2016

Morrison Law Firm, LLC
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212
Phone: (803) 661-6285
Fax: (803) 661-6289
E-mail: David@dmorrison-law.com
E-mail: Kassi@dmorrison-law.com
E-mail: Bob@dmorrison-law.com

David L. Morrison*
Kassi B. Sandifer
Robert G. Cooper**
J. Jordan Johnson

*Licensed in SC & NC
*Certified Mediator
**Of Counsel

January 20, 2016

The Honorable Jeanette McBride
Clerk of Court, Richland County
Post Office Box 2766
Columbia, South Carolina 29202

RE: Kim Murphy v. Richland-Lexington School District 5 Board of Trustees, et al.
C/A #: 14-CP-40-4666
Date of Incident: October 2012
Our file: 110.0472

Dear Clerk McBride:

Enclosed are the originals and one copy each of the Motion for Summary Judgment filed on behalf of Defendants Richland-Lexington School District 5 Board of Trustees and the Motion for Summary Judgment filed on behalf of Defendant Robert Gantt in the above-referenced matter. Please file the original and return a clocked-in copy of each to me. By copy of this letter, I am serving counsel of record with a copy of same.

Very truly yours,

MORRISON LAW FIRM, LLC

David L. Morrison

DLM/cmm

Enclosure

cc: Patrick John Frawley, Esquire
J. Lewis Cromer, Esquire
Michael H. Montgomery, Esquire

RECEIVED
JAN 25 2016
J. LEWIS CROMER
& ASSOCIATES, L.L.C.

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND	)))	IN THE COURT OF COMMON PLEAS
Kim Murphy, ☐ Plaintiff, v. Richland-Lexington School District 5 Board of Trustees, Robert Gantt and Bobby Merle Bowers, in their individual capacities, ☐ Defendants.	)))))))))	Civil Action No. 14-CP-40-4666 **MOTION & ORDER INFORMATION FORM COVER SHEET**

Plaintiff's Attorney:	Defendant's Attorney:
Ashley C. Storey PO Box 11675 Columbia SC 29211 Phone: (803) 799-9530 Fax: (803) 799-9533 E-Mail: astory@jlewiscromerlaw.com	David L. Morrison, Bar No.4101 7453 Irmo Drive, Suite B Columbia, South Carolina 29212 Phone: 803-661-6285 Fax: 803-661-6289 E-Mail: david@dmorrison-law.com

☑ **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: Motion for Summary Judge of Defendant Richland-Lex. 5 Board of Trustees
Estimated Time Needed: 30 minutes 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.

Signature of Attorney for Defendant(s) Date Submitted: JAN. 29, 2016

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: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Kim Murphy,	)	
	)	C/A #: 14-CP-40-4666
Plaintiff,	)	
	)	
v.	)	**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OF DEFENDANT RICHLAND-LEXINGTON SCHOOL DISTRICT 5 BOARD OF TRUSTEES**
	)	
Richland-Lexington School District 5 Board of Trustees, Robert Gantt and Bobby Merle Bowers, in their individual capacities,	)	
	)	
Defendants.	)	
	)	

TO: ASHLEY C. STORY, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant, Richland-Lexington School District 5 Board of Trustees, will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Courthouse, Columbia, South Carolina, on the tenth (10th) day after service hereof at 10:00 a.m. or as soon thereafter as counsel may be heard, or at such time and place as may be set by the Court, for an Order granting summary judgment to Defendant Richland-Lexington School District 5 Board of Trustees on the following grounds:

1. **In this defamation case, the Plaintiff is a public figure and therefore must prove constitutional actual malice. The Richland-Lexington School District Five Board of Trustees is immune for suit for matters involving actual malice pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. Section 15-78-60(17). Therefore, this Defendant is entitled to summary judgment as a matter of law.**

2. **Plaintiff has not identified any defamatory statement made.**

3. **The statements about which Plaintiff complains are not defamatory.**

4. **The statements about which Plaintiff complains are true.**

5. **The statements about which Plaintiff complains are fair comment upon a matter of public interest, in that Plaintiff's ability to hold office as an elected school board member when she ran for office in the wrong county is a matter of public interest.**

6. Any comments of which Plaintiff complains are good faith comments upon a matter about which the School Board had a duty or interest in commenting upon and therefore any comments are privileged.

7. Any comments of which Plaintiff complains are good faith comments upon a matter about which the public had an interest in hearing and therefore any comments are privileged.

8. There is no controversy as to the facts and therefore the determination as to whether the statements of which Plaintiff complains are defamatory are matters for the court to determine.

9. There is no controversy as to the facts and therefore the determination as to whether the statements made are entitled to a good faith qualified privilege are matters for the court to determine.

10. There is no controversy as to the facts and therefore the determination as to whether the statements made are entitled to an absolute privilege are matters for the court to determine.

11. The statements about which Plaintiff complains are fair comment on a matter of public interest and are therefore privileged.

12. There is no evidence of constitutional actual malice in the statements about which Plaintiff complains.

Said Motion is based upon the depositions taken in this matter, including the depositions of the Plaintiff, Defendant Gantt, Defendant Bowers, witnesses Zupan and Bagnal and such other matters as may be properly presented to the Court at the time of the hearing.

MORRISON LAW FIRM, LLC

By: _____

David L. Morrison, Esquire
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212
Phone: (803) 661-6285
Fax: (803) 661-6289
E-mail: david@dmorrison-law.com

ATTORNEY FOR THE DEFENDANT
RICHLAND-LEXINGTON SCHOOL
DISTRICT 5 BOARD OF TRUSTEES

Columbia, South Carolina

January 20, 2016

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Kim Murphy,	)	C/A #: 14-CP-40-4666
Plaintiff,	)	
v.	)	**CERTIFICATE OF SERVICE**
Richland-Lexington School District 5 Board of Trustees, Robert Gantt and Bobby Merle Bowers, in their individual capacities,	)	
Defendants.	)	

The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendants, Richland-Lexington School District 5 Board of Trustees and Robert Gantt, does hereby certify that service of the **MOTION FOR SUMMARY JUDGMENT OF DEFENDANTS RICHLAND-LEXINGTON SCHOOL DISTRICT 5 BOARD OF TRUSTEES** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 20th day of January, 2016, addressed as follows:

Patrick John Frawley, Esquire
Post Office Box 489
Lexington, South Carolina 29071

Michael H. Montgomery, Esquire
Post Office Box 11886
Columbia, South Carolina 29211

J. Lewis Cromer, Esquire
Ashley C. Story, Esquire
Post Office Box 11675
Columbia, South Carolina 29211

Callie M. Morrison

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kim Murphy, ☐ Plaintiff, v. Richland-Lexington School District 5 Board of Trustees, Robert Gantt and Bobby Merle Bowers, in their individual capacities, ☐ Defendants.	)	IN THE COURT OF COMMON PLEAS Civil Action No. 14-CP-40-4666 **MOTION & ORDER INFORMATION FORM COVER SHEET**

Plaintiff's Attorney: Ashley C. Storey PO Box 11675 Columbia SC 29211 Phone: (803) 799-9530 Fax: (803) 799-9533 E-Mail: astory@jlewiscromerlaw.com	Defendant's Attorney: David L. Morrison, Bar No.4101 7453 Irmo Drive, Suite B Columbia, South Carolina 29212 Phone: 803-661-6285 Fax: 803-661-6289 E-Mail: david@dmorrison-law.com

☑ **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: Motion for Summary Judge of Defendant Robert Gantt
Estimated Time Needed: 30 minutes 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.

Signature of Attorney for Defendant(s) JAN 20, 2016 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:
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SCCA/233 (11-03)

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Kim Murphy,	)	
	)	C/A #: 14-CP-40-4666
Plaintiff,	)	
	)	
v.	)	**NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT OF DEFENDANT ROBERT GANTT AS TO THE DEFAMATION CLAIM**
	)	
Richland-Lexington School District 5 Board of Trustees, Robert Gantt and Bobby Merle Bowers, in their individual capacities,	)	
	)	
Defendants.	)	
	)	

TO: ASHLEY C. STORY, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Defendant, Robert Gantt, will move before the Presiding Judge of the Fifth Judicial Circuit at the Richland County Courthouse, Columbia, South Carolina, on the tenth (10th) day after service hereof at 10:00 a.m. or as soon thereafter as counsel may be heard, or at such time and place as may be set by the Court, for an Order granting summary judgment to Defendant Robert Gantt as to the defamation claim on the following grounds:

1. **Plaintiff has not identified any defamatory statement made by this Defendant.**

2. **The statements about which Plaintiff complains are not defamatory.**

3. **The statements about which Plaintiff complains are true.**

4. **The statements about which Plaintiff complains are fair comment upon a matter of public interest, in that Plaintiff's ability to hold office as an elected school board member when she ran for office in the wrong county is a matter of public interest.**

5. **Any comments of which Plaintiff complains are good faith comments upon a matter about which the School Board had a duty or interest in commenting upon and therefore any comments are privileged.**

6. Any comments of which Plaintiff complains are good faith comments upon a matter about which the public had an interest in hearing and therefore any comments are privileged.

7. There is no controversy as to the facts and therefore the determination as to whether the statements of which Plaintiff complains are defamatory are matters for the court to determine.

8. There is no controversy as to the facts and therefore the determination as to whether the statements made are entitled to a good faith qualified privilege are matters for the court to determine.

9. There is no controversy as to the facts and therefore the determination as to whether the statements made are entitled to an absolute privilege are matters for the court to determine.

10. The statements about which Plaintiff complains are fair comment on a matter of public interest and are therefore privileged.

11. There is no evidence of constitutional actual malice in the statements about which Plaintiff complains.

12. Any statements made by this Defendant, were made in his capacity as Chairman of the Board of Trustees of Richland – Lexington School District Five and therefore this Defendant is immune from suit pursuant to the South Carolina Tort Claims Act in that he was acting within the course and scope of his employment at all times. S.C. Code Ann. Section 15-78-70(b).

13. Plaintiff has not offered any evidence of knowledge of falsity or reckless disregard for the truth as required in a public official defamation case. Defendant Gantt acted as Board Chair, commented upon matters of great public interest in informing the public about the issue concerning Plaintiff's residency, spoke only after the State Budget and Control Board had made an official determination that Plaintiff did not run for office in the county of her residency, followed proper procedure in allowing an evidentiary hearing after that determination by the Budget and Control Board, allowed Plaintiff to be represented by counsel, participate and present evidence in the evidentiary hearing before retired Circuit Court Judge Tommy Cooper and allowed Plaintiff to be represented by counsel, participate and present evidence in a hearing before the School Board, all of which was the proper procedural for handling this matter both legally and pursuant to the recommendations of school district general counsel.

14. There are no genuine issues of material fact and this Defendant is entitled to summary judgment as a matter of law.

Defendant Gantt is filing a separate motion for summary judgment as to the conspiracy claim.

This Motion is based upon the depositions taken in this matter, including the depositions of the Plaintiff, Defendant Gantt, Defendant Bowers, witnesses Zupan and Bagnal, all of which all counsel have in their possession and such other matters as may be properly presented to the Court at the time of the hearing.

MORRISON LAW FIRM, LLC

By: _____

David L. Morrison, Esquire
7453 Irmo Drive, Suite B
Columbia, South Carolina 29212
Phone: (803) 661-6285
Fax: (803) 661-6289
E-mail: david@dmorrison-law.com

ATTORNEY FOR THE DEFENDANT
ROBERT GANTT

Columbia, South Carolina

January 20, 2016

STATE OF SOUTH CAROLINA	)	
	)	**IN THE COURT OF COMMON PLEAS**
COUNTY OF RICHLAND	)	
Kim Murphy,	)	
	)	C/A #: 14-CP-40-4666
Plaintiff,	)	
	)	
v.	)	**CERTIFICATE OF SERVICE**
	)	
Richland-Lexington School District 5 Board of Trustees, Robert Gantt and Bobby Merle Bowers, in their individual capacities,	)	
	)	
Defendants.	)	
	)	

The undersigned employee of Morrison Law Firm, LLC, attorney for the Defendants, Richland-Lexington School District 5 Board of Trustees and Robert Gantt, does hereby certify that service of the **MOTION FOR SUMMARY JUDGMENT OF DEFENDANT ROBERT GANTT** in the above-captioned action was made upon all counsel of record by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 20th day of January, 2016, addressed as follows:

Patrick John Frawley, Esquire
Post Office Box 489
Lexington, South Carolina 29071

Michael H. Montgomery, Esquire
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Ashley C. Story, Esquire
Post Office Box 11675
Columbia, South Carolina 29211

Callie M. Morrison

Columbia, South Carolina

STATE OF SOUTH CAROLINA COUNTY OF RICHLAND Kim Murphy, Plaintiff, v. Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Robert Bowers, in their individual capacities, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT Civil Action No.: 2014-CP-40-4666 **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

INTRODUCTION

Plaintiff Kim Murphy ("Plaintiff") hereby responds to the Defendants' Motions for Summary Judgment. Plaintiff filed this action on July 28, 2014, alleging civil conspiracy against Defendants Bobby Bowers ("Bowers") and Robert Gantt ("Gantt"), as well as defamation against Defendants Richland-Lexington School District 5 Board of Trustees ("Board") and Gantt.

Bowers filed a Motion to Dismiss for failure to state a claim and a Motion for Summary Judgment on December 31, 2015, requesting this court dismiss the Plaintiff's claim for civil conspiracy[1]. Counsel for Defendant Gantt filed a Motion for Summary Judgment on January 8, 2016, seeking a grant of Summary Judgment as to both the civil conspiracy and defamation claims against Gantt. Separate counsel for Gantt filed a second Motion for Summary Judgment on January 20, 2016, which addressed only the defamation claim. Lastly, on January 20, 2016,

[1] Bowers also, by way of his Motion, requested this Court grant summary judgment as to Plaintiff's claim for defamation. However, Plaintiff did not allege a claim for defamation against Bowers; thus, it will not be addressed in this memorandum.

Defendant District also filed a Motion of Summary Judgment seeking dismissal of Plaintiff's claim for defamation. Plaintiff will address all four motions within her discussion of the relevant causes of action. For the reasons set forth herein, all Motions should be denied, and this case should proceed to a trial before a jury.

FACTS

Plaintiff is a former Board member of the Board. (Exhibit 1: Plaintiff's Deposition at p. 29, 6/22/15). Plaintiff and her husband have three (3) children, all of whom went to public school in Richland-Lexington School District 5 ("the District"). (Ex. 1 at p. 48, 11/5/15). Plaintiff's children are all registered voters of Richland County. (Ex. 1 at pps. 6-7, 6/22/15).

Since building her home in Richland County in 2001, Plaintiff has been very active in District related activities by attending Board meetings and staying well-informed of the issues facing the District. (Exhibit 2: Deposition of Robert Gantt at p. 23). Plaintiff continues to attend Board meetings.[2] (Ex. 1 at p. 35, 6/22/15). When she built her home, located on Old Laurel Lane, in Chapin, South Carolina, she was registered to vote and began paying taxes in Richland County; presently, Plaintiff still votes in and pays property taxes to Richland County. (Ex. 1 at pps. 67-81, 6/22/15).

a. Plaintiff's 2004 Board Campaign

As Plaintiff increasingly became involved in District matters as a parent, she chose to run for election as a Richland County candidate to the Board in 2004. (Ex. 2 at p. 26). Plaintiff and Gantt ran opposed to one another during that election, and it was during their respective

[2] Plaintiff was known for being outspoken and heavily involved with the Board as early as 2003 when District employees went so far as to sign an "open letter to the community" and stated that Plaintiff was "responsible for the distorted view of happenings at [District] school board meetings." (Exhibit 14: "Open letter to the community").

campaigns that Gantt was approached by Stewart Mungo[3] ("Mungo") about Plaintiff's residency status. (Ex. 2 at p. 28). Specifically, Mungo informed Gantt that he believed Plaintiff did not live in Richland County; however, Gantt did not look into the veracity of this report at the time because he did not feel threatened by Plaintiff in 2004 and was "busy running a campaign." (Ex. 2 at pps. 29 and 63). Gantt prevailed over Plaintiff in the 2004 Richland County School Board election, and he was subsequently re-elected in 2008. (Ex. 2 at p. 25).

b. Plaintiff Engages in Litigation Concerning Construction at Chapin High School

Between 2004 and 2011, Plaintiff remained active in District issues, particularly as it concerned the large renovation project that was to take place at Chapin High School ("CHS"). (Ex. 1 at p. 42, 6/22/15). The District approved a bond referendum to raise taxpayer funding for the costly construction needs. (Ex. 2 at p. 38). Plaintiff's personal interest in a portion of the CHS construction project was fundamental – Plaintiff and her family enjoy the benefits of a stream that runs through their property; Plaintiff had concern that the environmental impact of construction had serious and detrimental effects on herself and many other property owners in the community, so she filed a legal action to have a portion of the renovation halted until such a time as a more environmentally-friendly solution could be assessed. (Ex. 1 at pps. 42-44, 6/22/15). That litigation began in 2010 when Plaintiff originally filed her appeal and was lengthy and contentious. *Id.*

As a result of Plaintiff's CHS litigation, a non-profit group called Maggie Stroud and D5 Citizens Ensuring the Implementation of the Referendum, Inc. ("Maggie Stroud") formed and filed a lawsuit against Plaintiff for monetary damages. (Ex. 1 at p. 41, 6/22/15). Maggie Stroud

[3] Mungo personally contributed to Gantt's District Board campaign activities during each election cycle that Gantt participated in as a candidate. (Ex. 2 at p. 96). Mungo invested approximately $1,000.00 over the course of four separate campaigns to benefit Gantt. *Id.*

included District Board member Jondy Lovelace and others. (Ex. 1 at pps. 187-188, 7/22/15). The Board, during a meeting, went so far as to resolve to request:

> "that the South Carolina School Board Association review the TEMPORARY RESTRAINING ORDER AGAINST DEFENDANT MURPHY obtained by Maggie Stroud and D5 Citizens Ensuring the Implementation of the Referendum, Inc. and consider providing assistance to Maggie Stroud and D5 Citizens Ensuring the Implementation of the Referendum, Inc. . . . ."

(Exhibit 3: Board Meeting Resolutions) (emphasis added).

c. Plaintiff Successfully Runs for a Richland County Board Seat in 2010 While CHS Litigation is Pending

In 2010, Plaintiff ran for a Richland County seat on the Board and was elected despite her pending appeal relating to the renovation of CHS. (Ex. 2 at pps. 31 and 37). During Plaintiff's second election campaign in 2010, the issue of the location of her residence was not made an issue. (Ex. 2 at pps. 32 and 63). In fact, Plaintiff was dutifully approved by the election commission to run for the Richland County seat, and she was elected and began her four-year term of office in the final quarter of 2010. (Ex. 1 at pps. 57-58, 7/22/15; Exhibit 4: Depostion of Gloria Wilson at p. 37).

d. Plaintiff is Ostracized by Gantt and Other Board Members Upon Being Elected; Behavior Continues During Her Tenure

Plaintiff's election to the Board was very personal to Plaintiff, as her children attended District schools. (Ex. 1 at p. 48, 11/5/15). Plaintiff was a vocal advocate and was well-known for raising issues at nearly every Board meeting. (Ex. 1 at p. 35, 6/22/15; Ex. 2 at p. 23). It was no secret that Gantt[4] and Plaintiff had their differences during Plaintiff's tenure; the two often opposed one another on most issues and engaged in contentious arguments. (Ex. 2 at p. 33).

[4] Gantt even admitted that he did not vote for Plaintiff when she ran for election in 2010. (Ex. 2 at p. 32).

Approximately one month into her service, Plaintiff was compelled to send a letter to Gantt in December of 2010, outlining a list of issues that Plaintiff was facing with Gantt and her Board peers due to her continuing concerns that involved the District, funding, and student affairs. (Exhibit 5: Letter from Plaintiff to Gantt Dated Dec. 2010). For example, Plaintiff, in one public meeting, announced to the public that she started an inquiry into several potential procurement violations; as a result of her inquiries, Plaintiff learned that several projects were not advertised as required. (Exhibit 6: Procurement Violation E-mail; Ex. 2 at pps. 108-110).

It was evident to many that Plaintiff's Board colleagues expressed a general frustration with her publically on multiple occasions because of her outspoken views, and Gantt even unfairly and inappropriately sanctioned her in several meetings during times when Plaintiff spoke out about various issues. (Ex. 2 at pps. 92 and 93). There were several Board meetings during which the public became contentious, especially towards Plaintiff, because of what Gantt perceived to be "frustration" involving the CHS construction and the stalling of the bond referendum. (Ex. 2 at p. 93). Even community members, noticing that Board meetings were filled with contention and hostility directed towards Plaintiff, reached out to the Board as a whole, and to members individually, to complain that Plaintiff was being targeted and singled out for her views and statements. (Exhibits 7 and 8: Community Complaints). Specifically, a citizen wrote the following e-mail to Ed White ("White"), a Board member serving on the Board during the same time as Plaintiff, on June 14, 2011, which refers to Plaintiff:

> My wife and I recently moved to Irmo; we attended last night's school board meeting in an effort to become more familiar with our new community. We were appalled by the lack of sensitivity shown to fellow board members during the meeting.
>
> It was most appalling that Mr. Gantt never once cited you for twisting the truth even when you manufactured numbers to make a case that another board member was squandering taxpayer money

> when she came forward with a concern about location of practice fields.
>
> It was most appalling to listen to your diatribe of being appalled that a board member had released a taped segment of a board meeting to the public – you shrieked about the nerve of her to inform and enlighten members of the community! When a proposal was made to tape future meetings for the purpose of increased community involvement six members of the board voted it down – that was appalling.
>
> It was appalling to witness Mr. Gantt's iron fisted manner of limiting and containing discussion of the proposal to increase property taxes at a time when home values are plummeting and when the burden of additional taxes will very likely escalate foreclosure rates within the community. He effectively cut short any penetrating questions from citizens or from board members . . .

(Exhibit 7: Community Complaint E-mail, 6/17/11).

Such "appalling" behavior continued to be directed towards Plaintiff by Gantt and other Board members; a clear animosity had developed between Plaintiff, Gantt, and the others as it related to Plaintiff's lawsuit over the CHS construction. (*See* Exhibits 9-12). Several Board members singled out Plaintiff entirely as it related to her lawsuit by adding additional statements to Board minutes that bullied, belittled, and demeaned Plaintiff for her attempts to ensure that the District considered all environmentally friendly and cost efficient plans for construction. (Exhibit 12). Two (2) Board members stated that Plaintiff's behavior "is shameful and disrespectful" and accused Plaintiff of lying. (Exhibit 11). Indeed, the Board members' accusations were further carried out and perpetrated by students who were permitted by Gantt to personally and viciously attack Plaintiff for the same during public Board meetings. (Exhibit 13: Student Statements During Board Meetings).

These personal and vindictive attacks led to Plaintiff feeling ostracized, attacked, threatened, and fearful of her interactions as a Board member. (Ex. 1 at pps. 188, 194-195,

7/22/15). Her identity as a political contrarian was clear. (Ex. 2 at p. 35). Plaintiff feared harm and was threatened. (Ex. 1 at pps. 196-197, 7/22/15).

During the course of Plaintiff's lawsuit concerning the CHS construction, Board members, including Gantt, voted on resolutions to prevent Plaintiff and any other outspoken Board members from initiating legal actions against the District. (Exhibit 12). Gantt and others voted upon and approved resolutions to chastise Plaintiff and condemn her actions for the same in open, public meetings. (*See* Exhibits 15, 3, and 12). The Board's actions of publically and officially condemning Plaintiff's valid concerns were posted – at the direction of the Board – on the District's website, along with copies of the restraining order against Plaintiff. (*See* Exhibits 16, 12, and 17). This behavior continued throughout the course of Plaintiff's CHS litigation; including, Board members – under Gantt's watchful eye as Chairman of the Board – being permitted to discuss their public outcry at the amount of alleged legal fees that the District was incurring for the CHS litigation and publically blaming all of this on Plaintiff. *Id.*

Even more, the District posted bits and pieces of information relating to the CHS litigation on its public website, including portions of Plaintiff's deposition, mediation offers, restraining orders, and other information on a selective basis excluding all testimony, documents, and other materials that supported Plaintiff's position. (*See* Exhibits 18 and 16). Even Gantt was aware that deposition testimony from the CHS litigation was posted to the District's website. (Ex. 2 at p. 43). Per Gantt, he believed that this information was posted to the District website as a "matter of informing the public," but he admitted that he was not aware of any testimony from this pending lawsuit, which involves a current Board member and a former Board member – Gantt and Plaintiff respectfully, being posted to the District's website to "inform the public." (Ex. 2 at pps. 44-45).

At the conclusion of the CHS litigation, the District shockingly posted a public message on an elementary school marquee that read "District wins lawsuit." (Ex. 2 at p. 42). Plaintiff's young children attended this same school, and it was hardly a secret among the community that this statement was made to spite Plaintiff and cause her unnecessary embarrassment and humiliation. (Ex. 1 at pps. 43-44, 11/5/15). Even Gantt, during his deposition, testified that he is not aware of any other lawsuits or similar announcements posted on school marquees like the one referencing the CHS litigation involving Plaintiff. (Ex. 2 at p. 43). Plaintiff feels strongly that she was singled out for harassment and attack by Board members. (Ex. 1 at p. 100, 7/22/15).

Such behavior only escalated further when other Board members, including Gantt, publically supported, called upon other agencies to support, and even became involved with Maggie Stroud, which was formed for the sole purpose of suing Plaintiff for damages resulting from the ongoing CHS litigation. (Ex. 3; Ex. 1 at p. 187, 7/22/15). This was done with pure and absolute animosity towards Plaintiff; that subsequent lawsuit was thrown out by the South Carolina Supreme Court. *Id.*

e. <u>Plaintiff's Home Residency Reappears on the Board "Radar" with Gantt</u>

After Plaintiff was elected to a Richland County Board seat in 2010, the next election cycle occurred in 2012, and Gantt ran for re-election and was successful. (Ex. 2 at p. 47). Gantt testified that the "issue" of Plaintiff's residence was again brought to his attention in the fall of 2012, during the time he was actively campaigning; however Gantt was not too "busy" to inquire into the issue during the 2012 election. (Ex. 2 p. 47).

f. Gantt's Testimony Involving Plaintiff's County of Residence[5]

Gantt testified that he spoke to Bowers[6] from the S.C. Budget and Control Board ("SCB&CB"), where Bowers was employed, to inform Gantt that it was brought to Bowers's attention that Plaintiff lived in Lexington County rather than Richland County. (Ex. 2 at pps. 47-48). During this phone conversation that occurred on or around October 2012, Bowers did not discuss with Gantt any basis he had for stating that Plaintiff did not live in Richland County; he did not divulge his source of information at that time. (Ex. 2 at pps. 49-50).

Approximately a week to ten (10) days after speaking with Bowers, Gantt visited Bowers's office to speak with him directly about Plaintiff's residence; however, Bowers was not at the office during that time. (Ex. 2 at pps. 50-53). As a result, Gantt spoke with Will Roberts ("Roberts") who was employed by the SCB&CB at that time and who reported directly to Bowers. (Ex. 2 at pps. 50-53; Exhibit 20: Deposition of Will Roberts at p. 9). After speaking with Roberts, Gantt immediately contacted attorney Ken Childs ("Childs"), legal counsel for the District, to discuss his conversation with Bowers and his brief meeting with Roberts. (Ex. 2 at pps. 53-54).

After speaking with Childs – who had prior experience in the removal of sitting school board members, a meeting was scheduled to include Gantt, Beth H. Watson ("Watson"), Childs,

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[5] Although sworn testimony reveals that Gantt and Bowers communicated prior to any "official" inquiries being initiated regarding Plaintiff's residence, the two (2) witnesses have conflicting stories about whether Gantt or Bowers began the sequence of communications that would ultimately be used against Plaintiff for the purpose of having her removed as an elected Board member. As these are issues pertaining directly to the civil conspiracy cause of action and are genuine issues of material fact, a jury should be permitted to decide the credibility of these witnesses as it relates to these statements taken under oath. *Schmidt v. Courtney*, 352 S.C. 310, 592 S.E.2d 326 (Ct.App. 2003).

[6] Bowers previously served as a school board member for Lexington School District One and is also a past president of the School Board Association, which Gantt later presided over as President. (Exhibit 19: Curriculum Vitae of Bobby Bowers; Ex. 2 at p. 8).

other attorneys from Childs's law firm, and Bowers. (Ex. 2 at p. 55). The meeting occurred approximately a week after the November 2012 election results were reported, after Gantt had been successfully re-elected. *Id.* During the meeting involving Gantt, Bowers, and others, the participants reviewed several detailed maps purporting to show the location of Plaintiff's residence on Old Laurel Lane in Chapin and further discussed the location of that residence in relation to the Richland/Lexington County line. *Id.* Plaintiff was not included in these meetings, although the sole purpose was to discuss her residence in relation to the County lines, which impacted her service on the Board; Gantt did not believe that Plaintiff would have any information to help address the issue of her own residency. (Ex. 2 at p. 62).

During this meeting, it was discussed that if Gantt wanted to move forward into investigating the county location of Plaintiff's residence, the District would have to make a formal request[7] by sending the same to Bowers. (Ex. 2 at p. 56). As a result, Childs drafted several formal requests for Gantt to sign and sent drafts of the same to Bowers's office for approval before the formal request was made in December of 2012. (Exhibit 21: E-mail to Bowers Regarding Draft Request Letter; Exhibit 22: Ex. 2 to Deposition of Robert Gantt). Gantt did not inform Plaintiff that he made the formal request; in fact, Plaintiff did not learn about any of this information until the January 2013 Board meeting. (Ex. 2 at p. 70).

g. Bowers's Testimony Involving Plaintiff's County of Residence

Bowers testified that many years before these events, he initially learned that there could

[7] Gantt opted to make a formal request through Bowers rather than challenge Plaintiff's residency through Richland County's Board of Voter Registration. (Ex. 1 at p. 61, 11/5/15). Per S.C. Code Ann. § 7-5-230, if an elector's residency is challenged, it must be challenged through the pertinent county board of voter registration. Specifically, S.C. Code Ann. § 7-1-25 provides a list of factors that are used for the purpose of considering residency; they include the following, all of which Plaintiff possessed at the time that were indicative of her residency status in Richland County: tax returns, mailing and physical address location, and the address listed on the driver's license.

be an issue regarding the county of Plaintiff's residence from Mungo. (Exhibit 23: Deposition of Bobby Bowers at p. 22). Specifically, Mungo called Bowers to tell him that he believed Plaintiff did not live in Richland County. (Ex. 23 at p. 22). After receiving a call from Mungo, Bowers received a call from Gantt about the same issue involving the location of Plaintiff's home; Gantt did not disclose to Bowers the sources that he deemed reliable who disclosed Plaintiff's residency issue to Gantt. (Ex. 23 at pps. 28-30). During this phone conversation, Gantt told Bowers that he wanted Bowers to "do some work" as it related to Plaintiff's residence, and Bowers agreed to proceed with an investigation as long as Gantt made a formal request. (Ex. 23 at p. 28).

As discussed *supra*, Childs drafted a letter on Gantt's behalf and sent the draft letter to Bowers before it was formally sent to Bowers's office to initiate the request. (Ex. 21). Bowers received copies of the draft letter after his phone conversation with Gantt but before receiving the final, formal request letter from Gantt. (Ex. 23 at p. 29). Bowers went on to testify that he did not meet with Gantt or anyone from the District before giving directives to his employees; however, Roberts and Gantt testified that they both met with Bowers prior to Gantt making the formal, written request. (Ex. 23 at p. 32; Ex. 2 at p. 65; Ex. 20 at p. 38).

h. <u>Bowers's Investigation into Plaintiff's County of Residence</u>

After receiving the formal inquiry from Gantt on December 20, 2012, Bowers directed his staff, including Roberts and Alan Jon Zupan ("Zupan"), to investigate Gantt's inquiry. (Ex. 23 at p. 42). Bowers takes full responsibility for the work of his staff and admitted that if his staff erred, he would be held ultimately accountable. (Ex. 23 at p. 70). Roberts worked for Bowers for a number of years and served as the State Political Cartographer. (Ex. 20 at p. 9). Zupan was employed by the SCB&CB to work in the geodetic survey section ("GIS"). (Exhibit

24: Deposition of Alan Jon Zupan at pps. 9-10).

Roberts first experienced dealings with Plaintiff's residency issue in September or October of 2012. (Ex. 20 at p. 15). In his employment capacity, Roberts is responsible for assisting the county voter registration offices to ensure that voters are assigned to the correct districts; during some routine checks in September or October of 2012, Plaintiff's residence was flagged along with several other properties as being in the incorrect county. (Ex. 20 at p. 16). After learning of this information, Roberts called the staff at Lexington County's voter registration office to discuss the properties, including Plaintiff's residence; he did not call Richland County. (Ex. 20 at p. 17).

On October 16, 2012, Roberts met with Zupan to discuss maps that were generated by Zupan and the staff in GIS. (Ex. 20 at p. 28). The meeting between Roberts and Zupan lasted approximately thirty (30) minutes; during the meeting, they discussed the location of Rocky Ford, which is a point delineated by statute as connected to the Richland/Lexington County line that has been in dispute for years and is situated near Plaintiff's property on Old Laurel Lane in Chapin. (Ex. 20 at p. 28; Exhibit 25: Deposition of John Cloyd at pps. 29-31). During the meeting, Roberts came to understand that Zupan located Rocky Ford years prior[8] by using a global position system ("GPS") to obtain the longitude and latitude of the ford. (Ex. 20 at p. 28). After Roberts met with Zupan, he did not take any further action at that time because he did not know how to proceed. (Ex. 20 at p. 31). It was not until Gantt initiated a meeting with Bowers and subsequently sent a formal request that any action was undertaken to make a determination

[8] Zupan along with Sid Miller ("Miller") visited the purported location of Rocky Ford in 1995 and learned, after speaking to two (2) different property owners in the area that there were two (2) fords in the general vicinity of Rocky Ford. (Ex. 24 at pps. 27-28). Zupan ultimately concluded that the northern ford was Rocky Ford; he revisited the site prior to the 2014 hearing before a referee to confirm his findings from 1995 using GPS. (Ex. 24 at p. 48).

into the county of residence as it concerned only Plaintiff's property. (Ex. 20 at pps. 38-42).

Upon receiving Gantt's formal request, Roberts began reviewing official house and senate district maps along with U.S. Census Bureau County Boundary data to try and determine Plaintiff's county of residence. (Ex. 20 at p. 43). Roberts also reviewed the PL 94-171 database, which is used for official redistricting in South Carolina. (Ex. 20 at p. 45). Roberts did not review any other information and admits he did not visit Plaintiff's property. (Ex. 20 at pps. 46 and 48). Roberts and Zupan met subsequently to discuss Plaintiff's property, and Roberts informed Zupan that there was some question about the boundary near Plaintiff's home; Roberts went on to explain to Zupan that discrepancies existed between the information that Roberts reviewed and the information that was given to him by the U.C. Census Bureau. (Ex. 24 at p. 16). Roberts also admitted that the precinct lines, tax lines, and county lines do not match for Richland and Lexington Counties. (Ex. 20 at p. 86; *see also* Exhibit 26).

As a result of their conversation, Roberts and Zupan began co-drafting a letter for Bowers that outlined the sources of the information used to make a determination as to the county location of Plaintiff's residence. (Ex. 20 at p. 51). Other than what was drafted and sent by Bowers to Gantt in Bowers's letter dated January 11, 2013, no other research was performed; Bowers felt that a survey was unnecessary[9] and did not visit Plaintiff's property himself. (Bowers at pps. 42-44). The only land survey that was ever completed as it relates to Plaintiff's

[9] Cloyd testified that his office was "continuously hav[ing] trouble where the darn thing [Rocky Creek] was. And one of our requests to the Geodetic Survey was, boy, when you get this Rocky Creek thing done, don't stop." (Ex. 25 at pps. 30-31 and Exhibit 45: Cloyd E-mail Discussing Boundary Dispute). Cloyd also discussed that the Rocky Ford boundary was being studied in 2013 but was not a priority for the geodetic survey folks because they were working on the Jocassee Gorge boundary; based on cloyds testimony Gantt knew there was a boundary issue near or around Plaintiff's property, had previously worked with maps, so he knew how to properly look at the maps. (Ex. 25 at pps. 18-19; Cloyd *generally*). Cloyd went on to testify that Plaintiff is the only public official he was aware of that was removed from her elected seat mid-term; for tax purposes, Plaintiff is still a resident of Richland County. (Ex. 25 at pps. 40-42).

residence was a survey conducted by Lucius Cobb ("Cobb") done many years before, which indicates that Plaintiff's home is in Richland County. (Ex. 24 p. 22).

In his final letter[10] to Gantt, Bowers cites to three (3) sources that were used by his office to determine that Plaintiff lives in Lexington County: (1) information from the U.S. Census Bureau, (2) information from precinct maps, and (3) the maps authored by Zupan from GIS. (Exhibit 27: Ex. 5 to the Deposition of Bobby Bowers). Zupan testified that the U.S. Census Bureau and precinct information could not stand alone to support the finding that Plaintiff's home is located in Lexington County. (Ex. 24 at p. 52). Thus, Zupan was forced to rely upon his own maps and GIS information. (Ex. 24 at p. 53).

After drawing several maps that purport to show the bearings and distances as it relates to Plaintiff's county of residence, Zupan admitted that (2) two of the maps that were generated by him have two (2) inconsistent lines; that is, they do not match.[11] (Ex. 24 at p. 59; Exhibit 29: Two Maps of Plaintiff's Property). Furthermore, Zupan testified that as it related to his work regarding the inquiry into Plaintiff's county of residence, he only used the old statutory description to find the appropriate bearings and "shot" the bearings from his determined Rocky Ford location allegedly located in 1995 because he did not have the time to do the additional work that would have been required due to his involvement with the North Carolina/South Carolina boundary dispute – another project he was currently working on. (Ex. 24 at pps. 13-

[10] Bowers did not only send his January 11, 2013, letter to Gantt; he went on to send a letter to Jasper Salmond ("Salmond") Chair of the Richland County Election Commission. (Exhibit 27: January 2013 Response Letter from Bowers; Exhibit 28: January 2013 Letter from Bowers to Salmond). Salmond responded to Bowers's letter by stating that his office did not have the authority to remove Plaintiff from its voter registration rolls and further requested that Bowers provide guidance on any authority that would permit the same; Bowers did not respond. (Ex. 20 at p. 64).

[11] The issue of Zupan's maps containing inconsistent lines becomes crucial when one of the maps is later used as evidence in a hearing before a referee as it relates to Plaintiff's residence; this is discussed *infra*.

14).

Gantt met with Bowers just days prior to receiving Bowers's letter dated January 11, 2013, claiming that Plaintiff is a resident of Lexington County. (Bowers at p. 33) Gantt received Bowers's letter shortly thereafter. (Ex. 2 at p. 66).

Notably, Roberts testified that his office had dealt with similar boundary issues in the past, specifically including one line dispute between Jasper and Beaufort Counties. (Ex. 20 at p. 32). Roberts testified that he contacted Zupan about the issue, and Zupan informed him that the process to resolve the dispute would require him to make a site visit and perform background research. (Ex. 20 p. 33). Despite this process and it having been completed in the past, none of the same steps were followed or performed during Bowers's investigation into Plaintiff's residence. (Ex. 20 at p. 33). Roberts then decided against looking into the Jasper/Beaufort issue because it would be time consuming, and it would impact only one or two votes; however, he did the opposite as it relates to Plaintiff. *Id.*

i. Expert Opinion on Bowers's Investigation

Plaintiff hired an expert, Ronnie L. Tyler ("Tyler"), to review and provide an opinion on the methods and procedures used by Bowers and his office. Tyler is, among other things, a professional land surveyor, land boundary surveyor, and forensic surveyor. (Exhibit 30: First Supplemental Report of Ronnie Tyler, Curriculum Vitae). Tyler also understands geodetic surveying. (Exhibit 31: Affidavit of Ronnie Tyler). Tyler provided a detailed report after reviewing Bowers's January 11, 2013, determination letter to Gantt, Zupan's maps that were used in the hearing before the referee, plats, surveys, and other documents. (Ex. 30).

Specifically, Tyler made the following findings as part of his report:

> The maps, by the South Carolina Geodetic Survey, presented at the Hearing of February 15, 2013, . . . are not plats of survey or maps

> of survey and do not report the accurate location of the existing Richland and Lexington County boundary . . . .
>
> The azimuths reported in the hearing as being for the boundaries from Rocky Ford are not the same bearings that are reported for these boundaries in the Code of Laws and is not the same bearing reported on the old plat of survey that created the Richland and Lexington County boundary north from the point at Rocky Ford.
>
> The South Carolina Geodetic Survey division of the South Carolina Budget and Control Board's Division of Research and Statistics had only the authority to assist counties in clarifying and determining the location of county boundaries. The SCGS findings were not binding on the counties as the SCGS did not have any authority to enforce the SCGS's locations of the county's boundaries until June 9, 2014, with the approval into law of the act to amend section 27-2-105, Code of Laws of South Carolina and only then by the procedures specified in that revised code.
>
> The maps by the South Carolina Geodetic Survey presented at the Hearing of February 15, 2013 . . ., are misleading in that there is not a statement on the maps listing the source of the data and there is not any statement on the maps that the maps do not represent a land survey.

(Ex. 30). Tyler also made a site visit to Plaintiff's property and the surrounding area for the purpose of locating "ground evidence" relating to the original survey that was taken of the Richland and Lexington County line. (Ex. 31). Tyler located a stake that should have been used by Bowers's team when it "determined" the location of Plaintiff's residence. *Id.* Tyler reported as follows:

> After I visited the stake that is located on the Spott property, I compared the location of the physical stake with the Spott property plat, deed and other documentation. As a result of this research, it is my opinion that the stake is at the point shown on the Richland County GIS system as the southwest end corner of the county boundary that passes through the Murphy's property. As a surveyor, the stake on the Spott property is ground evidence that should be considered in the resurvey of the county boundary. It is the normal standard of care for a surveyor who is doing a retracement resurvey for an existing boundary to research and investigate ground evidence and markers on record surveys

> relating to the boundary being surveyed. In the location of the Richland and Lexington county boundaries that were presented on the maps in the hearing . . . ; Mr. Miller nor Mr. Bowers reported that any property surveys of record had been researched or considered.

Id. Ultimately, Tyler concluded the following as it concerned Plaintiff's property:

> I believe when it concerned Mrs. Murphy's property, the standards and measurements used by Mr. Bowers' team did not meet the standard of care that is required of a surveyor, they did not locate the true retracement of the point at Rocky Ford or the location of the original survey boundary for the Richland and Lexington county lines.

(Ex. 30). Tyler also opined that "the standards and measures *used by Mr. Bowers's team were not acceptable.*" (Ex. 31) (emphasis added). In conclusion, Tyler found as follows:

> that the Rocky Point located by SCGS is not the point on the Richland County and Lexington County boundary that is specified as being at Rocky Ford . . . and the point located by SCGS as Rocky Ford is also not the point surveyed at Rocky Ford on the November 25, 1921 plat of survey . . . .
>
> (Ex. 30 at p. 20).

j. <u>The Aftermath Following Bowers's Investigation</u>

Following receipt of Bowers's letter, Gantt quickly moved to discuss the findings of the letter with the Board at the next Board meeting on January 14, 2013. (Ex. 2 at pps. 66 and 69). Prior to that meeting, an agenda was circulated from Gantt to the other Board members, including Plaintiff, which listed a misleading topic of discussion as "receipt of legal advice" for executive session. (Ex. 1 at pps. 88-89, 6/22/15 and pps. 84-85, 8/10/15). Plaintiff, unaware of the purpose of "the receipt of legal advice," questioned the same, and the agenda was edited to reflect that the Board was going to discuss Act 326 during executive session. (Ex. 1 at pps. 78-79, 8/10/15). There was no mention of Bowers's January 11, 2013, letter. *Id.* Furthermore, Gantt did not make any attempt to contact Plaintiff between the time he received Bowers's letter

and the date of the Board meeting. (Ex. 2 at pps. 70-71). Suspiciously, days before the January meeting, a pre-scheduled photography session for the Board was cancelled. (Exhibit 32: E-mail Cancelling Photographer; Ex. 1 at pps. 44-45, 8/10/15).

Prior to the January 14th meeting, an incident occurred during which time a District teacher "stomped" upon an American flag during class; the same attracted a lot of media attention, and Plaintiff was under the impression that the same incident was being considered by the Board that night. (Ex. 1 at pps. 83-84, 8/10/15). Moreover, there were a number of media professionals present at the meeting – more than usual. (Ex. 2 at p. 72). During executive session, Gantt – much to Plaintiff's surprise – informed the Board of his communications with Bowers dating back to October of 2012, and informed them all[12] of the process leading up to Bowers's letter to Gantt on January 11, 2013. (Ex. 2 at p. 70). Plaintiff was completely caught off-guard and shocked that she had not been included in any of the process that was initiated by Gantt. (Ex. 1 at p. 82, 8/10/15).

Before Plaintiff could recover from the shock and horror of Gantt's disclosure, the Board closed executive session and returned to the public meeting; at that time, Gantt made a public statement regarding Bowers's findings and stated that since Plaintiff was not a resident of Richland County she needed to "do the right thing" and resign, insinuating that Plaintiff deceived the public and knew she was not a resident of Richland County and thus was not fit to serve the same. (Exhibit 33). Gantt did not provide Plaintiff with an opportunity to respond to his statement during the public meeting; he merely wanted Plaintiff to resign from her position on the Board. (Ex. 2 at pps. 70 and 74).

[12] Watson went to the initial meeting with Gantt and Childs at Bowers's office. (Ex. 20 at p. 38). This further proves that Gantt had malicious motives because he could have informed Plaintiff about this "process" in December of 2012 since he included at least one other Board member.

Following that, Plaintiff sent an e-mail to her constituents, raising her concerns about the process utilized by Gantt and Bowers to try and oust her from her Board position. (Exhibit 34: Plaintiff's E-mail to the Public About Residence). This was the first and only chance Plaintiff had to address some of the public about the residency situation because Gantt would not allow her to speak during the January Board meeting. (Ex. 1 at pps. 11-12, 8/10/15). Gantt, who received a copy of Plaintiff's e-mail, forwarded it to the District attorneys; in turn, the e-mail was forwarded to Bowers and Roberts with the message as follows: "enjoy the show." (Ex. 34).

On January 28, 2013, the Board convened yet again for a public meeting; at that time, Gantt made another public statement concerning Plaintiff's residency and stated that he regretted Plaintiff's comments regarding her position and further reiterated that he regretted "any distraction" from the District's mission, all of which insinuated that Plaintiff was causing trouble and not doing her duty to follow the District's mission as a Board member. (Exhibit 35: Gantt January 28, 2013, Public Statement).

Subsequently, Plaintiff did not yield to Gantt and refused to resign from her Board seat for which she was duly certified and elected by the constituents of Richland County. (Ex. 35). As a result, Gantt spoke with the District's attorneys and unilaterally selected a Circuit Judge to conduct an evidentiary hearing as a referee, which would allow both the District and Plaintiff to present information in support of their opposing positions. (Ex. 2 at p. 76; Exhibit 36: Gantt Letter to Judge Cooper). Plaintiff was notified of the same on January 22, 2013, by Gantt and at the hearing before the referee. (Ex. 36). The District then began preparing to argue its "case" before the referee, for the hearing[13] was scheduled to take place on February 15, 2013. *Id.*

[13] Just before the hearing on January 23, 2013, Zupan e-mailed a Lexington County staff member, Jack Maguire ("Maguire") and exchanged the same maps he provided to Bowers; Maguire circulated them around to mapping personnel and then informed Zupan that Lexington

k. The February 15, 2013, Evidentiary Hearing

As scheduled, the evidentiary hearing took place; the District called a litany of witnesses, including employees of the SCB&CB, to substantiate Gantt's position that Plaintiff was not a resident of Richland County. (Exhibit 38: 2/15/13 Hearing Transcript). All Board members did not attend. (Ex. 2 at p. 85). Plaintiff did not participate upon the advice of her then counsel, Todd Kincannon.[14] (Ex. 1 at p. 64, 6/22/15). At the hearing, the District presented evidence by calling Bowers as a witness to testify to information that was provided to him by the GIS staff and Zupan. (Ex. 38).

Moreover, the District presented and introduced into evidence one (1) of two (2) maps generated by Zupan. (Ex. 29, p. 2). However, as Zupan later admitted in his deposition for this case, the line on the map shown by the District marked as Exhibit 10 for the hearing did not match the line he drew on another map to support his findings that Plaintiff's residence is located in Lexington County. (Ex. 24 at pps 57-65; Ex. 29).

Following the hearing on February 15, 2013, Roberts e-mailed Dean Crepes ("Crepes"), with Lexington County Voter Registration and Elections, and Maguire in response to an inquiry from Crepes about the fact that the county boundary issue, as it related to Plaintiff, had yet to be resolved and needed to be concluded. (Ex. 6). By way of reply, Roberts acknowledged that the county boundary in the area surrounding Plaintiff's residence needed to be surveyed and redrawn, both of which did not occur prior to February 20, 2013, and still have not occurred to date despite the ongoing dispute about Rocky Ford and its implications for the

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County could not match their own maps with those provided to the County by Zupan – the same maps, again, were used in Bowers's determination letter to Gantt. (Exhibit 37: Zupan E-mail to Maguire Dated January 2013).

[14] Plaintiff contended and today contends that there was no legal justification for this "hearing" and no jurisdiction since the proper method for challenging a candidate or office holder's residency is to appeal to the election commission of the county as previously set forth.

Richland/Lexington County line in that area. (Ex. 1 at p. 81, 6/22/15).. Roberts continued to acknowledge to Crepes that Richland and Lexington Counties did not have to accept the findings of Bowers and the SCB&CB as sent to Gantt on January 11, 2013. (Exhibit 39: Roberts E-mail to Maguire Dated February 2013; and Ex. 49). Additionally, Roberts went on to state that a survey would be time intensive and might not be completed by November of 2013, months after Plaintiff's removal. (Ex. 6). Ironically, Roberts conducted his "investigation" for Bowers within a matter of two (2) weeks as it concerned Plaintiff after having ignored the situation when he was first confronted with it and other properties in October of 2012.

I. <u>The March 19, 2013, District Board Hearing to Remove Plaintiff</u>

The referee issued his Findings and Recommendations on March 14, 2013, and within five (5) days the Board held a similar hearing in which they instantaneously decided to remove Plaintiff. (Exhibit 40: March 19, 2013, Board Minutes). During the hearing, Gantt reiterated that he thought Plaintiff would "do the right thing" and resign, continuing to assert that Plaintiff was being disingenuous to the Board and her constituents. *Id.* Other Board members continued to chide and scold Plaintiff for not attending or participating in the February hearing, although she did so at the advice of her then counsel of record at the time. (Exhibit 41).

In his statement to the attending press immediately following the hearing, Gantt stated that "[he] hoped she would do the right thing and step aside;" thus, Gantt insinuated that Plaintiff was engaging in wrongful conduct by not acquiescing and resigning from the Board. (Exhibit 42: WLTX Article Covering Removal of Plaintiff). Though Gantt and others potentially claimed that they voted to remove Plaintiff because it was their duty, they were following the law, and they were protecting the public, they failed to protect the Plaintiff's constituents as they failed to

replace her despite their promises to do so.[15] (Ex. 38 and Exhibit 43: Public Statement by Gantt, 3/19/13). Gantt claimed that his motive for removing Plaintiff was that he was fulfilling his oath and duty to protect the District constituents; yet his actions left thousands of constituents unprotected and unrepresented. *Id.*

As it relates directly to Plaintiff's removal from the Board, Plaintiff named two (2) witnesses from Richland County, both of whom have a great deal of experience with elections, voting, and the procedures that are used when determining a citizen's residence for the purpose of voting and paying taxes: Ms. Gloria Wilson ("Wilson"), former Chairman of the Richland County Board of Voter Registration, and Mr. John Cloyd ("Cloyd"), former Tax Assessor for Richland County. (Exhibit 44: Plaintiff's Answer to Interrogatory Attachment).

Wilson testified that during her more than two (2) decades of employment with Richland County, she never experienced an instance when her office was given a map showing an incorrect location for the Richland County line. (Ex. 4 at p. 28). In twenty (20) years, Wilson never had a resident placed in the incorrect county. (Ex. 4 at p. 30). Ultimately, Wilson knows that her office did not make any mistakes as it concerned the residency issue with Plaintiff. (Ex. 4 at p. 16). The offices of voter registration and the election commission certify a candidate for an election. (Ex. 4 at pps. 29, 32-33). As such, Plaintiff was certified to run for the Richland County board seat on the District's Board in 2004 and again in 2010. (Ex. 4 at pps. 36-37). Wilson is of the opinion that Gantt should have filed his challenge with the election commission when he wanted to question Plaintiff's qualifications to hold her seat. (Ex. 4 at p. 42).

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[15] Gantt, White, and Watson made public promises that they would fill the vacancy left by Plaintiff's removal from the Board; they did not do anything to ensure the voters had representation after Plaintiff was voted off the Board. (Ex. 43).

Wilson further went on to testify that she believed Plaintiff was removed from her position on the Board because she asked too many questions. (Ex. 4 at p. 15).

m. Plaintiff's Property Today

Ironically, the boundary between Richland and Lexington counties is currently being resurveyed so that it can be re-established. (Ex. 24 at p. 26). The SCB&CB Office of Research and Statistics is now researching land records and performing field work and historical research. (Ex. 24 at pps. 26-27) As Roberts stated in multiple emails discussed *supra* and as Tyler discussed in his report, such processes, if done properly, can take months to finalize. However in 2014, the South Carolina General Assembly passed a law giving Bowers's former office[16] the authority to determine county boundaries and mediate the same; they lacked this authority in 2013, but attempted to command the same in regards to Plaintiff. (S.C. Code Ann. 27-2-105; Exhibit 46: 2014 Bill: Geodetic Survey). Notably the statute requires in instances, such as Plaintiff's, where boundaries are ill-defined, unmarked, or poorly marked, that the SCB&CB "shall analyze archival and other evidence and perform *field surveys geographically* to position all county boundaries in accordance with statutory descriptions." *Id.* (emphasis added). Also, the statute provides affected parties, like Plaintiff, an avenue through which they may contest the findings. None of these procedures were followed when the boundary surrounding Plaintiff's property was being investigated nor were the appellate rights made available to Plaintiff.

As a result, of all Defendants' actions, Plaintiff testified that she has suffered numerous and extensive damages including the following: Plaintiff (1) had to seek the aid from a psychiatrist due to severe stress; however, she was unable to afford the same; (2) suffered severe and reoccurring muscle spasms; (3) was forced to seek aid from physical therapists who

[16] Bowers is now retired. (Ex. 23 at pps. 10-11).

performed deep tissue massages and dry needling; (4) lost the salary she would have been paid in connection to her Board service for the 2013-2014 school year; (5) lost the ability to be elected in either Richland or Lexington counties due to the reputational harm caused by the Defendants. (Ex. 1 at pps. 126, 128-129, 130, 136-137, 144, 6/22/15 and pps. 112, 183, 7/22/15).

Lastly, for all intents and purposes, Plaintiff is still considered a resident of Richland County, as she still votes and pays taxes in Richland County.[17] (Ex. 25 at p. 42; *see also* Cloyd testimony, *supra* at fn 9). Also, Plaintiff appealed the Board's decision to this Court and it was affirmed by Judge DeAndrea G. Benjamin. Plaintiff has since filed a Notice of Appeal with South Carolina Court of Appeals.

STANDARDS OF REVIEW

I. Motion to Dismiss

Under Rule 12(b)(6) of the SCRCP, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. *Spence v. Spence,* 368 S.C. 106, 116 (2006); *Baird v. Charleston County,* 333 S.C. 519, 527 (1999). A court may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon,* 347 S.C. 227, 553 S.E.2d 496 (Ct.App. 2001). "Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of

[17] Even after changes were made in the statute in 2014, giving the SCB&CB additional authority, there remains three (3) years later a complete failure to complete the realigning process. There is presently no map or legislative fiat changing the existing line between Richland and Lexington Counties. Not only is Plaintiff still a resident of Richland County as she has always been, she and all other affected citizens vote in all national, state, and local elections in Richland County as they have always done and are certified to do so. Neither the Richland County Election Commission nor the Lexington County Election Commission has taken a single step to remove Plaintiff and other affected property owners from the voter rolls. (Exhibit 48: Salmond Letter to Bowers).

the complaint." *Baird,* 333 S.C. at 527 (citing *Stiles v. Onorato,* 318 S.C. 297, 457 S.E.2d 601 (1995)). "[A] ruling on 12(b)(6) motion must be bottomed and premised solely upon allegations set forth by plaintiff." *Williams,* 347 S.C. at 233. If, in viewing the facts and inferences reasonably drawn therefrom in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory of the case, then the Rule 12(b)(6) motion to dismiss should be denied. *Baird,* 333 S.C. at 511; *Gentry v. Yonce,* 337 S.C. 1, 5 (1999); and *Stiles,* 318 S.C. at 300. Looking at facts in the light most favorable to plaintiff, and with all doubts resolved in his behalf, the court must consider whether the pleadings articulate any valid claim for relief. *Id.*

The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action. *Toussaint v. Ham,* 29S.C. 415, 357 S.E.2d 8 (1987). The court may grant a motion to dismiss only if the facts alleged in the complaint do not support relief under any theory of law. *Tatum v. Medical Univ. of South Carolina,* 346 S.C. 194, 552 S.E.2d 18 (2001).

II. Summary Judgment

Summary judgment is a drastic remedy and is only proper "when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Baughman v. American Tel. And Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537, 545 (1991); *Young v. South Carolina Dep't of Corrections*, 333 S.C. 714, 511 S.E.2d 413 Ct. App. 1999); Rule 56(c), SCRCP. "All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant." *Bayle v. SCDOT*, 344 S.C. 115, 120, 542 S.E.2d 736, 738 (Ct. App. 2001). "Moreover, since it is a drastic remedy, summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual

issues." *Englert, Inc. v. Leaf Guard USA, Inc.*, 377 S.C. 129, 133-34, 659 S.E.2d 496, 498 (2008).

Where there are triable issues of fact, "those issues must go to the jury." *Schmidt v. Courtney*, 357 S.C. 310, 592 S.E.2d 326 (Ct. App. 2003). Further, even "when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied." *Bayle*, 542 S.E.2d at 738 (citing *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 534 S.E.2d 672 (2000)). "In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit *a mere scintilla*[18] of evidence in order to withstand a motion for summary judgment." *Hancock v. Mid-South Management Co., Inc.*, 381 S.C. 326, 673 S.E.2d 801 (2009) (*emphasis added*).

ARGUMENT

Plaintiff argues that she sufficiently alleged and established facts to support her actions and presented ample evidence to demonstrate a genuine dispute of material fact as to each of her causes of action. She respectfully requests this Court to deny all four (4) motions for summary judgment and all claims to proceed before a jury of Plaintiff's peers.

I. CIVIL CONSPIRACY – Motion to Dismiss

Plaintiff alleged in her complaint facts sufficient to support her cause of action upon which relief can be granted against Defendant Bowers. Bowers asserts in his Motion to Dismiss that Plaintiff's claim for civil conspiracy must be dismissed because she failed to state a claim upon which relief can be granted.[19]

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[18] A mere scintilla is a "gleam, a glimmer, a spark, the least particle, the smallest trace." *Bethea v. Floyd*, 177 S.C. 521, 181 S.E. 721, 724 (1935).

[19] Rule 12(b) provides that "[a] motion making any [Rule 12(b)] defenses shall be made before pleading if a further pleading is permitted." Fed.R.Civ.P. 12(b). However, Rule 12(h)(2) provides that the defense of failure to state a claim upon which relief can be granted as set forth

A properly pled civil conspiracy claim asserts three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E. 2d 91, 95 (Ct. App. 1989). To establish the first two elements a plaintiff needs to allege "additional acts in furtherance of the conspiracy." *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). The third element, special damages, must be satisfied to prevent a double recovery. *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 610, 538 S.E.2d 15, 31 (Ct. App. 2000); *see also Anthony v. Ward*, 336 Fed. Appx. 311, 318, C.A.4 (2009) (attached) (interpreting South Carolina civil conspiracy law and recognizing that "[t]he case law makes clear that the concern is with the plaintiff receiving a double recovery.")

i. **Plaintiff has properly pled acts in furtherance of the conspiracy**

To establish the first two elements of a civil conspiracy, a plaintiff must plead acts in furtherance of the civil conspiracy to inform the defendants of "what acts in furtherance of the alleged conspiracy they are being accused." *Hackworth v. Graywood at Hammett, LLC*, 358 S.C. 110, 116, 682 S.E.2d 871 (Ct. App. 2009). The pleadings in this case appropriately apprise

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in Rule 12(b)(6) may be raised "by motion for judgment on the pleadings, or at the trial on the merits." Fed.R.Civ.P.12(h)(2); *see* 5A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1367 at 514–15 (2d ed.1990). Therefore, as a matter of motions practice, the Defendant's motion should be viewed as a Rule 12(c) motion for judgment on the pleadings raising the defense of failure to state a claim upon which relief can be granted. *See Republic Steel Corp. v. Pennsylvania Eng'g Corp.*, 785 F.2d 174, 182 (7th Cir.1986). The purpose of a Rule 12(b)(6) motion is to test the sufficiency of a complaint; "importantly, [a Rule 12(b)(6) motion] does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *244 *Republican Party v. Martin,* 980 F.2d 943, 952 (4th Cir.1992). *Edwards v. City of Goldsboro*, 178 F.3d 231, 243 (4th Cir. 1999). Pursuant to Rule 12(b)(6), Fed.R.Civ.P., a motion to dismiss for failure to state a claim upon which relief may be granted must be filed contemporaneously with or *before* the answer or other responsive pleading. *Yorkey v. Pettiford*, No. 8:07-1037-HMH-BHH, 2007 WL 2750068, at *8 (D.S.C. Sept. 20, 2007) *aff'd*, 271 F. App'x 337 (4th Cir. 2008).

the Individual Defendants of the acts in furtherance of the civil conspiracy for which they are charged. *See*, *Hackworth*, 682 S.E.2d 871 at 875.

In the present case, Plaintiff specifically alleged that after years of Plaintiff's outspokenness on the Board, Defendant Gantt received information that Plaintiff's property was not wholly located within Richland County. (*See* Exhibit 47: Plaintiff's Complaint). He purposely refrained from taking any action for a period of time; then, he contacted and met with Defendant Bowers, during which time they decided that Bowers would use his resources to improperly and inexactly identify Plaintiff's property in Lexington County. *Id.* In turn, such information provided Gantt with a basis to remove her from the Board. *Id.* Plaintiff additionally alleged that their actions were motivated by their desire to silence her criticisms of procurement violations, non-observance of Board policies, Gantt and other Board members' personal agendas, and her general outspokenness as a Board member. *Id.* Plaintiff alleged that the Individual Defendants met at various times and places to devise such a scheme. *Id.* Further, Plaintiff alleged that all actions taken by the Individual Defendants were performed outside the course and scope of their respective positions and employment as the Chairman of the Board and Director of the SCB&CB. *Id.* For these reasons, Bowers's Motion to Dismiss should be denied as Plaintiff properly alleged a claim upon which relief may be granted.

ii. Plaintiff properly pled special damages

The third element of a properly pled civil conspiracy requires a plaintiff to plead special damages: "[i]f a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim, their conspiracy claim should be dismissed." *Hackworth*, 682 S.E.2d 871 at 875; *see also*, *Christian v. South Carolina Department of Labor Licensing and Regulation, et al*, 2013 U.S. Dist. LEXIS 36080 (12(b)(6)

motion to dismiss a civil conspiracy claim denied where damages were not identical), and *Christian v. South Carolina Department of Labor Licensing and Regulation, et al.*, 2012 U.S. Dist. LEXIS 186908 (Report & Recommendation). A civil conspiracy claim can be shown where a plaintiff pleads that she has been maliciously blacklisted. *See Austin v. Torrington Co.*, 810 F.2d 416 (4th Cir. 1987). Furthermore, the cost of prosecuting an action is a properly considered special damage. *Benedict College v. Nat'l Credit Sys., Inc.*, 400 S.C. 538, 735 S.E.2d 518, 523 (2012).

The Plaintiff, here, pled special damages distinct in both word and nature from the other damages alleged herein; thus, there is no threat of a double recovery. *See*, *Kuznik*, 342 S.C. at 610. Specifically, Plaintiff pled that she suffered "special damages including pain, suffering, and emotional distress directly tied to Plaintiff being blacklisted from Defendant Board, ostracized for her outspoken criticisms that were valid, the loss of her position on Defendant Board, and other intangible damages including loss of reputation linked to her inability to run for and be elected to Defendant Board." (Ex. 47). Plaintiff also requested the costs of prosecuting this action. (Ex. 47). The special damages pled by the Plaintiff are cognizable at law. Plaintiff has sufficiently pled facts to support claim for civil conspiracy against Defendant Bowers. As such, his Motion to Dismiss should be denied.

II. CIVIL CONSPIRACY – Motion for Summary Judgment

Plaintiff has demonstrated a genuine issue of material fact as to the requisite elements of her civil conspiracy claim; therefore, the Individual Defendants' Motions for Summary Judgment as to civil conspiracy should be denied.

i. Plaintiff has presented sufficient facts to demonstrate a genuine dispute of material fact as to her claim for civil conspiracy against Bowers and Gantt

Bowers's Motion alternatively seeks a dismissal of Plaintiff's civil conspiracy claim by

way of a Motion for Summary Judgment. Gantt's first Motion for Summary Judgment, filed on January 8, 2016, is the only one (1) of the two (2) that addresses Plaintiff's action for civil conspiracy. Gantt and Bowers provide essentially the same grounds for their motions[20], which include the following: (1) Plaintiff's claim for civil conspiracy must fail because she cannot demonstrate a genuine issue of material fact as to the each element of this cause of action; (2) Gantt and Bowers performed their actions in the course of scope of their duties; and (3) punitive damages cannot be awarded against them because they are granted immunity by the South Carolina Tort Claims Act ("SCTCA"). Bowers additionally argues that he is granted judicial immunity. Plaintiff has presented sufficient evidence to permit her claim for civil conspiracy to go to a jury.

A properly pled civil conspiracy claim must demonstrate the following: (1) a combination of two or more persons; (2) with the purpose of injuring the plaintiff; and (3) causing special damages to the Plaintiff. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct.App. 1989).

"To establish a conspiracy, evidence, either direct or circumstantial, must be produced from which a party may reasonably infer the joint assent of the minds of two or more parties to the prosecution of the unlawful enterprise." *Pridgen v. Ward*, 391 S.C. 238, 246, 705 S.E.2d 58, 63 (S.C. Ct. App. 2010) (citing *Cowburn v. Leventis*, 366 S.C. 20, 49, 619 S.E.2d 437, 453 (Ct.App. 2005)). "Conspiracy may be inferred from the nature of the acts committed, the relationship of the parties, the interests of the alleged conspirators, and other relevant circumstances." *Moore v. Weinberg*, 373 S.C. 209, 228, 644 S.E.2d 740, 750 (Ct. App. 2007). "Because civil conspiracy is 'by its very nature covert and clandestine,' it is usually not provable

[20] As their motions seek the same relief, Plaintiff will address arguments to their motions in a consolidated fashion.

by direct evidence." *Id.* (quoting *Island Car Wash, Inc. v. Norris*, 292 S.C. 595, 601, 358 S.E.2d 150, 153 (Ct. App. 1987)). "Moreover, the field of admissibility of evidence is broadened in proof of conspiracy." *Island Car Wash, Inc.*, 292 S.C. at 601 (citing *Hall v. Walters*, 226 S.C. 430, 85 S.E. (2d) 729 (1955)).

However, the gravamen of a civil conspiracy is the damage resulting to the plaintiff from an overt act done pursuant to the combination, not the agreement or combination per se. *See Lee v. Chesterfield Gen. Hosp., Inc.*, 289 S.C. 6, 344 S.E.2d 379 (Ct. App. 1986).

ii. Plaintiff has presented sufficient evidence to demonstrate that the Individual Defendants acted in concert to harm her

Individual Defendants Gantt and Bowers argue that Plaintiff has not presented facts sufficient to demonstrate that they combined together for the purpose of harming Plaintiff. However, the very nature of the acts committed and the relationship between Bowers and Gantt itself is evidence of conspiracy. Further, Plaintiff argues that she has presented sufficient evidence regarding motive, opportunity, and concerted action from which a jury could conclude that the Individual Defendants reached an agreement to harm Plaintiff.

Specifically regarding the nature of the relationship between the Individual Defendants, Plaintiff has discussed that Gantt was the Chairman of the governing body – District Board – who not only publically exhibited clear animosity towards Plaintiff but also voted to remove her when presented with such opportunity. Bowers, as the director of the Office of Research and Statistics of the SCB&CB, had the power to provide Gantt with the "proof" he needed to present to his Board calling for the vote for Plaintiff's removal. The relationship of Gantt and Bowers, and their respective positions, demonstrates that they had the power together to remove Plaintiff from her position.

The evidence presented by the facts above illustrates just how the nature of the acts committed[21] is not only suspicious but amount to evidence of conspiracy. The evidence presented demonstrates that the timing of the request was malicious, the motivation behind such request was malicious, and the methods used to investigate the matter were malicious.

First, the motivation behind the request was malicous. The facts presented *supra* demonstrate that Gantt and his fellow Board members grew increasingly agitated with Plaintiff's involvement and activism with District matters following an unsuccessful campaign in 2004 and before the initiation of the investigation into her residence in 2012. Specifically, Plaintiff filed an appeal with the South Carolina Department of Health and Environmental Control ("SCDHEC") to challenge the issuance of permits to the District for CHS construction. She also continuously brought to the attention of both the Board and the public her concerns including perceived procurement violations, questionable uses of District funds, and deviations from proper Board procedures. She expressed these concerns during Board meetings, via open communications with her constituents, through the media, and even in personal letters to Defendant Gantt, copying her Board colleagues.

Due to Plaintiff's actions, Defendant Gantt and his fellow Board members took every occasion to publically express their disdain and opposition to Plaintiff's actions, including making statements during public Board meetings, making statements to the media, posting the District's victory in the appeal on District signage, posting details of the appeal on the District's website[22], and adopting a resolution calling for support against Plaintiff, and expressly guaranteeing their support of a non-profit organized for the sole purpose of suing Plaintiff for

[21] Plaintiff contends that the Individual Defendants made clear omissions in furtherance of their conspiracy, that their purposeful failures to perform constitute civil conspiracy.

[22] Again, nothing has been posted to the District website for "public information" regarding this pending suit.

damages related to CHS litigation. The evidence presented illuminates Gantt's motivation for wanting Plaintiff removed from the Board because she was an outspoken critic of District practices, and she was perceived as a proverbial problem child on the Board. In considering this motivation in combination with the timing of his request to Bowers, it is apparent that in 2012, after having this information for almost eight (8) years, Gantt suddenly had a reason to use the information originally provided to him by Mungo in 2004. He contacted the one person who could take that information and provide him and his fellow Board members a basis to silence Plaintiff – Bowers. Moreover, Gantt did not challenge Plaintiff's residency status through the election commission, which would have been the best and most proper avenue at the time per Wilson's testimony from her own two (2) decades of experience.

Further, Gantt claims that the true motivation behind his actions in requesting a review of Plaintiff's residency and taking action against Plaintiff were as follows: he was acting in the best interest of the public, he was protecting the constituents of the District, and he was following the law. However, Gantt's proffered motivations are clearly questionable when taken into consideration with his timing and knowledge of Plaintiff's alleged residency status for nearly a decade. Specifically, if Gantt was acting in the best interest of the public, then why would he have not investigated the claim that she lived in another county at the earliest possible moment?[23] If this was a matter that was truly in the public's interest, then why the delay? Rather than look into the matter in 2004 when Plaintiff was running, or even in 2010 when she ran again, he waited eight (8) years until he had the opportune moment. Further, Gantt's claim

[23] Gantt testified he was too busy and did not perceive Plaintiff to be a threat when he first learned from Mungo, one of his financial supporters, that Plaintiff may live in Lexington County. Rather than disclose this information at the time her learned it, Gantt secretly protected what he learned until after Plaintiff created problems for him as Chairman of the Board by her questioning of District actions relating to procurement, meeting procedures, etc. After that time, Gantt then used Bowers – in secret from Plaintiff – to oust her from the Board.

that he was protecting constituents and following the law is merely a cover-up for his malicious behavior because he and the Board not only refused to allow Plaintiff to finish her term – despite the public's request that she be allowed to fulfill her term – but also utterly failed to fill her vacant seat. Gantt's actions in "protecting the constituents" left them unrepresented and without a voice on the Board for an extended period of time.

Second, the timing of Gantt's formal request and prior discussions with Bowers were malicious in and of itself. Though the bulk of the conspiratorial conduct occurred in late 2012 through early 2013, the basis of this conspiracy began in 2004. Gantt testified that Mungo, a leader of a major development company within the District's geographical area, informed him as early as 2004 that he believed Plaintiff's residence may not be squarely located within Richland County. At that time, Plaintiff and Gantt were both campaigning for the Richland County Seat on the Board. In the years prior, Plaintiff had become very active in District matters by regularly attending school board meetings and raising concerns she felt prevalent. Gantt testified that he did not look into Plaintiff's residency at the time because it was of little concern to him and he "was busy running his campaign."

However, years later, in the fall of 2012, Gantt was again "busy" running a campaign, this time to be re-elected to his seat on the Board, and he found the time to hold several meetings and draft correspondence initiating the investigation into Plaintiff's residence. Notably, Wilson testified that when Plaintiff ran for the Board in 2004 and in 2010, her residence qualifications were not challenged, and they were certified by the Election Commission when Plaintiff filed to run. The Richland County Election Commission never even questioned her qualifications either time and has not done so to date.

Further, the timing of Gantt's decision to notify Plaintiff and Bowers's subsequent communications to both Lexington and Richland Counties requesting to have Plaintiff switched on the voter and tax rolls are subject to suspicion. The facts demonstrate that Gantt and Bowers both decided against notifying Plaintiff of the request or the investigation, despite her being arguably the best source for determining her county of residence – contrast this omission from Plaintiff to Gantt's inclusion of Watson, another Board member. Rather, Gantt met, planned, and conspired with Bowers and others for nearly three (3) months without ever notifying Plaintiff or giving her any opportunity to weigh-in on the issue. It was kept secret from her and for the purpose of preventing her from taking action and being further outspoken about yet another major decision concerning the District, students, and constituents – all of whom Plaintiff had an extensive history of being outspoken to inform the public of legitimate issues.

Instead, Gantt decided to ambush Plaintiff with the information during a uniquely crowded and well-attended Board meeting during which time he made a statement to the public; he refused Plaintiff the same opportunity and did not allow Plaintiff to speak or make any rebuttal statements. Gantt silenced her. Additionally, the facts show Gantt requested only that Bowers determine Plaintiff's residency issue, but Bowers went beyond that request. Bowers wrote to both Lexington and Richland Counties for Plaintiff's removal from the voter and tax rolls, although he admittedly did not have authority to do the same. Thus, Bowers took the conspiracy beyond providing Gantt with a basis for removing Plaintiff from the Board, and he provided the same information to the Counties to try to have her removed from their voter and tax rolls, which would solidify his "findings." Salmond even openly challenged Bowers's requests via letter; Bowers did not respond, and instead, a bill was passed in 2014 giving

Bowers's office complete authority over these matters through an appellate-like process – a process that was not and has not been afforded to Plaintiff.

Richland and Lexington Counties do not have the authority to do as Bowers requested, and consequently three (3) years later, Plaintiff is still registered to vote and pays taxes in Richland County. Again, Salmond even asked Bowers to provide authority or a reference to his statutory authority, but Bowers did not respond. Likewise, Roberts testified that Bowers and his office had no authority to force the counties to make such a change as it relates to a boundary dispute issue.

Moreover, the facts above demonstrate an additional genuine issue of material fact as to the *timing and the manner* in which the issue of Plaintiff's residency was raised in 2012. (emphasis added). Roberts testified that along with Plaintiff's property, several other properties, including Plaintiff's neighbors and an apartment complex, were flagged as being registered to vote in the wrong county. However, no one under Bower's authority or at the SCB&CB took any action to address these additional flagged properties; only Plaintiff's property was singled out and investigated. This particular boundary near and around Plaintiff's property – Rocky Ford – has been in dispute and ill-marked for quite an extended period of time, as noted by former Richland County Tax Assessor John Cloyd. Cloyd testified in depth about this particular boundary dispute but also how Plaintiff remains on the tax rolls in Richland County today.

The facts highlight that Bowers, Gantt, and Roberts provided inconsistent testimony as to exactly how Plaintiff's residency became known to the SCB&CB and Gantt. However, their testimony does align on the fact that they all met ahead of the formal December 20, 2012, request to discuss the issue and its resolution. Specifically, the facts above demonstrate that the Bowers and Gantt met with District attorneys and others to discuss their "plans." Following the

meeting, District attorneys drafted the request, but not before providing Bowers and his staff with the opportunity to review and edit the same. Thus, the facts demonstrate that Gantt, Bowers, and others, discussed, devised, and determined their course of action well before any "formal" action was taken by way of the December 20, 2012, letter.

Third, the methods used by Bowers are malicious because they are not proper. In his January, 11, 2013, response letter and by way of his testimony, Bowers stated he and his staff relied on three (3) sources to determine that Plaintiff was not a resident of Richland County. Bowers, Roberts, and Zupan each admitted that they did not perform a survey, visit Plaintiff's property, or examine any physical markers on or around the boundary in dispute. Zupan went on to testify that he did not locate any "ground evidence" such as the stake viewed by Tyler, Plaintiff's expert.

Further, Tyler opined that such a failure on their part was a deviation of standard surveying practice and procedure. Tyler concluded that the location of the boundary between the counties located by the SCB&CB was incorrect because that office failed to utilize and rely upon recorded surveys; failed to confirm the location of the statutorily defined "Rocky Ford;" and failed to inspect ground evidence on or near Plaintiff's property. Also, there are clear discrepancies in the maps they used to support their findings.

In addition to the numerous inaccuracies, discrepancies, and failures reported by Tyler, the staff of Bowers's former department even acknowledged that a true determination of the boundary would take months to determine – as revealed in the email from Roberts to Maguire. In his email sent a month after Bowers sent his findings to Gantt, Roberts noted that the SCB&CB had a plan to officially "research and reconstruct the boundary," which would take time and might not even be finished by November – some ten (10) months later. This email alone

demonstrates that even after Bowers and his team made their determination regarding the boundary near Plaintiff's property, the same sect of boundary was still in dispute, and the proper procedure would be to research and reconstruct the same. Yet, such research and reconstruction was never done to determine the accurate location around Plaintiff's property. The SCB&CB spent approximately two to three (2-3) weeks reviewing Plaintiff's residency issue; yet, Roberts's email demonstrates that boundary reconstruction in that area would take months. Ironically, such research and reconstruction is now being performed. Lastly, the standards and procedures required by § 27-2-105, indicate that even the General Assembly demands that boundary disputes such as Plaintiff's be determined only after a survey is performed.

The above discussion demonstrates the following: (1) Gantt purposely and intentionally waited eight (8) years to utilize the information that he was provided in 2004; (2) Gantt specifically chose to seek the help from Bowers rather than file an appeal with the Election Commission; (3) Gantt and Bowers met in advance to discuss their action before they took official actions in the form of a formal request letter; (4) Bowers took such a request and hastily performed a rudimentary investigation into Plaintiff's residence; and (5) Bowers then provided his unsupported findings to Gantt, so he could use the same as grounds to remove Plaintiff from the Board. As such, Plaintiff has presented sufficient circumstantial evidence demonstrating the Gantt and Bowers acted in concert to harm her.

iii. Plaintiff has presented sufficient evidence to demonstrate that the acts of the Individual Defendants caused her special damages

Gantt argues that Plaintiff cannot present evidence sufficient to demonstrate that she suffered special damages. The third element of a proper civil conspiracy requires the Plaintiff to show special damages. *Hackworth*, 682 S.E.2d 871 at 875. A civil conspiracy claim can be shown where a plaintiff pleads that she has been maliciously blacklisted. *See Austin v.*

Torrington Co., 810 F.2d 416 (4th Cir. 1987). Furthermore, the cost of prosecuting an action is a cognizable special damage under South Carolina Law. *Benedict College v. Nat'l Credit Sys., Inc.*, 400 S.C. 538, 735 S.E.2d 518, 523 (2012).

Here, Plaintiff presented substantial evidence that she has been blacklisted and ostracized and suffered damages therefrom. Due to the actions of Bowers and Gantt, Plaintiff's reputation as a reliable and cognizable candidate for the Board has been forever tainted. Plaintiff testified she feels she is unable to conduct a successful campaign or be re-elected to the Board because the Individual Defendants' actions have caused the public to view her as an untrustworthy or burdensome candidate, and the public still questions the status of her residency. Thus, not only did the Board force her out prematurely, it also prevented her from ever seeking to be replaced to her former position. Further, Plaintiff has been caused special damage in that she had to seek the aid from a psychiatrist due to severe stress; she suffered severe and reoccurring muscle spasms, also forcing her to seek aid from physical therapists who performed deep tissue massages and dry needling. Additionally, she lost the salary she would have been paid in connection to her Board service for the 2013-2014 school year.

Plaintiff has presented sufficient evidence demonstrating that she suffered special and recoverable damage at the hands of the Defendants; therefore their Motions for Summary Judgment should be denied on these grounds.

iv. <u>The Individual Defendants' actions were performed outside the course and scope of their duties</u>

Individual Defendants Gantt and Bowers go on to argue that Plaintiff's action for civil conspiracy must fail because they, at all times, acted within the course and scope of their duties as Chairman of the Board and Director at the SCB&CB, respectively. The evidence presented

establishes that Gantt and Bowers's actions fell outside the course and scope of their respective duties.

"A civil conspiracy cannot be found to exist when the acts alleged are those of employees or directors, in their official capacity, conspiring with the corporation." *Pridgen*, 391 S.C. at 244, 705 S.E.2d at 62 (citing *McMillan v. Oconee Memorial Hosp., Inc.*, 367 S.C. 559, 565, 626 S.E.2d 884, 876 (2006)). "As a result, 'no conspiracy can exist if the conduct challenged is a single act by a single corporation acting exclusively through its own directors, officers, and employees, each action within the scope of employment.'" *Id.* "Although a corporation cannot conspire with itself, 'the agents of a corporation are legally capable, as individuals, of conspiracy among themselves, or *with third parties.*'" *Pridgen*, 391 S.C. at 244, 705 S.E.2d at 62 (citing *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 14, 344 S.E.2d 379, 383 (Ct. App. 1986) (emphasis added)). "An act is within the scope of a servant's employment where [it is] reasonably necessary to accomplish the purpose of his employment and in furtherance of the master's business." *Pridgen*, 391 S.C. at 244, 705 S.E.2d at 62 (citing *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 276, 639 S.E.2d 50, 52 (2006)). "On the other hand, if the servant acts for some independent purpose of his own, wholly disconnected with the furtherance of his master's business, his conduct falls outside the scope of his employment." *Pridgen*, 391 S.C. at 244-245, 705 S.E.2d at 62 (citing *Crittenden v. Thompson-Walker Co., Inc.*, 288 S.C. 112, 116, 341 S.E.2d 385, 387 (Ct. App. 1986)).

Here, there is more than one reasonable inference that can be drawn indicating that Gantt and Bowers acted outside the course and scope of their respective employments. Gantt's actions were motivated by the independent purpose of silencing Plaintiff. The facts above demonstrate the Plaintiff was constantly and fervently outspoken before and during her tenure on the Board.

They also demonstrate that the Board constantly condemned her publically, rebuked her, and scolded her for her actions as a Board member. Gantt was highly motivated by his desire to remove Plaintiff, so she could no longer infringe or impede on his and the Board's agenda.

Further, Gantt's actions were performed outside the course and scope of his employment, as evidenced by his failure to address the residency issue at the earliest opportunity, rather than wait eight (8) years, and his failure to involve or even apprise the Board of his plan, until after the same was complete. The evidence demonstrates that Gantt knew at the time that Plaintiff was campaigning, and when she was elected in 2010, there was a contention regarding her residency. Yet, he chose not to address it, instead waiting until it was most convenient for him. Gantt chose to look into or investigate Plaintiff's residence on his own accord. He did not seek the approval of his Board. He did not permit the Board to agree upon a resolution to the issue. In fact, he did not even inform the entire Board of the very existence of the issue, until after it had been "determined" by Bowers.

Plaintiff anticipates that Gantt and Bowers will argue that all correspondence between the two and with others, were on agency or Board letterhead and included their signatures with their respective titles. Plaintiff avers, however, that it is not the formalities of the letter that determines whether Gantt and Bowers's correspondence was performed within the course and scope of their duties; rather, it is the content and the purpose behind such correspondence that are the true indicia of whether their actions are made for some independent purpose.

More importantly, Gantt's actions fall outside the course and scope of his Board duties because Gantt violated the very Board policies that govern the scope of his duties. (Exhibit 50: Board Policy BCA). As a Board member and Chairman, Gantt – like all other Board members – is bound by the Board's own policies and procedures. Specifically, Gantt violated his own

Board's Code of Ethics as it concerned the actions he took against Plaintiff; in turn, Gantt acted outside the scope of his authority. Policy BCA states as follows:

> This code of ethics is adopted by the board as a guide to its members as they strive to render effective and efficient service to their community.
>
> A board member should honor the critical responsibilities that his/her membership demands by doing the following:
>
> - **refusing to play politics in either the traditional partisan or any petty sense**
> - accepting the responsibility of becoming well informed concerning the duties of board members and the proper functions of public schools
>
> A board member should respect his/her relationships with other members of the board by doing the following:
>
> - recognizing that authority rests only with the board in official meetings and that the individual member has no legal status to bind the board outside of such meetings
> - **making decisions only after all facts bearing on a question have been presented and discussed**
> - **refusing to participate in irregular meetings such as secret or "star chamber" meetings which are not official and which all members do not have the opportunity to attend . . . .**

(Ex. 50) (emphasis added). Gantt, through his actions of targeting Plaintiff, treating her with disrespect, holding "star chamber" meetings without her knowledge, and binding the Board to a formal inquiry and inquest into her residency, acted outside the course and scope of his functions as a Board member.

Further, Bowers was acting outside the course and scope of his employment because he acted with the independent purpose of fulfilling Gantt's improper request. The facts demonstrate that Bowers and Gantt met in advance, Gantt's attorneys drafted and allowed Bowers to edit the request, and Bowers conducted a cursory review of Plaintiff's residence by compiling and

relying on three (3) sources he knew to be insufficient to determine an ill-defined boundary such as Plaintiff's.

As such, the above facts and discussion create more than one reasonable inference that Gantt and Bowers were acting outside the course and scope of their respective positions by planning to formulate unsupported grounds to remove Plaintiff from the Board.

v. The Individual Defendants are not immune from punitive damages under the SCTCA

Plaintiff has presented ample evidence, which demonstrates that Defendants are not entitled to immunity under the SCTCA.

The SCTCA addresses the circumstances under which a governmental entity is liable for tortious conduct of its employees. The SCTCA states that "a governmental entity [is] liable for [its] torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein." S.C. Code Ann. § 15-78-40. Relative to the instant matter is S.C. Code Ann. § 15-78-60, which identifies exceptions to the waiver of immunity. The statute identifies forty (40) exceptions wherein the governmental entity is not liable for a loss. S.C. Code Ann. § 15-78-60.

"The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense." *Steinke v. S.C Dep't of Labor, Licensing, & Regulation*, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999); *see also Strange v. S.C. Dep't of Highways & Pub. Transp.*, 314 S.C. 427, 430, 445 S.E.2d 439, 440 (S.C. 1994); *Faile v. S.C. Dep't of Juvenile Justice*, 350 S.C. 315, 324, 566 S.E.2d 536, 540 (2002) ("The governmental entity claiming an exception to the

waiver of immunity under the Tort Claims Act has the burden of establishing any limitation on liability.")

Pursuant to section 15-78-70(a) of the South Carolina Code, "an employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefore except as expressly provided for in section (b)." S.C. Code Ann. 15-78-70(a); see also *Pridgen v. Ward*, 391 S.C. 238, 248, 705 S.E.2d 58, 64 (S.C. Ct. App. 2010). The subsection of the same statute then provides that "nothing in the chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties *or* that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." *Id.*; *South Carolina State Budget & Control Board v. Prince,* 304 S.C. 241, 403 S.E.2d 643 (1991) (the Tort Claims Act does not provide immunity to an employee whose conduct constitutes actual malice). Further, a government employee is considered to be acting within the scope of his official duty if he is "(1) acting in and about the official business of a governmental entity and (2) performing official duties." S.C. Code Ann. 15-78-30(i). "Actual malice is ill will, recklessness, wantonness, or conscious indifference to the plaintiff's rights." *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987) (citing *Padgett v. Sun News,* 278 S.C. 26, 292 S.E.2d 30 (1982)). The question of actual malice is a question to be determined by a jury. *Anderson v. Augusta Chronicle*, 365 S.C. 589, 619 S.E.2d 428 (2005).

Here, the Individual Defendants contend that there is no evidence demonstrating that they were acting outside the scope of their official duties. Inversely, Plaintiff contends that she has presented ample circumstantial evidence upon which more than one reasonable inference can be drawn that the Individual Defendants acted outside the scope of their official duties and with the

intent to harm her. A strong inference is drawn from the relationship of the Individual Defendants as well as the very nature of their actions. Such inference being that they conspired together to harm her and silence her by removing her from the Board.

As argued *supra*, Gantt's role as Board Chairman is to be the leader of a political body, which governs the District as a unified entity. However, Gantt acted outside the course and scope of his role as Board Chair by failing to address Plaintiff's residence at the earliest opportunity, by failing to apprise or seek approval from his fellow Board members in violation of Board policy, and by acting on his own accord and disjoining himself from the political body that he leads in order to pursue his agenda of removing Plaintiff. Additionally, Gantt's actions were done with actual malice in that he acted recklessly by failing to address the perceived issue with Plaintiff's residency at the earliest possible opportunity, and he failed to gather any indicia of trustworthiness from Mungo, one of his financial supporters. Gantt has acted in a conscious indifference to the plaintiff's rights in that he refused to even allow her the opportunity to take part or even weigh in on an investigation that he was well aware could and would remove her vested right to serve as a Board member. By way of being elected by the constituents of the District, Plaintiff had the right to serve on the Board; yet, Gantt's actions were in a conscious disregard for that right because his ultimate in goal in this conspiracy was to remove that very right bestowed upon Plaintiff.

Further, Bowers's role as the Director of the Office of Research and Statistics was to work with state agencies and political subdivisions to provide mapping and other services to agencies. However, Bowers's actions fell outside the permissible scope of those duties when he met with Gantt and others to accept and devise a plan, then implemented such a plan by way of directing his staff to perform a cursory, unsubstantiated, and improper review of Plaintiff's

property. Bowers did not even have Roberts follow-up on the other properties that were flagged, and the SCB&CB performed such a cursory review despite the fact that the staff, including Roberts, knew that this was a problem area from Cloyd himself. As Tyler stated, the review performed by Bowers and his team went outside the standard practices and procedures of proper surveying and their review, as summarized by the January 11, 2013, response letter, was insufficient to determine a county boundary dispute per Tyler's expert opinion, which was based upon the past practices and procedures and the standard procedures now required by SC statute.

As such, Gantt and Bowers are not afforded protection from the SCTCA because their actions in furtherance of the civil conspiracy were performed outside the course and scope of their duties, and they acted with actual malice.

a. Defendant Bowers is not afforded judicial immunity

Bowers takes the position that his actions in investigating the exact location of Plaintiff's residence and in providing subsequent testimony regarding the same should be protected by common law judicial immunity. Any activities Bowers engaged in outside the context of litigation are not protected.

Judicial immunity is a common law immunity that is preserved by the SCTCA rather than supplanted by it. *O'Laughlin v Windham,* 330 S.C. 379, 383, 498 S.E.2d 689, 691 (Ct. App. 1998). "Judicial immunity is an absolute bar in the sense that it absolutely bars litigation against the judicial officer in certain circumstances." *Id.* "Judicial immunity extended not only to public officials but also to private citizens (in particular jurors and arbitrators); the touchstone for its applicability was performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights." *Burns v Reed,* 500 U.S. 478, 500, 111 S.Ct. 1934, 1946 (1991) (citations omitted).

However, the United States Supreme Court has carved out three exceptions. *O'Laughlin,* 330 S.C. at 383, 498 S.E.2d at 691 (*citing* Erwin Chemerinsky, *Federal Jurisdiction* § 8.6 (2d ed.1994)). "First, no judicial immunity exists if the judge acts in the 'clear absence of all jurisdiction.'" *Id.* (citing *Stump v. Sparkman,* 435 U.S. 349, 357, 98 S.Ct. 1099, 1105, 55 L.Ed.2d 331 (1978)). Second, judicial immunity extends only to judicial acts. *Id.* (citing *Forrester v. White,* 484 U.S. 219, 108 S.Ct. 538, 98 L.Ed.2d 555 (1988)). Finally, judges cannot claim judicial immunity for suits seeking only prospective, injunctive relief. *Id.* (citing *Pulliam v. Allen,* 466 U.S. 522, 104 S.Ct. 1970, 80 L.Ed.2d 565 (1984)).

Additionally, quasi-judicial immunity extends "only to government servants, protecting their 'quasi-judicial' acts-that is, official acts involving policy discretion but not consisting of adjudication. Quasi-judicial immunity, however, [is] qualified, *i.e.*, could be defeated by a showing of malice." *Burns*, 500 U.S. at 500, 111 S.Ct. at 1947 (citations omitted).

In this case, Bowers is not entitled to judicial or quasi-judicial immunity. First, Bowers is not entitled to judicial immunity because his actions dealing with investigating Plaintiff's property were not actions that are protected by such immunity. Specifically, by accepting Gantt's request and acting in furtherance of such conspiracy in deviating from proper standards and past practices of determining boundary disputes, Bowers's actions did not arise to resolving a dispute or adjudicating private rights; rather, they were done for the purpose of providing Gantt with grounds to remove Plaintiff.

Second, Bowers is not entitled to quasi-judicial immunity because his actions were made with malice. Specifically, they were made in reckless disregard for Plaintiff's rights. For example, Bowers's deviation from standard practices and procedures, as well as his own office's past practices and procedures demonstrates that he disregarded Plaintiff's rights. Bowers was

aware that his actions would provide Gantt and his fellow Board members with a basis to remove Plaintiff. He was aware that such a right was vested when she was properly elected for her position. However, rather than performing a diligent and proper review of Plaintiff's property, including performing a survey or even a site visit, Bowers provided a letter to Gantt stating three (3) bases for his conclusion, two (2) of which his own staff testified were insufficient standing alone. If Bowers acted with due regard to Plaintiff's right, then he would have taken the time, no matter how extensive or consuming, to perform a thorough, diligent, and proper review of Plaintiff's property and residence, such as the review that is currently being performed of the county boundary surrounding Plaintiff's and others' properties.

As such, Bowers is not entitled to judicial or quasi-judicial immunity wherein his actions were not judicial, and they were made with malice – Bowers is liable for his conspiratorial actions.

III. DEFAMATION

Plaintiff has demonstrated a genuine issue of material fact as to the requisite elements of her defamation claim against Gantt.

Defendant Gantt filed two (2) separate Motions for Summary Judgement, and both address Plaintiff's claim for defamation. Both Motions state that Plaintiff's claim for defamation should fail for the following reasons: (1) there exists no genuine issue of material fact as to any of the elements of a claim for defamation; and (2) Gantt is immune from suit pursuant to the SCTCA because Plaintiff cannot establish that Gantt's statements were made with actual malice, and he made all statements while acting in the course and scope of his duties.

Additionally, Defendant Board filed its Motion for Summary Judgment similarly seeking dismissal of Plaintiff's defamation claim. The Board provides the following as grounds for its

motion: (1) there exists no genuine issue of material fact as to any of the requisite elements for defamation and (2) the Board is entitled to immunity under the SCTCA.

Plaintiff has presented ample evidence to show the Defendants made defamatory and actionable statements, and their respective Motions for Summary Judgment should be denied.

i. Plaintiff is able to demonstrate a genuine issue of material fact as to her claim for defamation

A properly pled defamation claim must assert the following: (1) a false and defamatory statement concerning another; (2) an unprivileged publication to a third party; (3) fault on the part of the publisher; and (4) actionability of the statement. *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S.C. 462, 474, 710 S.E.2d 67, 74 (2011). Additionally, the Plaintiff must prove the additional element of "malice" when she qualifies as a public official. *New York Times v. Sullivan,* 376 U.S. 254 (1964).

a. Defendants Board and Gantt made false statements concerning Plaintiff

The first element of the cause of action requires that a plaintiff show that a false and defamatory statement was made concerning herself. *Id.* A false or defamatory statement must have a defamatory meaning, which can be expressed directly through signs, pictures, etc. and indirectly by innuendo, insinuation, conduct or action. *Tyler v. Macks Stores of South Carolina,* 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980). A statement that has defamatory meaning tends to impeach the honesty, integrity or reputation of a person, subjects her to public hatred, contempt, or ridicule, injures a person's business or occupation; for example an allegation of criminal wrongdoing. *See Eubanks v. Smith,* 292 S.C. 57, 354 S.E.2d 898 (1987); *Smith v Bradstreet Co.* 63 S.C. 525, 41 S.E. 763 (1902). Extrinsic circumstances can render a statement defamatory when it would not ordinarily be interpreted as such. *Costas v Florence Printing Co.,* 237 s.c. 655, 118 S.E.2d 696 (1961); *see also Mains v. K-Mart Corp.*, 297 S.C. 142, 375 S.E.2d

311 (Ct. App. 1988). "Where words used are capable of different meanings, one of which is slanderous, the jury must ascertain [the] sense in which they were published and decide which meaning was, in fact, conveyed." *Timmons v. News & Press, Inc.*, 232 S.C. 639, 103 S.E.2d 277 (1958).

Additionally, at common law, falsity is presumed, but where the First Amendment is involved, such as where the Plaintiff is a public official, the Plaintiff carries the burden of proving falsity. *See Tharp v. Media Gen., Inc.*, 987 F.Supp. 2d 673 (D.S.C. 2013); *Parker v. Evening Post Publishing Comp.*, 317 S.C. 236, 452 S.E.2d 640, 644-46 (Ct. App. 1994). The plaintiff may do so by offering evidence that the defendant omitted material information. *Id.*

There is a genuine issue of material fact that the statements and actions made concerning Plaintiff had a defamatory meaning, which impeached her integrity and reputation and subjected her to public hatred and contempt. Further, there is a genuine issue of material fact that the statements made were patently false, and such issue should be resolved by a jury.

The statement that "Plaintiff that is a resident of Lexington County" is certainly not true. For all intents and purposes she is still to this day – three (3) years later – a resident of Richland County. In fact, both Counties still treat her as a resident of Richland in that neither has taken action to switch her and her family to the Lexington's tax or voter rolls, and she still pays taxes and votes in Richland County. As a pretrial matter, it is false and defamatory in and of itself for Gantt to falsely suggest that she knows that Plaintiff does not live in Richland County and that she falsified her candidacy application and oath and should resign in the middle of her elected term – charging her with incompetency and violation of law, defamation *per se* under any standard. As stated, the statements are patently false and published with clear malice. Plaintiff

is still a resident of Richland County even three (3) years after these statements and actions have taken place.

Further, throughout the entirety of Plaintiff's tenure on the Board, the Board and Gantt constantly and publically published false statements concerning Plaintiff. Such statements and actions were plentiful. The first example being that the Board and Gantt published that the District won the lawsuit on a marquee located on a public road outside a District school, one which Plaintiff's children attended. Gantt even testified that he was aware that no other lawsuit was currently pending; thus, District constituents reading the sign would be aware that the lawsuit referenced was Plaintiff's appeal concerning CHS construction.

Next, the District, at the direction of the Board, widely distributed limited and one-sided information about the lawsuits filed against and by Plaintiff via automated phone calls, automated e-mails, and postings on the District website. Gantt again admits that information regarding the current lawsuit has not been similarly distributed.

Further, Gantt made numerous public statements during Board meetings and to the media that Plaintiff should "do the right thing," which insinuated that her refusal to resign was some sort of wrongful or fraudulent conduct. Also, Gantt refused Plaintiff the opportunity to respond to the allegations leveled against her and effectively silenced her during the highly attended Board meeting in which he revealed her residency issue. During this same Board meeting, in January 2013, Gantt's actions by intentionally and purposefully omitting from his public statement the information that Plaintiff has for ten (10) years paid taxes and voted in Richland County permitted the defamatory insinuation to ring aloud to the constituents that were present and serves as evidence of falsity.

Additionally, the facts demonstrate that Gantt permitted other Board members and even the public – including students, to ridicule, humiliate, and single out Plaintiff during Board meetings, all the while disallowing Plaintiff the opportunity to adequately respond to the same. Gantt permitted Board members to make motions, which were later approved by the Board – excluding Plaintiff – which publically, officially, and formally admonished and condemned Plaintiff for exercising her right to appeal an agency decision.

All such statements and actions impeach Plaintiff's honesty, integrity and reputation. Such statements and actions subjected her to public hatred, contempt, or ridicule, so much so that Plaintiff is certain that she will never be able to be elected to any seat – whether Richland or Lexington – on the District Board.

Plaintiff has presented sufficient evidence that the Defendants Gantt and District made false statements concerning Plaintiff.

b. Defendant Board and Gantt's statements were not privileged

Gantt asserts that his communications, statements, and actions were privileged because they were (1) made in good faith; (2) concerned a matter of public interest; and (3) are subject to an absolute privilege.

The second element of defamation is an unprivileged publication to a third party. *Argoe v. Three Rivers Behavioral Health, L.L.C.*, 392 S.C. 462, 474, 710 S.E.2d 67, 74 (2011). The publication is the communication, intentionally or by a negligent act, to a third party who is someone other than the person defamed. *Id.* (citing 50 Am. Jur. 2d Libel & Slander § 235 (1995)).

In a defamation action, the defendant may assert the affirmative defense of conditional or qualified privilege. *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 484, 514

S.E.2d 126, 134 (1999). "Under this defense, one who publishes defamatory matter concerning another is not liable for the publication if (1) the matter is published upon an occasion that makes it conditionally privileged, and (2) the privilege is not abused." *Id.* (citing Restatement (Second) of Torts § 593 (1977)).

In South Carolina qualified privilege is defined as:

> [a] communication made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a duty, is privileged if made to a person having a corresponding interest or duty, even though it contains matter which, without this privilege, would be actionable, and although the duty is not a legal one, but only a moral or social duty of imperfect obligation. The essential elements of a conditionally privileged communication may accordingly be enumerated as good faith, an interest to be upheld, a statement limited in its scope to this purpose, a proper occasion, and publication in a proper manner and to proper parties only. The privilege arises from the necessity of full and unrestricted communication concerning a matter in which the parties have an interest or duty, and is not restricted within any narrow limits.

Conwell v. Spur Oil Co., 240 S.C. 170, 178-179, 125 S.E.2d 270, 274-275 (1962) (citing 33 Am. Jur., Libel and Slander, section 126, 124). Applying those elements of qualified privilege, this context means: (1) the defendant speaker believed in good faith that the information was true when uttered; (2) the information served a legitimate interest; (3) the statement was limited in its scope; (4) communicated on a proper occasion; and (5) it was provided only to an appropriate person who had a legitimate interest in receiving the information. Thus, to invoke qualified privilege, Defendant Gantt has the burden for each of these elements.

Additionally, a conditional privilege may be lost or overcome where (1) the defendant makes a statement with common law actual malice; (2) the statement exceeds the scope of the privilege by publishing such statements to unnecessary persons; (3) or if the statement is made in reckless disregard of the victim's rights. *Abofreka v. Alston Tobacco Co.*, 288 S.C. 122, 341

S.E.2d 622 (1986); *Bell v. Bank of Abbeville,* 208 S.C. 490, 38 S.E.2d 641 (1946); *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987); *Fountain v. First Reliance Bank*, 398 S.C. 434, 730 S.E.2d 305 (2012). As stated *supra*, "actual malice is ill will, recklessness, wantonness, or conscious indifference to the plaintiff's rights." *Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987) (citing *Padgett v. Sun News,* 278 S.C. 26, 292 S.E.2d 30 (1982)).

A qualified privilege is subject to being "abused." *See McBride v. Sch. Dist. of Greenville Cty.*, 389 S.C. 546, 562, 698 S.E.2d 845, 853 (Ct. App. 2010). The South Carolina Supreme Court explained the privilege as follows:

> When one has an interest in the subject matter of a communication, and the person (or persons) to whom it is made has a corresponding interest, every communication honestly made, in order to protect such common interest, is privileged by reason of the occasion. *The statement, however, must be such as the occasion warrants, and must be made in good faith to protect the interests of the one who makes it and the persons to whom it is addressed.*

Bell, 208 S.C. at 493-94, 38 S.E.2d at 643 (emphasis added). In sum, communications between employees are qualifiedly privileged only if made in good faith and in the usual course of business. *McBride*, 389 S.C. at 562, 698 S.E.2d at 853 (citing *Murray v. Holnam, Inc.*, 344 S.C. 129, 140-141, 542 S.E.2d 743, 749 (Ct. App. 2001)). The conditional privilege can be lost if the statement is made with malice or with knowledge of its falsity or reckless disregard of whether it is true or false.

"In general, the question whether an occasion gives rise to a qualified or conditional privilege is one of law for the court. However, the question whether the privilege has been abused is one for the jury." *Swinton, 334 S.C. at 485, 514 S.E.2d at 134* (citing 50 Am. Jur. 2d Libel and Slander § 276 (1995)). Factual inquiries, such as whether the defendant acted in good faith in making the statement, whether the scope of the statement was properly limited, and

whether the statement was sent only to the proper parties, are generally left in the hands of the jury to determine whether the privilege was abused. *Id.*

The general rule has been applied in *Swinton* and in *Fulton.* In *Fulton*, the South Carolina Supreme Court held that it was a question for the jury to determine if the publication went beyond what the occasion required and was unnecessarily defamatory. *Fulton*, 220 S.C. at 297, 67 S.E.2d at 429; *cf. Woodward*, 277 S.C. at 32-33, 282 S.E.2d at 601 ("...abuse of privilege is ordinarily an issue for the jury..."). In *Swinton*, the Court held that "[a]ssuming the occasion did give rise to a conditional privilege, we believe a question existed for the jury as to whether the privilege was exceeded or abused." *Swinton*, 334 S.C. at 486, 514 S.E.2d 126 at 135.

1. <u>The Board and Gantt's statements exceed the scope of the privilege</u>

The Board and Gantt cannot demonstrate the elements of the qualified privilege. Specifically, they cannot and have not offered evidence demonstrating the following: (1) they believed in good faith that the information was true when uttered; (2) the information served a legitimate interest; (3) the statement was limited in its scope; (4) it was communicated on a proper occasion; and (5) it was provided only to an appropriate person who had a legitimate interest in receiving the information. Gantt and the Board are not entitled to a qualified privilege because they cannot offer evidence to prove that they believed in good faith that Plaintiff was a resident of Lexington County. In fact, the evidence presented above demonstrates the opposite – they knew Plaintiff was not a resident of Richland County because the Counties still, in January 2013 and today, considered Plaintiff a resident of Richland and because she had yet to be adjudicated as a resident of Lexington.

Further, the statements and actions discussed *supra* did not serve a *legitimate* interest; rather, they served the personal interests of the Board members, including Gantt: their interests to

remove Plaintiff and make her appear to the public as a proverbial troublemaker, who was wasting taxpayer money. Lastly, the statements and actions of the Board and Gantt were not made in a proper occasion or communicated to the appropriate person because these statements were published on the website and District signage; they were communicated in open sessions of Board meetings; and they were not directed or communicated solely to Plaintiff, she being the only *appropriate* recipient. (emphasis added).

Assuming *arguendo* that Gantt and the Board can demonstrate the above listed elements, they lost their conditional privilege because (1) they made a statement with common law actual malice; (2) the statements exceeded the scope of the privilege because they were published to unnecessary persons; (3) and the statements were made in reckless disregard of Plaintiff's rights. Gantt and the Board's statements and actions were made with actual malice because they were made with ill-will; Gantt and the Board wanted to damage and ruin Plaintiff's reputation and standing with her constituents by blaming her personally for the delay in the CHS construction. Their actions and statements, all including those listed above, were done for the purpose of preventing Plaintiff from being re-elected if she were to choose to run again.

Due to their actions and statements, Plaintiff feels as if their goal was achieved because she testified that she does not have any chance in successfully running a campaign in the District, no matter the county in which she ran. Further, the statements that she is not a resident of Richland County are not only false, as discussed above, but also were made with reckless disregard for her rights. South Carolina statute provides that Plaintiff, if removed for cause, must first have an opportunity to be heard. However, in stating that she was not residence of the county which she represented, the Board and Gantt were infringing on that right to be heard by a fair and impartial body. Moreover, they were infringing on her right to run again for any seat on

the Board because their statements, as they were aware, would harm her opportunity to successfully exercise that right. Therefore, any conditional privilege claimed by the Board or Gantt was overcome, and they are not protected by any such privilege.

Lastly, the Board and Gantt lost their qualified privilege because they made statements and acted in bad faith, outside of the usual course of business, and with malice or with knowledge of falsity or reckless disregard of whether the statements were true or false. For the reasons discussed in the preceding paragraphs, the statements and actions by the Board and Gantt were made in reckless disregard for the truth of the same. Additionally, for the same reasons that the statements and actions were made with ill-will, they were made in bad faith. The Board and Gantt made all statements and conducted themselves in a fashion towards Plaintiff for the sole purpose of harming her reputation and standing with the District community. In regards to the statements made in the January 14, 2013, Board meeting, the Defendants' bad faith is demonstrated by the fact that they chose to reveal such controversial information during a unusually well-attended meeting and also because they did not allow Plaintiff to provide any rebuttal to the allegations they levelled against her that night.

For the foregoing reasons, Defendants Board and Gantt are not entitled to either conditional or qualified privilege, and their respective Motions for Summary Judgment should be denied as to these grounds. Additionally, whether any such privilege has been abused should be submitted to and determined by a jury.

2. The Board and Gantt's statements and actions were not subject to an absolute privilege

A defamatory statement is granted an absolute privilege if such statement was made in pleadings, sworn or unsworn affidavits, depositions, testimony, briefs, or during trial preparation. *See* S.C. Code Ann. § 41-27-560 (1986); *Southern Glass & Plastics v. Duke*, 367 S.C. 421, 626

S.E.2d 19 (Ct. App. 2005); *Richardson v. McGill*, 273 S.C. 142, 255 S.E.2d 341 (1979); *Crowell v. Herring*, 301 S.C. 424, 392 S.E.2d 464 (Ct. App. 1990); *Anderson v. Southern Ry. Co.*, 224 S.C. 65, 77 S.E.2d 350 (1953). An absolute privilege applies in administrative, grievance, or arbitration proceedings. *Id.*

Defendants Gantt and Board claim that they should be entitled to an absolute privilege; however, none of the defamatory statements listed above and discussed in the facts were made within pleadings, sworn or unsworn affidavits, depositions, testimony, briefs, or during trial preparation. Rather, all the statements at issue were made to the media, to the public during board meetings, via public statements read aloud at board meetings, on the District's website, on district signage, and even impliedly through their actions, *i.e.* refusing Plaintiff the opportunity to respond to the allegation that she was not a residence of Richland County. Put simply, as with the qualified and conditional privilege, the Defendants cannot demonstrate the requisite elements of an absolute privilege; therefore, they are not entitled to the same. Plaintiff respectfully requests the Defendant Board and Gantt's respective Motions for Summary Judgment be denied as to this ground.

c. Plaintiff has produced ample evidence that Defendant Board and Gantt are the at fault party

"To prove fault in a defamation action, a plaintiff who is a public official or public figure must prove by clear and convincing evidence that the defendant acted with actual malice in publishing a false and defamatory statement about the plaintiff." *Erickson,* 368 S.C. at 468, 629 S.E.2d at 666 (citing *New York Times,* 376 U.S. at 279-80, 84 S.Ct. at 726). South Carolina law considers a school board member a public official. *See Anderson v. Augusta Chronicle,* 365 S.C. 589, 619 S.E.2d 428 (2005). Constitutional actual malice consists of a statement that was "made with knowledge that it was false or with reckless disregard of whether it was true or false." *New*

York Times, 376 U.S. at 280. To find actual malice for constitutional purposes, "the court must use a subjective standard to test the 'publisher's good faith belief of the truth of his or her statements.'" *Anderson,* 365 S.C. at 595, 619 S.E.2d at 431 (citing *Peeler v. Spartan Radiocasting, Inc.*, 324 S.C. 261, 266, 478 S.E.2d 282, 284 (1997). Reckless disregard for the truth includes that the defendant had a "high degree of awareness of ... probable falsity." *Erickson,* 368 S.C. at 477, 629 S.E.2d at 671. "[O]ne may recklessly disregard the falsity of alleged defamatory material by failing to investigate the truth of the material when 'there are obvious reasons to doubt the veracity of the informant.'" *Id.* (citing *St. Amant v. Thompson,* 390 U.S. 727, 731, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968)).

For the reasons discussed *supra*, Gantt and the Board did not make their statements in good faith nor did they have a good faith belief that the statements were true. However, the facts above and preceding discussion demonstrates that Gantt and the Board made the statements concerning Plaintiff and acted in a manner that was with knowledge that the conveyed message was false and they acted with reckless disregard of whether the statements were true or false. Further, Gantt and the Board had a high degree of awareness that the statements were false because even Gantt testified that Mungo did not provide him any reasons as to why he believed Plaintiff lived in Richland County. The statement, in fact, amounted to a mere rumor that Gantt took at face value, and he failed to investigate the veracity of Mungo or his motive for providing Gantt with the same information. Yet, Gantt took this statement and went to Bowers, who gave him an unsupported basis for removing Plaintiff. The Board then took the January 2013 letter from Bowers as evidence enough that Plaintiff lived in Lexington County and published the same, despite knowing that the she had never been adjudicated as such by a court of this state,

despite knowing the Counties refused to treat her as such, and despite knowing that she had been certified as a resident of Richland County each time she filed her campaign application.

For the foregoing reasons, Plaintiff has demonstrated that Defendants Board and Gantt acted with constitutional actual malice in publishing false statements about her. Therefore, Plaintiff respectfully requests this Court to deny the respective motions on these grounds.

d. Plaintiff has produced evidence that Defendant Board and Gantt made actionable representations.

A statement is classified as either actionable *per se* or defamatory *per quod.* "The defamatory meaning of a message or statement may be obvious on the face of the statement, in which case the statement is defamatory *per se*. An example of defamation *per se* is 'A is a thief.'" *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 508-509, 506 S.E.2d 497, 501 (1998). If the defamatory meaning is not clear, then the statement is defamatory *per quod. Holtzscheiter*, 332 S.C. at 509, 506 S.E.2d at 501. In cases involving defamation *per quod*, the plaintiff must introduce facts extrinsic to the statement itself in order to prove a defamatory meaning. *Id.* An example of defamation *per quod* is "A had a baby" where the extrinsic fact is that A is unmarried. *Id.*

Additionally, a defamatory statement may be actionable *per se* or not actionable *per se. McBride,* 389 S.C. at 560, 698 S.E.2d at 852 (citing *Erickson*). "The determination of whether or not a statement is actionable *per se* is a matter of law for the court to resolve." *Id.*

> When the statement is classified as actionable *per se*, the defendant is presumed to have acted with common law malice, and the plaintiff is presumed to have suffered general damages. *Id.* When the statement is not actionable *per se*, the plaintiff must plead and prove both common law malice and special damages.

Id. General damages include injury to reputation, mental suffering, hurt feelings, emotional distress, and similar types of injuries which are not capable of definite money

valuation. *Erickson*, 368 S.C. at 465 n.6, 629 S.E.2d at 664 n.6. Special damages are tangible losses or injuries to the plaintiff's property, business, occupation, or profession in which it is possible to identify a specific amount of money as damages. *Id.*

In the alternative, even if the statement is not considered a statement in words, the South Carolina Supreme Court has held that an actionable defamatory insinuation may be made by action or conduct, not just by words. *Tyler v. Macks Stores of South Carolina*, 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980). Moreover, defamation can be actionable even when it is indirect. *See Eubanks v. Smith*, 292 S.C. 57, 354 S.E.2d 898 (1987); *see also Tyler*, 275 S.C. at 458, 272 S.E.2d 633, 634 (1980). "To render the defamatory statement actionable, it is not necessary that the false charge be made in a direct, open and positive manner. A mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain." *Tyler*, 275 S.C. at 458, 272 S.E.2d at 634 (citing *Timmons v. News and Press, Inc.*, 232 S.C. 639, 644, 103 S.E.2d 277, 280 (1958)).

The conduct of Gantt and the Board qualify as defamation *per quod* and is actionable *per se*. The statements and actions by Gantt and the Board are defamation *per quod* because they were not direct statements in which the defamatory meaning was clear on its face. Rather, the defamatory meaning must be determined by the extrinsic facts and circumstances surrounding the statements and actions of Gantt and Board. Specifically, in all of their actions and statements concerning the lawsuits brought by and against Plaintiff, the extrinsic facts, including Gantt's own testimony demonstrate that the District did not treat other lawsuits in the same manner. Instead, they chose to constantly publicize the aspects Plaintiff's lawsuit; they chose to comment upon the same during Board meetings to criticize and admonish Plaintiff for the same. They even went so far as to formally propose and approve resolutions condemning Plaintiff's action,

supporting the lawsuit against her, and one Board member went so far as to become a member of Maggie Stroud, which was formed for the purpose of filing suit against Plaintiff and harming her.

Moreover, the insinuations made by the statements and actions by Board and Gantt are actionable as a positive assertion because they were false and malicious. Specifically, the suggestion that Plaintiff knows that she does not live in Richland County, that she falsified her candidacy application and oath, and should resign in the middle of her elected term were all false and malicious, charging Plaintiff with incompetency and violation of law; these arise to defamatory insinuations. Then, when Gantt and the Board did not allow Plaintiff to respond to that same suggestion, that in and of itself further insinuated by action that Plaintiff was admitting truth of Gantt and the Board's allegations by remaining silent and not responding to the public during the open Board meeting.

Each and every action and statement listed in section III(ii)(a) *supra* is actionable in that those instances qualified as actionable defamatory insinuations made by actions, conduct, and words. The defamatory meaning of each example listed is plain, false, and was made with malicious intent.

For the foregoing reasons, Plaintiff has presented sufficient evidence demonstrating each element of her claim for defamation against Defendants Gantt and Board. Plaintiff respectfully requests their respective Motions for Summary Judgment be denied accordingly.

e. <u>The SCTCA does not preclude Plaintiff's action for defamation against Defendants Board and Gantt.</u>

The SCTCA was enacted by the General Assembly for the purpose of creating public policy that the State and its political subdivisions are only liable for torts within the limitations of

[the act] and with the principles established by the SCTCA. S.C. Code Ann. § 15-78-20(a) (Supp. 2002).

Defendant Board and Gantt argue that because Plaintiff is a public figure, she must allege and prove malice to be successful on her defamation claim. Plaintiff does not argue with this position, as it is well-known that a heightened legal standard exists for the defamation of public officials. *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). However, the Board and Gantt go on to argue that the Board and Gantt are barred from suit by the SCTCA because torts requiring malice are not covered by the SCTCA.

However, the SCTCA states as follows:

> On or after January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, *shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually*, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. *In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant.*

S.C. Code Ann. § 15-78-70(c) (Supp. 2002) (emphasis added). The SCTCA requires that a plaintiff bring the claim against the state agency; in this case, Plaintiff brought the claim against both the Board and Gantt to comply with these requirements because, should this Court dismiss the defamation claim against one Defendant, the other shall stand in its stead. For these reasons, the Court should deny the Board and Gantt's motions.

Furthermore, as it applies directly to Gantt, he was acting outside the course and scope of his duties when he made the statements and performed the actions charged against him by Plaintiff. He made such statements and conducted such conduct towards Plaintiff outside his

role as Chairman of the Board because he knew that the statements he made were false, malicious, and were made with the intent to directly harm Plaintiff as discussed *supra.*

For the reasons above, Plaintiff has pled sufficient credible evidence of genuine issues of material fact on her claims for civil conspiracy and defamation; Defendants' Motions for Summary Judgement as to this action should be DENIED.

CONCLUSION

Here, Plaintiff has produced a myriad of reasons that there are many issues of disputed facts and inferences in this case, which require a jury trial – a trial that will last for several days, require numerous witnesses, involve countless arguments, and likely have a high profile in the media. Clearly, Plaintiff is still at this time a resident of Richland County, and the charges made against her and the actions taken against her are factually and legally without justification. Plaintiff has not made her own motion for summary judgment but in her trial would be entitled to have a predetermined case of absolute liability with a jury only deciding some of the damages.

The case is has been placed on the jury roster for next month. Perhaps the Court can rule on these motions in time to proceed, or perhaps a trial should wait until the appeal from her removal is decided by the South Carolina Court of Appeals or South Carolina Supreme Court. In any event, the Court needs to be aware of the temporal consequences of its rulings on these motions.

Based on the foregoing reasons, Plaintiff respectfully requests that the Court DENY the Defendants' Motions for Summary Judgment and allow this case to proceed to trial before a jury.

[SIGNATURES FOLLOW]

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

BY: _____

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Attorneys for Plaintiff

February 24, 2016

Certificate of Service
I hereby certify that on the date indicated above, I served on counsel of record a true and correct copy of this document by e-mail and Hand Delivery.

_____
Chelsea R. Rikard

State of South Carolina	)	
	)	
County of Richland	)	
Kim Murphy,	)	2014-CP-40-4666
	)	
Plaintiff,	)	
	)	
v.	)	Deposition
	)	
Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers, in their individual capacities,	)	of
	)	Kim Murphy
Defendants.	)	
	)	
	)	
	)	

Date: June 22, 2015

Time: 12:13 p.m.

Location: J. Lewis Cromer & Associates, LLC, 1418 Laurel Street, Columbia, South Carolina

Reported by
Susan A. Wyant

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Also Present:
Kim Anderson
Bobby Bowers
Robert Gantt
Beth Hutchinson

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EXHIBITS

Defendants' Exhibit Number 1, "Defendant Bobby Merle Bowers' First Set of Interrogatories to the Plaintiff."

Defendants' Exhibit Number 2, "Defendant Bobby Merle

Bowers' Request for Production to Plaintiff."
Defendants' Exhibit Number 3, Plaintiff's Answers to Defendant Bobby Merle Bowers' Interrogatories and Requests for Production to Plaintiff."

Defendants' Exhibit Number 4, "Attachment - Plaintiff's Answer to Interrogatory No. 2."

(Defendants' Exhibits Numbers 1 through 4 were marked prior to the start of the deposition.)

STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

- - - -

The reading and signing of this deposition is reserved by the deponent and counsel for the respective parties.

Whereupon,

Kim Murphy, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. FRAWLEY:

Q Ms. Murphy, how are you today? I would say "this morning," but I guess we're early afternoon. Will you state your name and address for the record, please?

A Kim Murphy, 154 Old Laurel Lane, Chapin, South Carolina.

Q Okay. How long have you lived at that address?

A Since 2000.

Q Okay. And who lives at that address with you?
A My husband and, on occasion, our college students.
Q Okay. Your -- your children who are in college?
A The children, yes.
Q Okay. I have a 26-year-old who's done with college, and he still lives with me right now, so I know how that works.
What -- what is your husband's full name?
A Dennis Jay Murphy.
Q And when were you and Mr. Murphy married?
A 1990.
Q First marriage for both?
A His second.
Q Okay. And you and Mr. Murphy have some children together?
A Three.
Q Okay. What are their names? I don't need their birth dates.
A Emily --
Q Okay.
A -- Amelia and Elizabeth.
Q And is Emily -- what's Emily's last name? Are any of your three girls married?
A No.
Q Okay. So they all have the -- the name Murphy?

A Yes.
Q Okay. Where does Emily live?
A Presently, at our home.
Q Okay. So she is -- is she considered -- well, is she a Richland County resident, and it was possible -- a -- a possible jury member in this case, which is a Richland County case?
A Ask that again. I'm not sure I --
Q Okay.
A -- understand.
Q Is -- is she a registered voter?
A Yes.
Q What county is -- is her registration in?
A Richland.
Q Richland, okay. And is her permanent address your address?
A Yes.
Q Okay. When did she register to vote, if you know? How many years ago?
A I'm not sure, but I believe when she turned 18.
Q Okay. And when was that? What year?
A She's -- she'll be 23 tomorrow.
Q Okay. How about Amelia? Does Amelia still live with you?
A Yes. But she's on an internship in Charleston.

Q Okay. Do you know what her permanent address is on her driver's license?
A Our home.
Q Your home, okay.
And how old is Amelia?
A Twenty-one.
Q And how about Elizabeth? Where does she live?
A At home -- home address.
Q Okay. Is she registered to vote?
A Yes.
Q Okay. How old is she?
A Twenty.
Q Okay. Elizabeth's driver's license has your address as the permanent address?
A Correct.
Q Okay. Elizabeth's voter registration, do you know if it's Richland or Lexington County?
A Richland.
Q How about Amelia?
A Richland.
Q How about your registration for voting?
A Richland.
Q Have you ever had your deposition taken before?
A Yes.
Q Okay. I'm going to go over some general ground

rules. My name is Pat Frawley. I'm with the Davis Law Firm in Lexington, and I represent Bobby Bowers in this lawsuit. Do you understand that?

A (Nods head up and down.)

Q The answer to that is yes?

A Yes.

Q Okay. You need to make sure all your answers are verbal; avoid head shakes or head nods. If you do lapse into a head shake or a head nod, as we all do, I'll follow that up with, "Was that a yes?" or, "Was that a no?" I mean no disrespect by that. I just want to make sure we got a clear record.

By the same token, when you say yes or no, I need you to say yes or no as opposed to uh-huh or unh-unh, which phonetically may sound the same. This court reporter is not repeating the words we say today; she's repeating the sounds. She does have several backups, so she's probably going to get it right; they usually do. But I want to make sure we have a clear record, all right?

A (Nods head up and down.)

Q The answer to that is yes?

A Yes.

Q All right. So if you lapse into uh-huh or unh-unh, I will follow up with a, "Was that a yes?" "Was

that a no?" Again, I mean no disrespect. I want to make sure we have a clear record, all right?

A Yes.

Q All right. If I ask you any questions today and you don't know the answer, "I don't know" is an acceptable answer. I'll ask you not to speculate and not to guess. I may ask that question in another manner to see if I've inartfully asked the question. Then if I ask it properly and you do know the answer but if your answer remains that you don't know, stick with you don't know, and then we'll move on to the next question, all right?

A Yes.

Q If you don't understand my question, it's not going to be because I used big words or asked a particularly complex question. It's probably going to be because I asked a bad question. I have a -- a script; I have some documents here; I may be thinking about your last answer, wondering what your next answer will be, and I may have a questions that's just indecipherable. If you don't understand the question, you have to ask me about that. You can't turn to -- to Ms. Story and say, "What did this guy just say?" You have to ask me the question. We'll do it as many times as we need

to until you understand the question, but I want to make sure that you understand the question before you begin your answer, all right?

A Yes.

Q By the same token, if I ask you a question and you don't remember the answer -- some of this stuff happened a few years ago. You may not have a specific memory of the question I asked, and if you don't remember, tell me you don't remember and -- and we'll move on. I may ask that question in another manner to see if I've inartfully asked the question and I really can prompt a memory. But if your answer remains that you don't remember, don't speculate, don't guess. Tell me you don't remember, and we'll move on, all right?

A Yes.

Q If I should ask any questions that are objectionable, either Ms. Story or all of the attorneys will object and you'll hear them say, "Object to the form of the question. Answer it if you can," or something to that effect. Because we don't have a judge here who would rule on objections, we -- we reserve the objections, except as to the form of the question.

So if I ask a question that Ms. Story deems

objectionable, let her voice her objection; stop talking -- the court reporter can't really get two voices at one time -- and then we'll decide if we're going to move on with that question or if I have to re-ask the question, all right?

A Yes.

Q All right. If you need a break at any time, let me know. We're going to go a while on this so -- but -- but we'll -- I think we're going to finish before five, at least for purposes of today.

Now, for the record, we were produced about 7800 pages or 7800 documents of -- of production I think mid-week last week, along with a 74-page answer to interrogatory and response to request to produce. I think it may have been Wednesday or Thursday of last week. I can't remember. But we have agreed, with regard to the documents -- because I've not had the opportunity to review all of them. I'm not sure if Mr. Morrison has or not, but we're going to reconvene when we have the opportunity to review that.

MR. FRAWLEY: (To Ms. Story) And I understand there may be other documents coming?

MS. STORY: That's correct.

MR. FRAWLEY: Okay.

MS. STORY: And we don't have any objection to that.

MR. FRAWLEY: Okay.

Q So we'll go as far as we can today with your responses -- the 74-page responses I'm going to spend time on today -- and get as far as we can on the other material. And then we'll adjourn and then reconvene.

Ms. Murphy, let's talk about your education. Where'd you go to high school?

A Cushing Academy.

Q Was it Cushing Academy?

A Cushing Academy.

Q And where's that located?

A In Ashburnham, Massachusetts.

Q Who is the Cushing in that? Who's that named after?

A I'm not really sure.

Q Was it Cardinal Cushing?

A Not sure.

Q Are -- is it a Catholic academy?

A No.

Q Okay. And how many years did you attend there?

A Three.

Q Okay. And what year did you graduate?

A Seventy-five.
Q How'd you happen to get to South Carolina from Massachusetts?
A I made my way to Hilton Head through college and an opportunity for employment.
Q Was it summer employment?
A Permanent.
Q Okay. Well, tell me how you made your way. How'd you -- how'd you get from -- I got here from Michigan, and I have my story on that, but how did -- what's your story on how you got here from Massachusetts?
A I studied hotel and restaurant management in college.
Q Okay.
A And after graduating, I moved home with my family. And a friend of mine from college moved to Hilton Head to start a career in the hotel and restaurant management business, and he contacted me and convinced me that this would be a -- a great place to start a career.
Q Okay. Well, let's back up, then. I got ahead of myself. You graduated from high school in 1975. Where'd you go to college?
A Paul Smith's College.

Q And where is that located?
A In Paul Smiths New York.
Q P-a-u-l Smith?
A Yes.
Q Okay. Did you graduate?
A Yes.
Q What was your degree in?
A Hotel and restaurant management.
Q Okay. I went to Michigan State University, which had 41,000 kids, then came down to USC, which at that time had 15- to 17,000. My son graduated from Coastal Carolina, which had 8,000. How many students did Paul Smith have, if you know, when you attended?
A Approximately 2,000.
Q Two thousand. So it was a small school?
A Yes.
Q Okay. What year did you graduate?
A Seventy-eight.
Q So you basically got a bachelor's degree in three years; is that right?
A Associates degree.
Q Associates degree. Okay. Did you -- any -- any college after your associate's degree from Paul Smith?

A Some college courses.
Q Okay. Was Paul Smith a -- a two-year school, or was it a four-year school at which you -- you obtained a two-year degree?
A It was a two-year school.
Q Two-year school, okay.

So after graduating in '78, your friend called you from Hilton Head and said, "This would be a good place to -- to work," and you moved to Hilton Head?

A Correct.
Q In -- in '78?
A Early '79.
Q Okay. When you got to Hilton Head, where did you begin working?
A Palmetto Dunes Resort.
Q And what was your job title there?
A Front desk clerk.
Q Had you worked at a hotel as a desk clerk before?
A Yes.
Q While you were at Paul Smith?
A Yes.
Q And before that?
A And afterwards.
Q Okay. How long did you work at Palmetto Dunes?

A I don't recall exactly how many years.
Q Okay. But more than one year?
A Yes.
Q Okay. Where'd you go from Palmetto Dunes?
A I worked several jobs while working at Palmetto Dunes and worked as a -- a waitress.
Q At Palmetto Dunes, you said you worked as a front desk clerk. Did you ever work as a night auditor there?
A Yes.
Q Okay. Were you --
A My --
Q I'm sorry. Go ahead.
A My reason for taking the job is I was to take over the front desk manager's position.
Q Okay.
A Which I did.
Q When you say your "reason for taking the job," your reason for taking the desk clerk job initially or your reason for taking the night auditor duties?
A The reason for me being hired --
Q Okay.
A -- was to replace the front desk manager.
Q Okay. When you worked the night audit, were you a -- were you a designated night auditor or were you

a relief night auditor? Do you know the distinction?
A I was covering as a manager for --
Q Okay.
A -- the night auditor who was out.
Q Okay. I worked, when I was in college, as a relief night auditor on weekends to give the guy during the week the weekends off. So I worked every weekend the night audit. Is that what you did, or did you just occasionally work the night audit?
A Occasionally.
Q Okay. Did you take over as the front desk manager?
A Yes. I did.
Q And when was that? Well, let me ask you this: How many years after you started there did you take over the front desk manager job?
A I can't pinpoint the year, but my first day as front desk manager was when Hurricane David hit the area.
Q Okay. All right. Were you there -- were you working that job -- the front desk job before you became the manager more than a year or less than a year?
A Less than a year.
Q Okay.

A I -- I -- yes.
Q Okay.
A Working as a clerk less than a year.
Q So your -- your testimony was that you came there to work the front desk job for purposes of taking over the manager job --
A Correct.
Q -- and within a year, you got the manager job, correct?
A Within less than a year.
Q Less than a year, okay. Which is within a year.

Then you worked for Palmetto Dunes several years. You can't remember exactly how many years, correct?

A In various positions.
Q Okay. What other positions did you work at Palmetto Dunes, in addition to the front desk clerk and a front desk manager?
A Reservations and as the owner accountant.
Q How many units did Palmetto Dunes Resort have?
A Approximately 500.
Q All located in the same place or were there -- were there several different sites?
A Contained in Palmetto Dunes.
Q Okay. Do you know how many total years you worked

at Palmetto Dunes before you went to other employment?
A I cannot remember.
Q Okay. Do you remember what your next job was, regardless of how long it was after that?
A I can't remember in chronological order what jobs I had next.
Q Okay. I'm not looking for part-time waitress jobs; I'm looking for a job that you would've considered your full-time job.
A Again, I can't remember in chronological order what came after Palmetto Dunes as a full-time job. I worked for a Century 21 as an office manager.
Q In what city?
A Hilton Head.
Q And how long did you work there?
A I can't recall.
Q A month? A year? Two years?
A I can't recall, but a good -- good bit of time.
Q Okay. More than one year?
A I can't recall. I --
Q How old are you, ma'am?
A I would've -- how --
Q How old are you?
A Fifty-seven.

Q All right. Century 21. When did you next -- the next job you remember, other than Century 21, regardless of the chronological order, is what?
A I was a junior accountant with Hughes & Associates.
Q Where is that located out of?
A Hilton Head.
Q And what did you -- what did those duties entail?
A A good bit of accounting.
Q Did you do tax returns?
A Yes.
Q How long were you with them?
A I can't recall.
Q A month? A year? Two years?
A I can't -- more than a month. It was just --
Q You recognize a distinction between more than a month in -- in -- in proximity to a year? You recognize that, right?
A Yes. But I cannot recall. I can't recall if I worked less than a year or more than a year or several years.
Q Something between a month and -- you can't recall if you worked less than a year, more than a year, or several years in -- in a job?
A That's correct.
Q Okay.

A This -- in this particular era, correct.
Q In -- in this particular era?
A When I lived in Hilton Head.
Q Okay. Is there a reason why you don't remember time from that time?
A No.
Q Okay. Did you have any kind of hospitalizations during that time that's -- anything that affects your memory?
A No.
Q You're not on any kind of substance or medication today that would impair your memory, are you?
A No.
Q Okay. All right. Other than Hughes & Associates, what other jobs did you have at Hilton Head, regardless of the chronological order?
A I worked on the side keeping books for some professional athletes.
Q Okay. Do you remember what year that would've been?
A No. I don't.
Q Do you remember what decade that was?
A 1980.
Q Okay. The 1980s.
A 1980s.

Q And how long did you do that? Or was that something that may have overlapped other jobs you were doing?
A Yes.
Q Okay. Who were the professional athletes you kept books for?
A Rod Langway, Washington Capitals; Gary Sampson, Washington Capitals; Moose Bosson, Jets, I believe.
Q New York Jets?
A I believe so.
Q Okay. Was he a football player?
A Football. And I also had a few other owners that I assisted.
Q Okay. What else?
A I did some construction cleaning.
Q Was that work that you did as your major job or -- or work that kind of dove-tailed in with other jobs you were doing?
A I was doing this at the same time I was keeping books.
Q Okay.
A For extra income.
Q All right. And for construction cleaning, can you describe for me what that entailed?
A Going into new units after the contractors had

finished their work and making it presentable for sale.

Q Okay. And the units, were these residential units? Were they office units?

A Condominiums.

Q Condominiums, okay. And that was out of Hilton Head, as well?

A Yes.

Q Okay. Do you remember what decade that was in?

A Eighties.

Q Okay. How long did you stay in the Hilton Head area before you left?

A I got married in 1990 and moved to Columbia.

Q Okay. So your time in Hilton Head would've been between 1979 -- early 1979 and when you got married in 1990; would that be an --

A Yes.

Q -- accurate statement?

And these jobs that we've just described were all jobs that would've taken place between 1979 and when you got married in 1990?

A That's correct. And, also, I was a real estate broker.

Q Okay. So you got a real estate license while you were there, as well?

A I did.
Q And for whom did you work as a real estate broker, or were you self-employed? In other words, were you aligned with an agency or another --
A My -- the broker-in-charge was Century 21 first.
Q Okay.
A And then First South Realty was the second.
Q And is that something that you did as your primary job, or was it something that you -- you filled in while you were working elsewhere?
A It was -- if I recall, was my primary job. I -- I'm not sure. I may have done some accounting work, as well, at the same time. I --
Q Okay. All right. When you moved -- when you were married in 1990, did you move to the Columbia area?
A Yes.
Q Okay. And where did you first move in the Columbia area? Remember your address?
A It was in Quail Hollow.
Q Okay. And how long did you live there?
A I can't recall the exact year, but possibly late -- late 1990s --
Q Okay.
A -- '98/'99/'97, when we sold our home and moved to --

Q -- moved to a second home?
A -- a second -- another home.
Q Okay. Where was that second home located?
A That was in Whiteford subdivision.
Q Whiteford? Where's Whiteford located?
A In Lexington.
Q Okay. How long did you live there?
A I'm not exactly sure of the time frame, but we were renting that home until we could move into our new home in Chapin.
Q Okay. And the new home that you moved into after living in Whiteford, renting in Whiteford, is the home you live in now?
A Correct.
Q Okay. So you moved from Hilton Head to Quail Hollow. Sometime in the late '90s, you moved to Whiteford -- sold your home in Quail Hollow and moved to Whiteford, where you were renting and building a home, and then you moved to Chapin in the home that you were building?
A Can you repeat again, please?
Q Yes. Absolutely. You moved -- you originally went to Quail Hollow from Hilton Head when you married, correct?
A Correct.

Q All right. You stayed at Quail Hollow until sometime in the late '90s. I think you said '97/'98, not sure.
A Correct.
Q From there, you sold that home and moved to Whiteford where you were renting, correct?
A Correct.
Q The purpose of renting in Whiteford was to stay there until your home in Chapin was built.
A Correct.
Q Your home in Chapin was completed, and then you moved from Whiteford to your home in Chapin where you currently reside.
A Correct.
Q All right. Have you lived anywhere other than your home in Chapin since moving into that home?
A No.
Q Okay. Other than your associate's degree and your getting the -- whatever courses you would've attended to get your real estate license, have you gotten any kind of education since attending college?
A I did take a -- a college Spanish course.
Q Okay. When did you do that? Just the decade is close enough.

A Seventies.
Q Okay. And what was the purpose for doing that?
A I enjoyed the Spanish I had in high school.
Q Okay. Have you learned any other -- or studied any other languages other than Spanish?
A No.
Q Okay. Have you ever served in the military?
A No.
Q How about Mr. Murphy? Has he ever served in the military?
A No.
Q Do you regularly attend or are you a member of any church?
A I don't consider myself a member, but, yes.
Q Okay. What church is that?
A Chapin Methodist Church.
Q Okay. How long have you attended Chapin Methodist?
A It's been several years.
Q Are you currently employed? Well, bad question.
Are you currently employed outside of the home?
A No.
Q Okay. When were you last employed outside the home?
A Early 1900 -- early 1990s.

Q Okay. And what was that last job that you had outside the home?
A I did the bookkeeping for Kligman & Fleming, attorneys.
Q Is that Pierce Fleming?
A Yes.
Q Okay. Is it Milton Kligman, I think?
A Yes.
Q How long did you do that for them?
A Oh, a couple years.
Q Sometime in the 1990s when you first moved to the area?
A Yes.
Q Okay.
A Before I had children.
Q Okay. And Emily is your oldest. She would've been born sometime around, what, 1992?
A Correct.
Q Okay. Have you worked outside the home since you started having children, with -- with Emily?
A I'm not sure whether or not you would consider the school board as a -- as a job.
Q Okay. Certainly the duties are -- are hard enough, I think. Did you get paid with the school board?
A I chose not to get paid.

Q All right. Could you have been paid?
A Yes.
Q Okay. And you chose not to get paid why?
A I felt that I was a -- a representative of the constituents who elected me, and this was more of a -- a volunteer-type position. And that's . . .
Q Okay. When were you first elected to the school board?
A In 2010.
Q Between 1992, when your daughter -- your eldest daughter was born, and 2010, did you work outside the home in any capacity?
A I maintained a -- a real estate license.
Q Okay. Were you aligned with any real estate companies back then?
A John Hay Burriss held my license.
Q Okay. For the full eight years between '92 and 2010?
A No. I'm -- at -- at some point -- I can't recall the exact terminology, but it's sleeping right now.
Q Okay.
A It's inactive.
Q Lapsed, okay. Well, not lapsed.
A Yes. It's --
Q Just --

A -- inactive.
Q -- inactive. Right. When was your real estate license last active?
A I don't recall.
Q Okay. Was it last active in 2010 when you were elected to the school board?
A No.
Q Are you a member of any professional, social, or service organizations located in Richland County?
A Yes.
Q Okay.
A Ballantine Civic Association.
Q How long have you been with them?
A Several years.
Q Okay.
A Quite some time.
Q How -- how frequently do they -- do they meet?
A Once a month.
Q Okay. Do you attend all the meetings?
A As many as I can.
Q Okay. When was the last meeting you attended?
A A few months ago.
Q Okay.
A I can't remember the month.
Q So in the intervening months between a few months

ago and today, you -- you haven't attended? So you don't go every month?
A No.
Q Okay. Have you ever been a -- a -- an officer with the Ballantine Civic Association?
A No.
Q Is there a president of that association?
A Yes.
Q And who is that, if you know?
A I don't recall who the current president is.
Q Okay. Where do they typically meet?
A In Ballantine at the Richland County Community Center.
Q Okay. Same time every month?
A Yes.
Q When are the meetings --
A Pretty much so.
Q When are the meetings held?
A I can't recall. I think they're on -- I think they're on Mondays.
Q Okay. First Monday? Second Monday?
A I can't recall which it is.
Q All right. Do you have a calendar at home that keeps -- keeps notes on when -- when tonight's meeting of the Ballantine Civic Association is?

A No. I receive an e-mail --
Q Okay.
A -- reminder of when it is.
Q Okay. Any others besides the Ballantine Civic Association?
A The First Tuesday Republican Club.
Q The First Tuesday Republican Club. How long have you been a member there?
A I believe since 2002.
Q Okay. Are you a registered Republican?
A I am a Republican. I don't know if I'm registered.
Q Okay. I've never fully understood that. You know, I'm not, like, a registered Democrat. Is there someplace where you register where you can say, "This makes me a Democrat," or, "This makes me a Republican"? Have you done that anywhere?
A I don't recall if I have.
Q Okay. But you consider yourself a Republican?
A Yes.
Q Okay. What is it about the tenets of being a Republican that makes you think that you're a Republican or that makes you identify as a Republican?
A I'm conservative socially.
Q Okay.

A And believe that -- in limited government.
Q Okay. The First Tuesday Republicans Club obviously meets the first Tuesday of each month?
A Yes.
Q Okay. And where do they meet?
A They have been meeting at the large Baptist church in West Columbia.
Q The one on 378?
A Correct.
Q Okay. Where they used to -- used to have a BI-LO grocery store next to it? That may -- that may have predated you. That's fine.
A I don't -- I don't recall.
Q Okay. And -- and the members that will come to that, they're not just Lexington County members? They would be Richland County -- from -- from any area?
A They're Richland and Lexington.
Q Richland and Lexington. Okay.
Any other organizations besides the Ballantine Civic Association and the First Tuesday Republicans Club?
A Richland County GOP.
Q Okay. And is that something you have to sign up for or just go to the meetings?

A I don't -- I don't recall.
Q I mean, GOP stands for Republicans, right?
A Yes.
Q Do you know what the -- what the acronym GOP stands for?
A Grand Old Party.
Q Okay. Where does that -- well, where does that meet in Richland County?
A They have been meeting at Doc's BBQ.
Q How frequently do they meet?
A Once a month.
Q Have you ever been -- have you ever held office for that organization?
A No. I would like to.
Q Okay. Is that something that you're -- you have to register to be a member of that, or do you just go to the meetings?
A I believe, like First Tuesday, you have dues -- annual dues.
Q Okay. And how frequently do they meet?
A Once a month.
Q Any particular time during the month? First -- well, it wouldn't be the first Tuesday --
A Generally --
Q -- because you got the other one.

A Generally, it's the same night as the school board meeting.
Q Okay. Which is what?
A The second or fourth Monday of the month. I'm not sure which one it is.
Q Okay. When did you last attend a meeting with the Richland County GOP?
A I -- I can't remember. I -- I try to attend if a school board meeting has been scheduled for another date --
Q Okay.
A -- which happens on occasion.
Q Okay. Do you still attend school board meetings?
A Yes.
Q When was the last school board meeting you attended?
A June 22nd -- excuse me. June 8th.
Q So if the Richland County GOP meets on the fourth Monday of each month, you'd be able to go to a meeting tonight, right?
A Correct.
Q Okay. All right. Any other organizations other than those three?
A I think that's it.
Q Okay.

A I can't recall.
Q Do you have any relatives to whom you're related by blood or by marriage who are over the age of 18 and Richland County residents, prospective jurors on this case? You've mentioned your three daughters, your husband. Anybody other than that?
A Blood relatives --
Q Blood relatives --
A -- that --
Q -- or -- or --
A -- that are Richland County residents?
Q Yes. Or by marriage if Mr. Murphy has people who are Richland County residents.
A No. I'm not.
Q Okay. Who does Mr. Murphy work for?
A Metallic Buildings.
Q And where are they located out of?
A Texas.
Q Okay. Do they have a local office?
A No.
Q Okay. When he goes to work every morning, where does he go?
A He works out of the house.
Q Works out of the house? Okay.
What kind of -- what kind of business is

Metallic Buildings?
A. Pre-engineered steel buildings.
Q. Does he have any contacts in the Richland County area that you're aware of with regard to his business?
A. Yes.
Q. And do you know where they are or who they are?
A. He has many.
Q. Contractors?
A. Contractors, architects.
Q. Okay. Does he have -- does he work for Metallic Buildings, or -- or does he have his own business?
A. He's a sales manager -- district sales manager.
Q. Does he have any people over whom he's -- he has supervisory responsibilities?
A. No.
Q. If he's a district sales manager, are there people that he manages?
A. No.
Q. Okay. Well, what does he manage to be a district sales manager as opposed to salesperson?
A. He's -- he sells to contractors and developers.
Q. Okay. But there are no sales people that he supervises?
A. Correct.

Q Okay. Have you ever been involved in a lawsuit as a plaintiff or defendant, other than this lawsuit? Let's think about that because I think there is kind of a collateral lawsuit going on at this time that's on appeal, as I understand it.
A Yes.
Q So my question is: Have you ever been involved in a lawsuit other than this lawsuit? Your answer is yes?
A Yes.
Q Okay. One? Two? Three? About how many?
A I couldn't -- couldn't tell you a number.
Q Okay. Was it less than five?
A I couldn't tell you a number.
Q Well, then, let's go over the ones that you remember. What's the one that's collateral to this lawsuit? The lawsuit we have here is you against the Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers, so that's the one we're here today on, okay?
A (Nods head up and down.)
Q The answer to that is yes?
A Yes.
Q All right. What's the one that's collateral to this one that is on appeal at this time, as I

understand it?
A Appealing the board's vote to remove me.
Q Okay. And do you remember the caption on that? It's you against just the board, if you remember?
A I can't remember the caption.
Q Okay. All right. Who is representing you in that case?
A Ashley.
Q Same attorneys?
A Yes.
Q Okay. Do you know who's defending the board in that case?
A Childs & Halligan.
Q Okay.
A John Reagle.
Q Okay. And that one is currently on appeal?
A I'm not sure if -- of the terminology, but I believe it's still active.
Q Well, not -- not that it's defunct. I mean, I understand that -- that it is still ongoing, but are you before the South Carolina Court of Appeals? Do you know?
A No.
Q Okay. All right. You understand that it's still active, though?

A Yes.
Q Still ongoing? All right.
Besides the one we're here on and that lawsuit, what other lawsuits have you been involved in? The next one that you can remember.
A The school district filed a $10 million counterclaim --
Q In what case?
A -- against me.
Q In which case?
A I guess related to the appeal.
Q Okay. On the -- on the -- the one that you initiated that we just talked about, they filed a counterclaim?
A Yes.
Q Okay. Okay. So that's a -- that's another claim, but is it your understanding that's involved in the same lawsuit?
A I -- I don't know the --
Q Okay.
A -- legal --
Q Well, that's why you --
A -- technicalities of it.
Q That's -- that's why you got a lawyer. All right.
Other than this lawsuit, your suit about your

removal, and then the $10 million counterclaim, any other lawsuits that you've been involved in that you can think of?

A Yes.

Q All right. What's the next one that comes to mind?

A A nonprofit group, Maggie Stroud and D5 Ensuring the Implementation of Referendum who is suing me for monetary damages.

Q For what? What did they say you did?

A Claiming that I caused them damage related to a construction project.

Q Is that still an ongoing case?

A No.

Q How was it resolved?

A Supreme Court ruled in my favor.

Q South Carolina Supreme Court?

A Yes.

Q Okay. Who was your attorney in that case?

A Jay Bender.

Q Okay. And you were a defendant in that lawsuit?

A Yes.

Q Okay. Do you know who the attorney was representing the plaintiffs?

A Todd Ellis.

Q Okay. Did that go to trial and get appealed, or

was it dismissed on summary judgement? Do you know how it happened?
A How it got to the Supreme Court?
Q Right. How it got to the point that it was -- that you prevailed in the Supreme Court.
A At some point it went to the Court of Appeals, and the Court of Appeals sent it up to the Supreme Court.
Q All right. Was there a trial?
A I'm not sure I know the difference.
Q Okay. Did --
A Jay Bender went to a hearing or a trial. I'm not sure which it is.
Q Did you have to testify? Did you have to --
A No.
Q -- go to court and testify?
A No.
Q Okay. All right. Any other cases besides those?
A Yes.
Q All right. What's the next one?
A I appealed decisions that DHEC made related to construction that would damage a wetlands area.
Q Remember what year that was?
A 2010 --
Q Okay.

A -- I believe.
Q All right. And you -- you appealed the decision about DHEC regarding construction damaging a wetlands area. What -- what was your involvement in that? What was your standing to -- to raise that appeal?
A The creek that they were damaging ran into the creek that was just down from the creek that's in our backyard.
Q Okay. Who represented you in that case?
A Bob Guild and Katie Parham.
Q And what was Katie's last name?
A Parham, P-a-r-h-a-m.
Q Okay. How did that case resolve?
A The judge required the school district to build a preferential pathway to protect the creek instead of just filling the creek.
Q Okay. Who was the judge? Do you know?
A Carolyn Matthews.
Q Was there an appeal from that order?
A There were several proceedings, and I'm not exactly sure of --
Q Okay.
A -- the . . .
Q Any other suits?

A Well, there were the -- the -- there were -- I guess there was another one that was related to the wetlands.
Q Okay.
A I was in a -- a car accident in the early '80s.
Q Okay. Was there a lawsuit that resulted from that or just an insurance claim?
A I can't remember.
Q Okay. Were you injured?
A Yes.
Q Okay. Were you the party bringing suit, the plaintiff, or were you --
A Yes.
Q -- a defendant?
A I was the plaintiff.
Q Okay. Do you remember who the adverse party was?
A No.
Q Do you remember what county it was filed in?
A If there was a lawsuit, it would've been Beaufort County.
Q Okay. Did you have an attorney who represented you then?
A Yes.
Q Do you remember who it was?
A George Mullen.

Q And how did that dispute resolve? If it was a suit or just a claim, do you know how it resolved?
A I received a monetary settlement.
Q Okay. About what year would that have been?
A Mid '80s, maybe.
Q Mid 1980s?
A Somewhere in there. Some --
Q So it would've been before you were married?
A Yes.
Q Okay. Any other lawsuits?
A I can't recall at this time.
Q Okay. Have you ever filed bankruptcy?
A No.
Q Have you reviewed the pleadings in this case, in other words, the complaint that started this lawsuit? Have you reviewed them before they were filed?
A Can I --
Q Okay.
A -- see what you're --
Q Right.
A -- referring to?
Q Well, the first question I'm asking you is: The pleadings that initiated this lawsuit, did you review them before they were filed?

A What do you mean by "review"?
Q Look them over. Read them.
A Yes.
Q Okay. Here's a copy of your complaint. Go ahead and take a minute and look at that. And I'm not going to go -- I mean, attorneys draft these based on what they've heard from clients, so I'm not going to go over word for word, you know, "Is this correct?" But I am going to ask you about some allegations in there.

MR. FRAWLEY: (To the court reporter) Let's go off the record while she's got a chance to look at that.

(Off the record from 1:01 p.m. until 1:02 p.m.)

THE EXAMINATION BY MR. FRAWLEY CONTINUES.

Q Okay. You've had a chance to briefly look over your complaint. Does this appear to be your complaint?
A Yes.
Q Okay. And in this lawsuit, you understand that you've brought an action against the Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers; you understand that?

A Yes.
Q Okay. And you understand that there are two causes of action in this: One is for defamation per se, and one is for civil conspiracy; do you understand that?
A Yes.
Q Okay. Do you understand what "defamation per se" is?
A I believe so.
Q Okay. Well, tell me -- tell me your understanding of what "defamation" is.
A Ruining someone's reputation.
Q Okay. Uttering falsehoods or making a false representation that -- that damages someone's reputation?
A Correct.
Q Okay. Do you understand what the "per se" part at the end of it means?
A I do not know.
Q And you may not. That's kind of a legal -- okay.
Do you understand what "civil conspiracy" is?
A Yes.
Q Okay. What is your understanding of "civil conspiracy"?
A That individuals conspired to do something that was

intended to be harmful to someone.
Q Okay. Do you understand what "damages" are?
A I believe so.
Q Okay. What is your -- your understanding, as a layperson, of what "damages" are?
A As they relate to this?
Q Okay.
A Damages that have -- I have suffered from.
Q Okay. Could you turn to Paragraph 11 on Page 3 of the complaint? Go ahead and -- and read Paragraph 11 for yourself, and let me know when you're ready to go.
A Okay.
Q All right. Paragraph 11 reads: "In December 2012, two months after hearing, quote, rumors, close quote, regarding Plaintiff's residency, Gantt wrote to his colleague, Defendant Bowers, of the South Carolina Budget and Control Board." Do you see that?
A Yes.
Q And that's a yes?
A Yes.
Q Okay. Where you say "his colleague, Defendant Bowers," what evidence do you have, that you know of, that Bobby Bowers is a colleague of Mr. Gantt?

A I believe they have a long-time relationship through their education associations and involvement in their school districts.
Q Okay. You believe that. What evidence do you have that you know of, sitting here today, that Bowers and Gantt are colleagues? Well, let me back up a second before we get to that.
What is your definition of "colleague"?
A Associate. They have a relationship. Friends. They may work hand in hand together.
Q Okay. Now, tell me what evidence you have that Bobby Bowers ever worked hand in hand with Mr. Gantt.
A I believe that through the South Carolina School Board Association and his affiliation there, through his -- Gantt's -- Mr. Gantt's work with the South Carolina Tax Commission as a real estate appraiser, and through various associations with those involved with school administration and -- and school board.
Q Okay. Do you understand the distinction between your belief and evidence?
A I think -- I -- I believe wholeheartedly that they have a relationship.
Q Okay.

A And they're --
Q Do you understand the distinction between a wholehearted belief that you hold and evidence?
A Yes.
Q Okay. Tell me that distinction. How do we get from you -- you virulently believing something to evidence that is admissible in court? What evidence do you have that there is anything about a relationship between Mr. Gantt and Mr. Bowers that renders the two of them colleagues or anything beyond working -- two separate guys in two separate professions that have, at some point, a professional relationship?
A I believe that everything that I have reviewed, there is a very close connection between Bowers and Gantt and their beliefs in the positions they hold with regard to their opinions on education.
Q Okay. Well, the operative words in what you just said was "everything you reviewed." Tell me what everything is that you've reviewed that leads you to that conclusion.
A Mr. Bowers served as the chairman of the Lexington 1 School Board for eight years. I'm not sure he was chairman for eight years, but he served on the school board for quite some time. Gantt, as well,

has served on the District 5 Board and as chairman. Both have served or are serving as the president of the South Carolina School Board Association. Mr. Bowers has employees who were directly involved in my case who have employees that work for the District 5 School Board. Our just-retired chief financial officer worked with Bobby Bowers in Lexington 1.

Q Who is that?

A Karl Fulmer.

Q Karl Fulmer was the associate of the assistant director of Lexington School District 1 when my son attended there. What does that have to do -- I mean, does that make Mr. Bowers a colleague of Mr. Fulmer?

A Everything that they have said and done to me shows the relationship they have as colleagues.

Q Okay. So that's your belief. I'm looking for the evidence that supports that belief, other than your perception that you're being conspired against, which is basically your cause of action for conspiracy. What evidence do you have supporting that, other than your belief?

A I have evidence that shows they worked to cover their tracks.

Q Okay. What is that evidence?
A After I was given notice by Gantt and my residency was challenged, I contacted Will Roberts --
Q Okay.
A -- and --
Q Mr. Roberts and Mr. Bowers are colleagues, aren't they?
A Yes.
Q They work in the same office, don't they?
A Yes.
Q They do the same thing, don't they?
A Yes.
Q All right. All right. You contacted Mr. Roberts and what?
A And received a recommendation to contact Alan-Jon Zupan.
Q Okay. And who is Mr. Zupan?
A He also works with Mr. Bowers.
Q All right. Zupan and Bowers are colleagues. They work in the same office, correct?
A Yes.
Q All right. Did you contact Mr. Zupan?
A I did.
Q And what'd Mr. Zupan tell you? For the court reporter's edification, that's Z-u-p-a-n?

A I believe so.
Q Okay.
A He basically explained the procedure on how you establish -- reestablish a political boundary --
Q Okay.
A -- and discussed plats and the research that's required, and Mr. Gantt is -- is fully aware of what's required.
Q Now, how do you know what Mr. Gantt is aware of?
A As a licensed real estate appraiser --
Q Okay.
A -- he has --
Q I'm a licensed lawyer for the State of South Carolina --
A Uh-huh.
Q -- but I can tell you about that much -- and I'm holding my finger about a inch apart -- about environmental law, for instance. There's lots of areas that licensed lawyers know lots of stuff about that I know nothing about. What makes you think that Mr. Gantt, because he's a licensed real estate appraiser, knows any of that stuff?
A As a licensed real estate appraiser, you have got to look at plats. It's --
Q If you're doing the right job.

A It's part of the job --
Q Okay.
A -- and he's been doing it with the state so, and now he's with another firm.
Q Okay. So you're making an assumption that, because Mr. Gantt is a licensed real estate appraiser, he's aware of what he should be aware of as a licensed real estate appraiser; is that an accurate statement?
A Mr. Gantt is very much aware of the value of the metes and bounds and the stakes that are listed on plats.
Q Okay. What does that mean? What does that have to do with your -- your civil conspiracy claim against Bobby Bowers?
A That Mr. Gantt knew the information contained in a letter from Mr. Bowers responding to Gantt's request, checking into my residency, that that was insufficient to conclusively determine in which county I reside.
Q Okay. Didn't you have communication with Mr. Bowers' office through Will Roberts or others to -- to follow up or -- or make inquiries into the investigation into your -- well, into any boundaries, and you just happened to be a person

that -- that fell on one side of the line versus the side you'd like to fall on?

A Can you ask me that question again, please?

Q Sure. Did you have any communication with Bobby Bowers' office, anybody with his office other than Mr. Zupan, about the extent of the inquiry into your residency? Did you have e-mail exchanges with them?

A With Mr. Roberts.

Q Right. Where you asked for something and Mr. Roberts provided you with --

A Yes.

Q -- information, didn't he?

A Yes.

Q Okay. So you had access to -- to Mr. Bowers' office, didn't you?

A I did.

Q Okay. And you made use of that access, didn't you?

A I did.

Q Any other evidence that you've got with regard to Mr. Bowers and Mr. Gantt being colleagues and that they had an alliance, as alleged in Paragraph 11, other than what you've just told me?

A Mr. Bowers -- excuse me. Mr. Gantt indicated in his letter to Mr. Bowers that, "As you may be

aware, there have been rumors for some time that Ms. Murphy does not reside in Richland County."

Q Okay. Well, in -- in some -- one of your responses in your discovery, you mentioned that your residency was looked into in 2004, correct?

A In -- there -- it wasn't looked into as far as I know.

Q Do you recall there being mention in your discovery responses that your residency was looked into in 2004?

A I don't know if "looked into." Someone asked if I -- someone made the comment that I did not reside in Richland County.

Q Okay. We'll -- we'll go with that as opposed to "looked into." Somebody obviously looked into it in order to make that remark, but someone remarked to you that they didn't think that you lived in -- in Richland County in 2004; is that correct?

A Correct.

Q All right. Who was that someone?

A Stewart Mungo.

Q Stewart Mungo. Why would Stewart Mungo care whether you lived in Richland County or Lexington County?

A I can't answer that.

Q Okay. What was the context of Mr. Mungo's remark to you that he thought that you lived in Richland County or Lexington County?
A That remark wasn't made to me; it was made to a -- a school board member at the time, and she indicated that he asked her, and I responded that I --
Q Okay.
A -- live in Richland County.
Q Who is "she"?
A Carol Sloop.
Q Okay. And you responded. What was the context? Why would Mr. Mungo ask her whether you lived in Richland County or not?
A I can't answer that question.
Q Okay. Could you answer it back then, to the extent that you -- you felt compelled to give him a response? Why would you even care?
A I don't know why he -- I don't know why he asked. I don't -- I -- she just made the comment that he said I don't live in Richland County.
Q Okay. And you felt that that was important enough that you should even give him a response that you did live in Richland County, right?
A Well, I lived -- well, I do live in Richland

County.
Q Okay. But --
A I just filed to run for school board in Richland County.
Q Okay. All right. When someone raised that issue -- when -- when Mungo raises that issue, what inquiry did you go to to -- to -- to verify that you did, in fact, live in -- in Richland County?
A I live in Richland County. I've -- I have been there since 2000.
Q What did you do to verify that you lived in Richland County since someone like Mr. Mungo raised the question? Did you do anything other than tell him, "I live in Richland County"?
A I didn't tell Mr. Mungo that I lived in Richland County; I told Carol Sloop I lived in Richland County.
Q All right. What did you do, other than tell Ms. Sloop that you lived in Richland County, to investigate and verify that you did, in fact, live in Richland County in 2004?
A All I did was tell Ms. Sloop that I live in Richland County.
Q Okay. So, basically, because you told her you lived in Richland County, you felt that was

sufficient?
A I live in Richland County.
Q Okay.
MR. FRAWLEY: Let's take a break. We've been going for a little over an hour.
(Off the record from 1:20 p.m. until 1:33 p.m.)
THE EXAMINATION BY MR. FRAWLEY CONTINUES.
Q Okay. Ms. Murphy, we're back on the record after a short break. If you could look at the complaint, we just talked about Paragraph 11. I'd like you to look at Paragraph 12 and read that over, please. Then, when you're ready, let me know, and we'll ask you some questions about it.
A Okay.
Q Ready to go?
A Yes.
Q All right. In Paragraph 12, you allege that, "After determining only that Plaintiff's street address is located in Lexington County, Bowers himself or one of his employees visited Plaintiff's 16-acre property and used a simple GPS device to determine at what location the boundary between Lexington and Richland Counties intersects Plaintiff's property." That's what your first

sentence says there, correct?
A Yes.
Q All right. What evidence do you have that Bowers himself or one of his employees visited your 16-acre property?
A It's in the transcripts is one area.
Q Okay. And what evidence is that?
A That -- that they testified to going out to the site.
Q Okay. So either Bowers or his employees went to your 16-acre property?
A Yes.
Q Okay. And you've got evidence on that, based on the transcripts that were offered in the hearing before Judge Cooper?
A Yes.
Q Okay. The -- you didn't attend that hearing, did you?
A No. But I have the transcripts.
Q Okay. What was the purpose for that hearing?
A I'm not -- I'm not exactly sure the purpose of it.
Q Okay. What was the result of the hearing?
A Judge Cooper, who was the hearing officer, wrote a report.
Q That's -- that's part of your appeal in the other

case, isn't it?
A Yes.
Q All right. Where there was a finding by Judge Cooper that you did not reside in Richland County, correct?
A Yes.
Q Wasn't that --
A That's --
Q -- the purpose of the --
A -- was --
Q -- hearing, ma'am?
A That was what his report said.
Q All right. And wasn't the -- the purpose of the hearing was to make a judicial determination as to whether you did live in Richland or Lexington Counties?
A I don't know that it was a judicial determination.
Q It was some kind of determination, wasn't it?
A I -- I 'm -- I'm not exactly sure the reason for the hearing.
Q Were you a named party in that hearing?
A Yes.
Q Okay. Well, you knew that, whatever the purpose of the hearing, you were a named party, correct?
A Yes.

Q All right. And that -- who was the party adverse to you? The school board?
A In that case, the school board.
Q Okay. So it was a case in which --
A And --
Q -- in the caption the school board's one party and you were the adverse party, correct?
A I -- I'm not sure. If you --
Q You're --
A -- can explain -- ask the question again.
Q Well, you're -- you're --
A Legal terms, I don't --
Q Well, legal terms -- one party is suing another party or -- or bringing an action seeking a resolution against another party. Do you understand that concept?
A (Nods head up and down.)
MS. STORY: (To the deponent) Is that yes?
A Yes. Yes.
Q Okay. All right. And one party in that hearing was the Richland-Lexington School District 5 Board of Trustees, correct?
A Yes.
Q All right. They were one party and adverse to them was you, correct?

A Yes.
Q So you knew that much, didn't you?
A Yes.
Q Whatever they're wanting to do, you knew that a hearing was taking place in which you were adverse to the school board on which you were a member, correct?
A I -- I guess that's the correct terminology.
Q You knew that there was some kind of action brought against you? You understand that part?
A Yes.
Q All right. You're clear on that terminology?
A Yes.
Q All right. Yet, you chose not to show up, correct?
A At the advice of my attorney.
Q Okay. Well, who was driving the bus: you or your attorney on that one? Who -- who was in charge of making the decision as to whether you went there and contested whatever action they were taking?
A I -- I didn't attend at the advice of my attorney.
Q Okay. That was your decision based on the legal advice that your attorney gave you, correct?
A Yes.
Q But you made the decision, didn't you? Not your attorney?

A Well, that's at the advice of my attorney.
Q The attorney gave you advice, but you made the decision, didn't you?
A I was doing whatever my attorney advised.
Q Did you have any role in the decision that was made where you did not attend that hearing?
A I did not attend that hearing at the advice of my attorney.
Q That's not the question I asked.

Did you have any decision at all -- responsibility in making the decision not to attend that hearing in which you were a named party?
A I was relying on the advice of my attorney.
Q Okay. You were relying on the advice of your attorney, but you made the decision, didn't you?
A I -- I mean, I have -- I had to rely on the advice of my attorney.
Q Says who? Why did you have to rely on the advice of your attorney? What if that attorney gave you bad advice? Do you still have to rely on it?
A I relied on the advice of my attorney.
Q And made the decision not to attend the hearing, correct?
A I -- all I can say is I relied on his advice and . . .

Q Who, between you and your attorney, made the decision not to go to the hearing?
A At the advice of my attorney, I didn't attend the hearing.
Q Okay. But it was your idea? It was your choice --
A Wasn't my --
Q -- wasn't it?
A -- idea. It --
Q Wasn't it --
A At the --
Q -- your idea?
A -- advice of -- at the advice of my attorney, I did not attend the meeting.
Q Who works for whom in that -- in that relationship? Do you work for that attorney, or does he work for you?
A He works for me.
Q Right. He gives you advice based on his view of the legalities and the facts, right?
A Yes.
Q And then you make a decision based on that, correct?
A I relied totally on the advice of my attorney.
Q And you made the decision, didn't you? I mean, this is not a hard inquiry.

A Yes.
Q Thank you. Without going into what your attorney told you, in deciding not to go to that hearing, did you understand that the subject matter of that hearing, the inquiry, was going to be into what county you lived in?
A Yes.
Q Okay. Did you have any evidence for that hearing that you were prepared to offer Judge Cooper to prove that you did, in fact, live in Richland County?
A I did not attend at the advice of my attorney.
Q That isn't the question I just asked.
I asked: Did you have any evidence to offer Judge Cooper at that hearing establishing that you lived in Richland County?
A I do not know what my attorney was going to present.
Q Okay. Did you give him evidence to work with?
A Yes.
Q Okay. So you did have evidence that you gave your attorney?
A Yes.
Q Okay. What was that evidence? And, again, evidence that you lived in Richland County that

could've been presented to that hearing.
A I don't know what evidence was going to be presented at that hearing. I don't know. I did not attend the hearing at the advice of my attorney.
Q All right. That's nice, but the question I asked you was: What evidence did you present to your attorney that could be presented at the hearing establishing that you were a Richland County resident?
A At that time, I do not recall what information he had.
Q I'm less concerned with what he had than what you gave him for evidence.

What evidence did you have -- regardless of what your attorney had, what evidence did you have to present at that hearing that you were a Richland County resident? For the fourth time.
A And I don't -- I don't recall what information that may have been.
Q Did you have evidence at that time?
A I had -- I had information related to my residency.
Q All right. Is information related to your residency also evidence that you were a Richland County resident?

A Yes.
Q Okay. And do you have evidence now that you were a Richland County resident?
A Yes.
Q Is it the same evidence you had back then?
A I have more evidence now. I -- I have more evidence now.
Q All right. So you've got additional evidence now to add to the evidence that you had back then, correct?
A Yes.
Q All right. Let's forget the additional evidence for this time and tell me what evidence you had back then.
A And that's what I don't recall is what evidence I had back then.
Q Okay. So sitting here today, you cannot offer any sworn testimony that you had any evidence supporting your claim to Richland County residency back when the hearing was held before Judge Thomas -- or Judge Cooper; is that correct?
A I had gathered information, but I do not know what information was going to be used as evidence.
Q Okay. And sitting here today, you can't say what that information or evidence was, can you?

A At that time, I can't recall exactly what information I had.
Q So sitting here today, you can't say whether you had any information then, can you, because you can't recall what it was?
A I recall I gave him information. I cannot recall what information I gave him.
Q Okay. So you can recall that you gave your attorney information to present at that hearing that you were a Richland County resident, correct?
A I gave my attorney information.
Q Okay.
A I don't know what he was going to do with it.
Q Okay. You don't know what he was going to do with it, but you did testify earlier that, after you gave him that information, he recommended to you that you not attend the hearing, correct? Isn't that what you just testified to?
A I gave him information between -- that I had gathered between January and February 15th, and I do not know what he was going to do with that information.
Q But you do know that he said, after he got that information, "Maybe you need to not go to that hearing," correct? Isn't that what you testified

to --
A No.
Q -- earlier?
A No.
Q Based on advice of your attorney, you chose not to attend the hearing, correct?
A That's correct.
Q After you gave him the information that supposedly supported your claim to be a Richland County resident, correct?
A I gave him -- I gave him information that documented that I was a Richland County resident.
Q All right. And I asked you a few minutes ago what that information was, and you couldn't give it to me --
A I --
Q -- could you?
A I could not recall. And I'm -- am -- I -- he had documentation that said I was a Richland County resident.
Q Which was what?
A Plats.
Q Plats of what?
A My property and the county line. A voter registration. I'm trying to recall. Approval

letter from Lexington County approving the subdivision plat.

Q That would've been from the late 1990s, wouldn't it?

A Tax records.

Q The approval letter from Lexington County would've been from the late 1990s when that subdivision was originally platted, correct?

A Correct. I cannot recall exactly what information Mr. Kincannon had that I had provided to him and what I provided to attorneys after -- my -- my new attorneys. So I'm trying to be correct in my time frame.

Q All right. Well, let me ask it this way: You were represented by counsel for that hearing, weren't you? You had an attorney?

A Yes.

Q Okay. Mr. Kincannon?

A Yes.

Q All right. And you'd presented evidence -- what you deemed to be evidence supporting your claim to being a Richland County resident to Mr. Kincannon for that hearing, correct?

A I gave Mr. Kincannon documentation that showed I was a Richland County resident. I do not know if

it was for that hearing.
Q You knew you had a hearing coming up. You knew when that hearing was taking place, didn't you?
A Yes.
Q Did you think your attorney was not going to use that evidence at that hearing if you allowed him to go forward?
A I gave him the information, and I do not know what -- how it was going to be used.
Q Okay. After giving him the information and after knowing you had a hearing that was coming up, the subject matter of which was your residency, your attorney advised you not to go to the hearing; is that what you testified to earlier?
A Yes.
Q All right. And you chose, based on that advice, to not go forward to the hearing, correct?
A Correct.
Q All right. So you had evidence to present, but you chose not to present it to Judge Cooper, based on the advice of your -- your attorney?
A Again, I don't know what was going to be presented, how it was going to be presented. I -- I don't know.
Q Well, after your attorney had the opportunity to

review it, he advised you not to go forward, didn't he?
A Timing-wise, that's correct.
Q Okay.
A I did give him information.
Q And he did advise you not to go forward?
A My attorney did advise me to not attend that meeting.
Q Okay. And you didn't attend the meeting?
A Correct.
Q You didn't offer any testimony in favor of your claim to Richland County residency, correct?
A We didn't attend the hearing.
Q And you weren't there to offer any testimony or evidence --
A Correct.
Q -- that you were a Richland County resident, correct?
A Correct.
Q So you had the opportunity, but you did not present any evidence to Judge Cooper?
A Correct.
Q All right. Do you know what the generally-accepted means for determining location is for a -- for a boundary line?

A Can you rephrase that?
Q Yes. Do you know -- well -- well, let's -- let's go back to Paragraph 12. You say, in Paragraph 12, again in that first sentence, "Mr. Bowers himself or one of his employees used a simple GPS device to determine at what location the boundary between Lexington and Richland Counties intersects Plaintiff's property." That's what you alleged in there, correct?
A Yes.
Q All right. Next sentence is, "Bowers utterly failed to review or locate the stakes delineating Plaintiff's property, and he failed to complete a thorough geographical survey," correct?
A Correct.
Q All right. What are the generally-accepted means for making those determinations? How should they have been done?
A They should've used a boundary survey.
Q Okay.
A They should have communicated with me, first of all. Didn't even know they were investigating the line.
Q Why should they communicate with you? You're just going to tell them you're a Richland County

resident, aren't you?
A Well, I may have documentation that I can share with them to show where the boundary is.
Q Did you?
A They never asked me.
Q Well, you -- this is the documentation that you didn't present to Judge Cooper when they had a hearing on the issue?
A (No response.)
Q If they had asked you, what would you have given them?
A What I say here is that Mr. Bowers and his team did not do what is required to establish a boundary, particularly a political boundary.
Q Okay. And -- and what basis do you have for -- for saying that? How -- how are you establishing a standard of care for what they should've done and then establishing that they varied from that standard of care?
A Mr. Bowers serves on the South Carolina-North Carolina Boundary Survey.
Q Right.
A And he knows what is required to reestablish a boundary. And part of that is actually going out and looking for the stakes that are referenced on

the plat or, in this case, it's in -- as well as in statute.

Q What statute --

A And --

Q -- are you talking about?

A It discusses the county -- where the county boundaries are. Mr. Bowers knows that you cannot just go out and put GPS/GIS equipment on one point that you think is the line and come up with where the lines are --

Q Okay.

A -- without physically looking for the stakes.

Q All right. You're not an expert in that area, are you?

A I got this information from Alan-Jon Zupan.

Q Okay. And how are you going to establish that? What evidence do you have as to what the proper standard is for establishing boundary lines?

A Can you ask that again, please?

Q Yes. What evidence do you have that will establish the proper procedure for establishing boundary lines?

A I have an audio tape from Alan-Jon Zupan that told me how the proper procedures -- proper procedures that should be taken to establish a political

boundary.
Q An audio tape. That means you taped a telephone conversation you had with him?
A That's correct.
Q Did you tell him you were taping him?
A I did not.
Q Why not?
A It wasn't necessary.
Q Is that how you do business, ma'am? You -- you tape people that you talk to on the phone?
A I use my tape recorder when it's necessary.
Q Okay. What makes you think that that audio tape is admissible into evidence?
A I have no idea whether it's admissible or not. But he is an expert, and he helped to educate me on the subject and what is required and what took place on our property.
Q Did he educate you before the hearing before Judge Cooper?
A I talked to him before Judge Cooper, yes.
Q So what information you have as far as the standard of care and that the standard was not properly adhered to by Mr. Bowers, you had that information before the hearing with Judge Cooper, didn't you?
A I did have that --

Q Had you --
A -- conversation --
Q -- provided --
A -- with him.
Q Had you provided that information to your attorney?
A I believe so.
Q And based on the information that you did provide to your attorney, your attorney still advised you not to move forward for that hearing, correct?
A I cannot say -- I cannot -- I do not know why my attorney advised me not to attend the -- the hearing.
Q But you had that information, and you could've gone forward and presented it to Judge Cooper, correct?
A I did have that information.
Q And you chose not to present it to Judge Cooper, correct?
A At the advice of my attorney, we didn't attend the hearing.
Q Okay. The answer to that is yes? Whatever your motivation for not attending the hearing, you did not attend the hearing --
A Correct.
Q -- and did not present that information that you had to Judge Cooper, correct?

A Correct.
Q What evidence do you have, as alleged in Paragraph 12, that "Mr. Bowers used a simple GPS device to determine at what location the boundary between Lexington and Richland County intersects Plaintiff's property"? What evidence do you have to establish that? Testimony or documents.
A I apologize. I wasn't listening to your question, but I was recalling other things that my attorney had received.
Q I'm not talking about your attorney in this case.
A Well, my --
Q I don't know want to know what your conversations with --
A Todd Kincannon.
Q All right.
A And -- such as e-mail communication with Will Roberts.
Q Between you and Mr. Roberts?
A Yes.
Q Okay. Okay. The question I just asked is: What evidence do you have that Bowers used a simple GPS device to determine what location the boundary was at?
A Based on what was said at the hearing --

Q Uh-huh.
A -- in -- in transcript and based on my conversation with Alan-Jon Zupan. Based on my conversation with the head of the North Carolina Boundary -- Mr. Bowers' counterpart in North Carolina.
Q That guy knew that Mr. Bowers was out there with a simple GPS device?
A Oh, this was that it was inadequate to use --
Q All right.
A -- as to --
Q How do you know that Mr. Bowers was out there with what you call a "simple GPS device"?
A Alan --
Q -- Zupan?
A -- Zupan.
Q Okay.
A And --
Q So you're planning on calling Mr. Zupan as a witness?
A Yes.
Q Okay. And who else?
A In the transcripts, Sid Miller --
Q Who's Sid Miller?
A -- and Mr. Bowers --
He is the surveyor that works with Mr. Bowers.

Q Okay. So -- so Mr. -- Mr. Miller testified in the transcripts you're referring to that they used a simple GPS device?
A They used a GPS device to position points.
Q Okay. And it's your understanding that that's not a generally-accepted means for determining location?
A That alone is unacceptable.
Q Okay. Do you know that that alone is what they used?
A That's what they said they did --
Q Okay.
A -- when they went out to the site.
Q All right. So your recollection from those conversations and from the testimony from Mr. Miller and Mr. Zupan is that all they did was use the GPS device, correct?
A They never did a boundary survey to look for the stakes.
Q Okay. Have you had a boundary survey done to look for the stakes?
A I have not.
Q So you're saying they should have to establish your Richland County residency, but you haven't done that to establish your Richland County residency?

A This is a political boundary. I have no obligation to survey a political boundary. Mr. Bowers is the expert here, and he cannot make the determination of where a political boundary is without doing the proper research.
Q Okay. You understand you're the plaintiff in this lawsuit and the gravamen of this lawsuit is that they've mislocated you. You understand that?
A Yes.
Q Okay. And you understand that one matter of proof may be your proving that you are, in fact, a Richland County resident?
A I can prove that they did not do what was required to determine where the boundary is, and, specifically, they did not attempt to look for the stakes that established the line.
Q Nor have you?
A I have looked for them and I know where one is.
Q But -- but this far into this lawsuit you don't have a -- a stake survey showing those -- those stakes, do you?
A I have not paid to do a boundary survey of a county line. That's very costly and should not be the responsibility of the property owner.
Q Should it be the responsibility of a plaintiff

bringing a lawsuit to establish something if that's a critical element in her case?
A. It should be the responsibility of the experts to provide honest and adequate information.
Q. All right. What responsibility do you have as a plaintiff to provide honest and accurate information supporting your claim?
A. I can show that Mr. Bowers did not provide adequate information.
Q. But you can't show the stake survey that would -- that would provide that information that your -- for -- for your lawsuit, can you?
A. No boundary survey was required to show that Mr. Bowers was negligent.
Q. Okay.
A. No boundary survey that I pay for is necessary to show.
Q. So your testimony is that, as a plaintiff, you don't have to go to the extent of getting a boundary survey if a boundary survey would establish your residency; is that your testimony?
MS. STORY: Object to the form.
Q. You can still answer the question.
A. Can you ask it again please?
Q. Sure. Your testimony is that, as a plaintiff, you

have no obligation to get the proof you need to establish your case --

MS. STORY: Same --

Q -- correct?

MS. STORY: -- objection. (To the deponent) You have to answer the question.

A I have proof that Mr. Bowers' findings were inconclusive.

Q But that proof does not include your getting the very stake survey that you're saying he didn't get?

A Based on testimony from the hearing with Judge Cooper --

Q That you didn't attend?

A I have the testimony, the transcript, and my conversation with Will Roberts and e-mails and with Alan -- Alan-Jon Zupan and testimony from Mr. Bowers that said the line is my -- is conclusive. It is not conclusive without locating the stakes.

Q Okay.

A That's a simple fact.

Q But you haven't located the stakes?

A I believe I know where one of the stakes is.

Q How many stakes are there?

A There's one stake referenced in statute at the other end of the line. It's referenced as Rocky

Ford; another line segment it's referenced as Pointers.
Q Okay. My question was: How many stakes are there?
A There's one -- one stake and three corners.
Q One stake and three corners? Are -- are all of those stakes, or is just one of them --
A No.
Q -- a stake?
A One is a stake.
Q So when you say "the stakes needed to be located," you're talking about just one stake?
A There're two line segments, and there are three corners involved with those two line segments.
Q Okay.
A One of those corners is a stake. That stake is specifically referenced in statute.
Q Your defamation claim -- if you could look at Paragraphs 19 and 20 and the paragraphs after that. Your cause of action for defamation is against the board and Gantt and not Bobby Bowers; is that accurate? Go ahead and take your time looking over 19 through 25.
A It says, "For first cause of action against Defendant Board and Gantt."
Q Okay. But go ahead and look at the paragraphs too.

A Okay.
Q You're not saying in any of these paragraphs under your first cause of action that Bobby Bowers defamed you, are you?
A I believe that's correct.
Q Okay. Let's look at the second cause of action, which is your civil conspiracy, and that would be Paragraphs 26 through 31, if you could take a minute and look at those, please.
A Okay.
Q Okay. Ready to go? In Paragraph 27 on Page 7 of the complaint, that paragraph begins, "Defendants Bowers, Gantt, and others met at various times and places, schemed, conspired, and planned in secret to make a baseless and shammed determination that plaintiff is not a" -- I think "resident" is supposed to be in there -- "of Richland County and, thus, removed her from the board." That's what that first sentence says, correct?
A Yes.
Q Do you agree with me that in that third line, not "a" but probably the word "resident" needs to be in there, with regard to the context?
A Yes.
Q Okay. So we'll assume that "resident" would --

would be put in there.

What evidence do you have, beginning that -- with that sentence, that Bowers, Gantt, and others met at various times and places? What evidence do you have supporting that statement?

A They schemed to put this together.

Q Okay. We're not to schemed yet. I'm going to get to that in a minute. Right now I want to know what evidence you have that Bowers, Gantt, and others met at various times and places. What evidence do you have of that?

A They have -- they had to have talked to put this together.

Q Assuming --

A This was --

Q -- that something was actually put together, what evidence do you have that they actually met at various times and places, other than your conclusion that they would've had to have met?

A Mr. Gantt and Mr. Bowers clearly spoke about how they could have me removed from the board and that this -- and they used a totally inaccurate method of -- of doing so, and it's clear that they've known for some time. Had they done what they were supposed to do -- I can't believe they did what

they did.
Q What is your evidence supporting that statement? Just because you stick "it's clear or clearly this," with regard to your belief or your conclusion, what evidence do you have establishing that? Just saying "clearly" doesn't make it evidence. What evidence do you have supporting it?
A It's clear that they did. They wouldn't've gotten to this point. They wouldn't've done what they did without having the communication. They wouldn't have done such a -- I just -- a -- a -- a cursory evaluation without having some communication in advance that this was done to have me removed from the board.
Q What would Bowers' motivation to have you removed from the board be? What evidence do you have that he even knew who you were before this?
A Mr. Bowers wanted to do this as swiftly as possible.
Q Okay. That's your conclusion. What evidence do you have supporting that conclusion?
A When he responded to Gantt, he responded in a way -- he responded -- they -- they schemed to have this added to the agenda where there was no time to respond, no -- no time. They -- they never came to

me. That's the first thing they should've done is come to me and say, "I'm looking at your property line." They never did that. They didn't want me to know about this. On January 11th, when Mr. Bowers responded to Gantt, he knew that what he had presented was inadequate to determine an elected official's county of residence.

Q How do you know that? What evidence do you have establishing that belief? Testimonial or documentary.

A Mr. Bowers is directly involved with the North Carolina-South Carolina Boundary Commission. They know from the work that they do what is required to determine a political boundary. In fact, Sid Miller, who is the -- the surveyor involved with this, sought an attorney general's opinion on a question they had with regard to establishing a section of the North Carolina boundary. And that same principle applies to this county boundary: that you have got to go out and look for the corners; you have a tremendous amount of due diligence that you have to do to look for those corners.

Q Okay. The question I originally asked was what evidence you had that Bowers, Gantt, and others met

at various times and places, as you alleged in the first subordinate clause of the first sentence of Paragraph 27 of your complaint. What --

A Had they come --

Q -- evidence do you have for that?

A Had they come to me in the beginning -- they did not come to me; I was never notified. Mr. Gantt never notified me that he was looking into my boundaries.

Q I don't care about Gantt. I want to know what Bowers did or what evidence you have that --

A Mr. Bowers --

Q -- Bowers met with Mr. Gantt.

A Mr. Bowers never came to me to let me know he was investigating my boundary, that there was any question there. This -- I was not notified until Executive Session, following Mr. -- Mr. Bowers' evaluation, that they were even evaluating the boundary. But following -- the same day that Mr. Bowers wrote to Gantt notifying him of my alleged county of residence and that I was not qualified to serve on the board on Richland County, he wrote to Jasper Salmond, who was the director of the Richland County Election Commission --

Q How do you spell that guy's name?

A S-a-l-m-o-n-d -- and informed him to remove me from the voter rolls without even checking with me, without even notifying the property owner that they were investigating --
Q Do you think --
A -- my county of residence.
Q Do you think you were the only person in that period of time whose residency was changed based on a -- a -- a line from one county to another? Do you think there were not other school board members in other counties statewide that the same thing happened to? Or do you even know?
A Mr. Bowers knew that it was an elected official; he knew it was me.
Q My question was: Do you know if there were other elected officials on other school boards statewide that the same thing happened to?
A Mr. Bowers does not have the authority to determine -- to remove someone from one county and place them in another county.
Q Ma'am, that's not even close to answering the question I just asked you. Do you know if other school board members statewide had the same thing happen to them, based on lines and based on more accurate drawing of lines?

A I do not know exactly -- I do not know.
Q Okay.
A I know there were other elected officials, and Bowers was involved with questioning their voting districts.
Q When the line was -- when -- when the determination was made that you were no longer a Richland County resident but were a Lexington County resident, was there a seat available in Lexington County for the school board?
A Ask that question again, please.
Q Yes. Once it was determined that you were no longer a Richland County resident, so could not hold a Richland County seat on the school board, wasn't there a -- a corresponding Lexington County seat that you could've run for?
A Following their vote to remove me?
Q After it was deemed that you were no longer eligible for the Richland County seat and you were removed at the hearing at which you did not attend, why did you not run for a corresponding Lexington County seat on the same school board?
A Because I'm still in Richland County. And -- and until Mr. Bowers does a survey -- a boundary survey that shows where the stakes are that shows that the

line is any different than what the counties recognize as the line, I'm still in Richland County.

Q Judge Cooper found that you were not a Richland County resident, didn't he?

A He was acting as a hearing officer; he was not a judge.

Q Well, he was acting as a hearing officer, and there was a conclusion that you were not a Richland County resident. You agree with that statement?

A His report said that I was not a Richland County resident.

Q And y'all appealed that, didn't you?

A Yes.

Q And it went to Judge Benjamin, didn't it?

A Yes.

Q Judge Benjamin's a judge, isn't she?

A Yes.

Q All right. She reviewed the record, which did not include any contribution from you because you didn't go to the hearing, correct?

A It included information from me at that hearing.

Q Well, then, it would've included more information than you presented before the school board hearing with Judge Cooper. You agree with that statement?

A I think the information that was presented shows that I'm still a resident of Richland County.
Q The information that was presented would've been presented to Judge Benjamin after the Judge Cooper hearing. Do you agree with that statement? Because you didn't even show up at Judge Cooper's hearing.
A We are asking for -- for her to reconsider her motion -- her -- her order.
Q The information that was presented to Judge Benjamin for her to review and make her decision was more than what was -- was presented to Judge Cooper. Do you agree with that statement?
A Yes.
Q All right. So Judge Benjamin had not only what was presented to Judge Cooper as a hearing officer, but also additional material that you and your attorney were allowed to submit for Judge Benjamin's consideration. Do you agree with that statement?
A Yes.
Q And based on all that information, Judge Benjamin found that you were not a Richland County resident. Do you agree with that statement?
A I believe -- I believe that's what the conclusion was.

Q Okay. And -- and you've asked for her to reconsider it, or that's on appeal; that -- that's not a done deal yet. Do you agree with that?
A Correct.
Q That -- that's the subject matter of the other lawsuit we're talking about, correct?
A Correct.
Q All right. You good to go, or do you want to take a five-minute break?
A I'm okay.
Q If you could look at -- let's look at still 27, Paragraph 27. The next clause in that first sentence says, "Bowers and Gantt schemed, conspired, and planned in secret to make a baseless and shammed determination that plaintiff is not a Richland County resident and, thus, removed her from the board." What evidence do you have -- well, let me ask you this: Did Bobby Bowers have any vote with regard to whether you were removed from the board or not? Was Bobby Bowers on the school board?
A No.
Q Did he get a vote when they voted on whether to keep you on the board or have you removed?
A No.

Q As far as the schemed, conspired, and planned in secret allegation there, what evidence do you have that they schemed, conspired, and planned in secret? Do you have any recorded conversations indicating that they schemed, conspired, and planned in secret?
A Witnesses have told me that this was political.
Q Great. We've got --
A And --
Q We've got witnesses, at least. Who are those witnesses?
A R.J. May.
Q Do you spell it M-a-y-e or just M-a-y?
A M-a-y.
Q All right. Who else?
A Ed McMullen.
Q Who else?
A I believe the attorney on Richland County.
Q The attorney on Richland County. Who are you talking about?
A Larry Smith.
Q Oh, the Richland County attorney, Larry Smith, has told you that?
A No. I believe that he has information that will show the effort behind this from Mr. Bowers.

Q Okay.
A And --
Q And how do you know or how do you suspect that Larry Smith has information with regard to Bobby Bowers and the effort behind this?
A I've had a conversation with him.
Q With -- with Mr. Smith?
A Yes.
Q All right. You said witnesses have told you that this was political. What -- what is the "this" you're talking about?
A That they're scheming to have me removed from the board.
Q When you say "they," who are you talking about? There -- there's -- there's so many indistinct --
A Bowers and Gantt.
Q -- terms out there.

Bowers and Gantt is the "they" you're talking about?

A Bowers and Gantt.
Q Okay. So witnesses have told you that Bowers and Gantt scheming to get you off the board was political; is that your statement?
A Yes.
Q All right. Witnesses are R.J. May. Who's R.J.

May?
A He's a political consultant.
Q A political consultant. What's his address?
A I don't have it.
Q Can you get it?
A (Nods head up and down.)
Q Is this one of the witnesses you listed?
A Yes.
Q All right. When did you and Mr. May have this conversation that -- that Bobby Bowers and Mr. Gantt conspiring or scheming together was political?
A Ed McMullen shared that information with me.
Q Well, we're talking about Mr. May now?
A Yes. And he said that I would have to depose him in order to find out but that it was clearly a conspiracy to have me removed.
Q Ed McMullen. Who is Ed McMullen?
A I guess he might be a political consultant too, if that's the right terminology for --
Q What is -- what is a political consultant? Do these guys -- what do they do? What does a political consultant do? Obviously, in this context, they make conclusions about whether people are scheming or not. But what does a political

consultant actually do?
A I like to believe they advise politicians. I think he works on other efforts, as well, too.
Q So your best recollection is that Ed McMullen and R.J. May are both political consultants, correct?
A Yes.
Q Are they aligned with the Democrats or the GOP or anybody in particular?
A At the time, they both were helping Meka -- Meka Childs with her superintendent of education campaign.
Q Is she a Democrat or a Republican?
A She's a Republican.
Q Okay. Did -- are -- are they always aligned with Republicans, or are they equal --
A I don't --
Q -- opportunity political --
A I don't know.
Q -- consultants?
A I don't know.
Q You don't know that. All right.
Specifically, again, what did R.J. May tell you, and when did you talk to him?
A R.J. did not tell me. This came from Ed McMullen.
Q Okay. So R.J. May -- you've not had a -- had a

conversation with R.J. May where R.J. May has told you that this was political?
A Not yet.
Q Not yet?
A Correct.
Q Okay. So when you told me, "Witnesses have told me that this was political," and I asked you who the witnesses are, when you -- when you said R.J. May, that was inaccurate, correct? Because Mr. May hadn't talked to you yet?
A Either I misunderstood your question, or your question wasn't the exact one you just gave me.
Q Okay.
A But the -- I believe that R.J. can testify to the facts based on what Ed McMullen said, and they are both witnesses.
Q Okay. But you haven't spoken to R.J. May about this?
A I have not talked to R.J. May.
Q So you've listed R.J. May as a witness in this case, one of among 143 witnesses, and you haven't even spoken to Mr. May. Is that your testimony?
A That's correct.
Q Okay. And you have spoken to Ed McMullen, though, right?

A Yes.
Q And tell me again what Mr. McMullen told you.
A He said very succinctly that this was a political move to have me removed from the board.
Q Okay. Is this based upon his expertise as a political consultant, or is it based on something he actually knows?
A I can't answer that question.
Q So you don't know what his basis of making that remark is, do you?
A He worked very closely with R.J. May.
Q Who doesn't -- who -- with whom you've not even spoken about this, correct?
A That's correct.
Q So you don't know what R.J. May knows, do you?
A We haven't deposed him yet.
Q You haven't even talked to him yet, much less deposed him, correct?
A Yes.
Q All right. Mr. McMullen succinctly told you that. What -- specifically what did Mr. McMullen succinctly tell you about it? Did he mention Bobby Bowers' name?
A No.
Q How about Larry Smith, the attorney in Richland

County? What -- what did Larry Smith tell you? Did you actually speak with Larry Smith?

A I did.

Q And what was the -- what was the purpose for speaking with Mr. Smith?

A I probably called him to -- I can't remember why I called him. It was related to this issue.

Q It was related to this issue?

A Yes.

Q Okay. And what did Mr. Smith tell you in that conversation, whatever your reasons for calling him?

A That -- if I recall correctly, that Mr. Bowers was insistent that I be removed from the voter rolls.

Q Did you record that telephone conversation?

A I did not.

Q Why not?

A I don't -- don't recall why I didn't.

Q Do some you record? Some you don't record?

A That's correct.

Q So other than your recollection and you can't remember why you made the phone call, you don't have anything to establish that Larry Smith said that Bobby Bowers was insistent on having you removed?

A Ask the question again, please.
Q Yes. Other than your recollection of -- of that conversation and you can't remember why you initiated the conversation, you don't have anything to establish that Mr. Smith told you that Bobby Bowers was insistent that you be removed?
A I did call Mr. Smith related to this situation, but he said that Mr. Bowers was insistent about it.
Q Insistent that Mr. Bowers had the property line correct?
A No. Insistent that there wasn't -- there wasn't -- that what was -- that what Bowers had done was not sufficient to have me removed from the voter rolls.
Q So Mr. Smith has some expertise into how county lines are supposed to be drawn?
A Or possibly the authority that Bobby Bowers has or doesn't have.
Q Looking at Paragraph 27 again -- well, let me ask you this: Any other witnesses besides R.J. May, with whom you haven't spoken, Ed McMullen, who succinctly told you what he thought, and Larry Smith, who said that Mr. Bowers was insistent, do you have anybody else, any other witnesses, who told you that this was political?
A Will Roberts communicated with Dean Crepes with the

Election Commission.
Q Dean who?
A Crepes, C-r-e-p-e-s, who is the director of the Lexington County Election Commission.
Q Okay. How do you know that?
A I have a letter. I have e-mail correspondence between the two of them. I have a recorded conversation.
Q With Mr. Roberts?
A With Mr. Crepes and --
Q So you recorded his conversation, too?
A I recorded several conversations.
Q Do you tell any of these people that you're recording them when you call them?
A There's no need for me to do that.
Q No need?
A For me to tell them.
Q You're talking about from a legal standpoint or from a moral standpoint?
A I think it was immoral what Mr. Bowers and Mr. Gantt did to me.
Q Do you think it's --
A And I have every right to protect myself.
Q Do you think it's immoral for you to call people -- initiate a call and record them without telling

them?
A I am trying to defend myself against an action that was very wrong.
Q Ma'am, you're the plaintiff in this lawsuit. You're not -- you're not defending yourself in this lawsuit. You brought this lawsuit.
A Mr. Bowers and Mr. Gantt schemed to have me removed from that board, and when I appealed, I was slapped with a $10 million counterclaim.
Q Mr. Bowers had nothing to do with that, did he?
A Mr. Bowers had a lot to do with -- I can't even think of the right adjective to describe totally for a man in his profession to put forth such a totally inadequate determination.
Q Well, you're not alleging negligence here, are you? You -- you don't have a cause of action for negligent work done by Bobby Bowers, have you?
A It was negligence. I don't know that I have a claim.
Q Do you know in his position -- you mentioned what -- what he should have done or should not have done in his position. Do you know if in his position he is requested to -- to check on county lines whether he has discretion, whether he can say, "No. I'm not going to do that one. I want to

do this other one over here," or whether he's required by law to make that investigation? Is that something you've checked out?

A Ask your question again, please.

Q Yes. Do you know if he has discretion when someone requests that a -- a county line be checked, that he has discretion on which ones -- which requests he's going to check and which ones he's not?

A You asked me not to guess. I can only --

Q I just want to know what you know.

A I -- I don't know, but it would seem in his position he has the power to check into whether a line may be accurate or not.

Q Do you know, if he is requested to check into whether a line is accurate or not, that he has the discretion to say, "Yes. I'm going to check," or, "No. I'm not going to check"?

A I don't know if he has that discretion.

Q Okay.

MS. STORY: (To Mr. Frawley) Do you mind if we take a restroom break?

MR. FRAWLEY: Yes, yes.

(Off the record from 2:43 p.m. to 2:56 p.m.)

THE EXAMINATION BY MR. FRAWLEY CONTINUES.

Q All right. Ms. Murphy, we're back on the record after a brief break. I'd been asking you some questions about Paragraph 27 of the complaint, and I think we finished the "schemed, conspired, and planned in secret" sentence.

The next sentence there reads, "Defendant Gantt met with members of the Defendant Board and Bowers at various times and places and planned to prohibit Plaintiff's effective representation of Richland County by consistently interrupting her, refusing to recognize her to speak, and allowing members of the public to verbally berate her, with the ultimate purpose of harming Plaintiff by having her kicked off the Board to silence her criticism of Gantt's and other Board members' personal agendas in making decisions for the District." Do you see that?

A Yes.

Q Okay. What evidence do you have that the Defendant Gantt met with members of the Defendant Board and Bowers?

A In Executive Session, Mr. Gantt said that he was --

MR. MORRISON: Time out a second. Let's take a break for just a minute and let me talk to Mike.

(Off the record from 2:58 p.m. until 3:02 p.m.)

MR. MORRISON: (To Mr. Frawley) All right. Before we continue, I don't recall what the question was, but I recall the answer started out with "In Executive Session, Mr. Gantt said." On behalf of the school district, we do not waive the privilege that is accorded to Executive Session. Executive Session is just that: It is executive; it is confidential; it is not disclosable, and, therefore, I would object to discussion of conversations had in Executive Session. It's not Ms. Murphy's privilege to waive; it's the school district's privilege, and the school district does not waive Executive Session privilege.

MR. FRAWLEY: Okay.

MR. MONTGOMERY: I would concur with that and join in that objection.

MR. FRAWLEY: And I -- I'll -- I'll ask the question again. I don't think my question specifically earmarked Executive Session. I think --

MR. MORRISON: It did not.

MR. FRAWLEY: -- her response did, but I'll go

ahead and ask the question again, subject to that objection, and you may want to voice that objection again.

THE EXAMINATION BY MR. FRAWLEY CONTINUES.

Q Ms. Murphy, I -- I read a fairly lengthy sentence in Paragraph 7 of the Complaint, beginning with, "Defendant Gantt met with members of the Defendant Board and Bowers at various times." And then there's a pretty long predicate there.

MS. STORY: (To Mr. Frawley) You mean 27, right?

MR. FRAWLEY: Yes. Did I say -- what'd I say?

MS. STORY: You said "7."

MR. FRAWLEY: No. I meant 27. I'm sorry.

Q What I'm most specifically interested in is what evidence you have that Mr. Gantt met, not with members of his board, because, obviously, he's on the board and probably meets with them frequently, but that he "met with Bowers at various times and places and planned to prohibit the Plaintiff's effective representation," whatever the remaining of that predicate is. What evidence do you have that Mr. Gantt met with Bowers at various times and places and planned to prohibit your effective representation of Richland County?

A Mr. Gantt said that he hadn't -- didn't -- wasn't aware -- made aware of this issue until October of 2012.
Q Where did he say that?
MR. MORRISON: Same objection. To the extent this is information coming from Executive Session, I'm going to make the same objection.
Q And my question is: Where did he say that?
THE DEPONENT: (To Ms. Story) Am I not able to --
MS. STORY: You have to answer unless someone instructs you not to answer.
THE DEPONENT: Okay.
Q Okay. So my question is: Where was he when he said that? Was that -- was that statement made in Executive Session, or was it made outside of Executive Session?
A Both.
Q Okay. Did you record him while he made that statement?
A He was recorded in the public meeting.
Q All right. In the Executive Session meeting, did you record any statements made by him or anyone else?
A No. I did not.

Q All right. Okay. So in the public meeting, you're saying that Mr. Gantt said what again?
A That he became aware of the issue in October of 2012.
Q Okay. And what does that have to do with the Defendant Gantt meeting with Bowers at various times and places and planned to prohibit your effective representation of Richland County?
A Well, Gantt said that he did not want it to interfere with his school board election in which was -- we were in the middle of that. That was in Executive Session in October -- excuse me -- in Executive Session in January. He said he --

MR. MORRISON: Same objection.

Q Okay. I don't want to know what he said in Executive Session because you're not going to be able to get into that. I'm looking for what evidence you have that's going to be admissible at trial on what I just asked you: that Gantt met with Bowers at various times and places and planned to prohibit you from doing your job as a -- as a school board member.
A And according to a newspaper article of Scott Murray, who was listed as a witness, said that he brought it to Gantt's attention in 2010.

Q Newspaper article. Scott Murray is quoted in the newspaper article?
A He was quoted after the school board's vote to remove me.
Q This he quoted in the newspaper article?
A Yes.
Q Okay. What newspaper? The State?
A The State newspaper.
Q Who's the reporter who wrote the article?
A I'm not sure.
Q You remember the date of the article?
A I -- I have a copy of the article.
Q Who is Scott Murray?
A Scott Murray is a very aggressive non-supporter.
Q A very aggressive --
A -- non-supporter.
Q That almost seems like an oxymoron. You're aggressive, but you're not going to support. What -- what --
A He's -- he's not --
Q I don't know what that means.
A He is -- he is very aggressive towards me.
Q Okay. When you say "aggressive," what do you mean by that?
A The -- the words he uses are aggressive.

Q Okay. What does aggressive mean in the context that you're using it?
A Meaning he accuses; he threatens.
Q When you say "threatens," is he a school board member?
A No.
Q Is he just a citizen that attends meetings?
A He's a citizen aligned with Gantt and some of the other school board members.
Q And how does he have language that is directed to you at all? How do you hear what he's got to say?
A He's --
Q I -- I would think this is a guy you don't want to go around if he's aggressive. How does -- how do you hear what he says?
A Well, the way he speaks to me and --
Q In meetings?
A -- tone -- the tone of his voice. Yes. In meetings he's -- he's . . .
Q Are these school board member meetings or school board meetings where Murray will have an audience at a podium and get to make remarks? Is that what you're talking about, or how would this guy have the opportunity to even talk to you if he's that aggressive? I would think you wouldn't want to be

around him.
A We've -- we've met once. We've talked on the phone. I ran into him at the Chapin Labor Day parade.
Q When you talked with him on the phone --
A Very aggressive.
Q -- did he call you or did you call him?
A I don't recall.
Q Did you record the conversation?
A I did not.
Q Would you have had any reason to call this guy who's apparently aggressive with you as far as his language?
A I -- yes.
Q Why would you have had reason to call him?
A I wanted to discuss with him the fact that Chapin High School's renovation plan was not going to expand the school as the district had promised.
Q Okay. And why would you want to call him? He's not on the school board, is he? I'm sorry. That's --
A No.
Q -- two questions.
A No.
Q Why would you want to call him?

A To share information that I had.
Q Okay. All right. What -- what did Scott Murray say in this -- The State newspaper article that you -- you refer to that is responsive to the question I just asked about what evidence you have that Defendant Gantt met with Mr. Bowers?
A Ask your question again, please.
Q What did Mr. Murray have to say in this newspaper article in The State that is responsive to my question to you, asking what evidence you had supporting the statement that Defendant Gantt met with Bowers at various times and places in Paragraph 27 of your Complaint?
A Well, Mr. Gantt was very well aware of the situation before October, although he said October of 2012.
Q Okay.
A Mr. Bowers, on a very basic but serious allegation and factless, said that I conclusively resided in Richland -- in Lexington County and -- and was therefore not qualified to be elected. After I -- after Mr. Gantt informed me in January of 2013 that I -- that Gantt -- that -- that Mr. Bowers was checking into this and that it was conclusive, again, Mr. Bowers contacted Richland County

Election Commission and told them, without the authority, to have me removed from the voter rolls, did not mention my name. That was intentional. I contacted Will Roberts to find out more information about how Mr. Bowers came up with the allegation. He provided me with maps in a period of about a week to ten days of e-mail communication back and forth, and I could not get the entire view of what I wanted to see, and I believe that to be intentional until the last of our e-mails, and -- and it -- I communicated with Zupan following those e-mails. Mr. Zupan was unaware that there was even a stake mentioned in statute, the stake that determines the -- the line.

Q Did they charge you for the maps and data that you got?

A No.

Q What does what you just said have to do with my question asking what evidence you have that Gantt met with Bowers at various times and places?

A They had to have met to come up with this information.

Q Okay. So you're connecting dots there, but you don't have any actual evidence where someone has actually seen them meeting, correct?

A Well, because of everything that they did and the way they did it, it was clear that they did. The lines that were sent to me by Will Roberts were then changed when it came to the hearing. They actually relocated the lines that they said were the official lines that they used to determine where I resided. And they -- they were changed by the time it got to the -- the hearing with Judge Cooper.

Q That you didn't attend.

A They were relocated.

Q You didn't attend that hearing, did you?

A I have the transcript and all the evidence that was submitted.

Q Ms. Murphy, you understand that when this case comes to trial, we're going to be in front of a jury? You understand that?

A Yes.

Q Okay. There's going to be 12 people sitting probably this close to a witness stand, to those books, watching you and gauging your credibility; you understand that?

A Yes.

Q And every time I ask you a question and you take an inordinate amount of time pausing or elliptically

answering or not answering, that jury's going to see that; do you understand that?
A They're going to see me respond.
Q Yes. The way you've been responding today; you understand that?
A I can just tell you that the way that they falsified evidence in my case and didn't communicate with me in advance, attempted to take me off the voter rolls without even communicating with me, that this was clearly contrived, and it was done to have me removed from the school board once and for all.
Q And the evidence you have supporting that is the evidence you've gone over in your testimony up to this point, correct?
A Can you ask your question again, please?
Q No. I'm not going to ask that one again.
Could you look at Paragraph 29, please? Look it over and let me know when you're ready to read it.
A Okay.
Q Okay. Paragraph 29 reads: "This conspiracy included defamatory and slanderous statements made about the Plaintiff to the Plaintiff, community members, and other board members, all of which the

Defendants knew were false or which they republished to others with reckless disregard for the truth. Defendant Gantt and other board members allowed members of the public, some of which were likely prearranged with Defendants, to chastise and attack Plaintiff during board meetings and, in a one-sided and unfair manner, refused to allow her to respond to false allegations made against her." That's what it says, correct?

A Yes.

Q All right. Let's address the first sentence in there. "This conspiracy included defamatory and slanderous statements made about the Plaintiff to the Plaintiff, community members, and other board members." What defamatory and slanderous statements are you talking about?

A The -- the accusation that I didn't live in the county.

Q Let's stop there for a second. As a Lexington County resident, I take a little offense at someone being deemed a Lexington County resident also being deemed a slanderous or defamatory statement. What was slanderous or defamatory about them saying you were a Lexington County resident rather than a Richland County resident?

A It was slanderous because it was -- what was slanderous is that I'm a Richland County resident and I was elected by Richland County voters and they, during the meeting, made it sound like I had known about this all along and that I was trying to cheat. I have no problem with Lexington County.
Q Okay. So the Lexington County part, you're okay with; it's that the result of your being deemed a Lexington County resident caused you to vacate your -- your Richland County School Board seat and the inference that you were somehow cheating by being a Lexington County resident running for a Richland County seat; is that accurate?
A And that I knew about it all along.
Q Okay.
A I mean, they said that in Executive Session. I just --
MR. MORRISON: Same objection.
Q Okay. So -- so your concern about the defamatory and slanderous statement wasn't the fact that you were deemed a Lexington County resident; it was other issues relating to that and your being a Richland County seat on a -- on the school board, correct?
A It had nothing to do with -- it was their method of

coming to the conclusion that I wasn't a resident. It was their motive, and it was the things they said during the process.

Q When you say "they," did Bobby Bowers make any of those statements?

A Bobby Bowers sent a letter to Mr. Gantt, knowing full well that that's not how you determine someone's county of residence.

Q All Bobby Bowers talked about was your county of residence; isn't that correct?

A Which -- which was false information.

Q I don't care if it's false or not. All he did was determine residency -- county of residence, correct?

A He -- he said it as conclusive, and it was not conclusive.

Q As to your county of residence, correct?

A And qualifications as a school board member.

Q Because you were a Lexington County resident, correct?

A I'm not a Lexington County resident.

Q Ma'am, I don't care if you are or aren't. I'm trying to get into -- to get an answer from you as to what Bobby Bowers said that you're using as a basis for your claim. And what Bobby Bowers said

was that you lived in Lexington County, not Richland County; isn't that correct?
A That's correct, and that's false information. That's -- that's --
Q It --
A -- defaming --
Q -- can be --
A -- me.
Q -- false. That's fine.
A That's --
Q But -- but is -- was it defamatory, him saying that you lived in Lexington County instead of Richland County, if you stop right there?
A Yes.
Q So living in Lexington County is defamatory in what -- in what aspect?
A Living -- living in Lexington County and -- that was -- it's false information. He put out false information, and it was -- it was intentional.
Q Okay. And you're prepared to offer evidence that it was false information and you do, in fact, live in Richland County, correct?
A Both Lexington and Richland County have no issue with -- with -- they aren't challenging the county line.

Q How do you know that?
A Because I've talked to both of them and for years this is where the line is, and until a boundary survey is done, they have no reason to put me in one county or the other.
Q Ma'am, that's great. But my question was: You are prepared to offer evidence that you are a Richland County resident and not a Lexington County resident; is that correct?
A (No response.)
Q Something more than you believing that you are a Richland County resident?
A I'm prepared to offer evidence that shows the process that Bowers and Gantt used was insufficient to show that I'm not a Richland County resident.
Q Okay. But you're not prepared to offer evidence that you are, in fact, a Richland County resident?
A I feel there's enough evidence to show that I am a Richland County resident.
Q All of which you could've provided to Judge Cooper at the hearing before the school board, correct?
A Again, that was a -- a hearing I didn't attend at the advice of my attorney.
Q You don't have any more evidence today supporting your claim to being a Richland County resident than

you had before that hearing before Judge Cooper that you didn't attend, do you?
A (No response.)
Q You had evidence back then, didn't you?
A I have a lot of evidence that shows Mr. Bowers did not do the job and abused the process.
Q And you had that evidence back before Cooper's hearing, didn't you?
A I've gathered more evidence in this time period.
Q Okay. But you would agree with me that no evidence was submitted to Judge Cooper, right?
A The evidence from Bowers' side was manipulated. They intentionally left out evidence.
Q What evidence do you have of that, that they intentionally left out evidence? Are you saying they defrauded the Court?
A Yes.
Q Okay. Are you saying people perjured themselves?
A I think they intentionally --
Q I don't care what you think. I want to know what evidence --
A They --
Q -- you have supporting that.
A They left out important evidence, and after my phone call with Zupan, who said he did not know

there was a stake at the other end of the line referenced in statute, and Zupan is the -- who -- who also -- who went out to the site in 1995 . . .

Q Have you finished your answer?

A For the moment.

Q Look at Paragraph 31 in the complaint, please. "Based on the civil conspiracy on the part of the Defendants acting as set forth herein, the Plaintiff sustained special damages including pain, suffering, emotional distress directly tied to Plaintiff being black-listed from the Defendant Board, ostracized for her outspoken criticisms that were valid, the loss of her position on Defendant Board and other tangible damages, including loss of reputation linked to her ability to run for and be elected to the Defendant Board. Plaintiff requests costs and attorney fees associated with this cause of action. Plaintiff is further entitled to an award of punitive damages against these Defendants for their willful, wanton, and grossly negligent conduct," correct? That's what it says?

A Yes.

Q Okay. Now, you -- you have not -- you haven't alleged a -- well, never mind. We won't get into that.

As far as your damages, have you seen or are you now seeing an emotional health counselor or a mental health counselor for damages resulting from your claims in this lawsuit?

A I have sought out a psychiatrist --

Q Okay.

A -- at the advice of a friend and discovered that it was extremely costly, and I would like very much to, but it's a cost that we can't bear right now.

Q Okay. What psychiatrist have you sought out?

A I can't recall his name. I have him -- I could look it up for you if I need to.

Q Have you just called him to inquire into rates, or have you actually had sessions with him?

A (No response.)

Q That doesn't seem to be a difficult question.

A We've talked to on the -- we've talked to each other on the phone and --

Q Have you actually gone to his place and met with him face to face?

A No.

Q Okay.

A And we -- we've communicated by e-mail.

Q Okay. But nothing that would actually be a session for which you have been charged?

A No. No.
Q And you do have that guy's name so if I request it --
A Yes.
Q When did you see him -- or when did you exchange your e-mails?
A Several months ago.
Q Okay. But within the last year?
A Yes.
Q Since this lawsuit's been going on?
A Yes.
Q Okay. Have you -- have you sought treatment for any physical maladies resulting from your claim here? Have you gone to any professional --
A Yes.
Q -- medical health professionals?
A Yes.
Q Okay. Who and when and for what?
A I've had some severe muscle spasms.
Q Okay.
A And because they were becoming so unbearable and going up into the side of my head and ear and gland area, I went to an ENT first to see someone who is a partner with my husband's doctor.
Q Where were these spasms? Where'd they originate?

A Left side below my shoulder, on up to my shoulder into my neck and --
Q Okay.
A -- head.
Q So you did see an ENT specialist initially?
A Yes.
Q Who was that?
A Dr. Thompson -- Tab Thompson.
Q First name is what again?
A Tab.
Q T-a-b Thompson? Where's his office?
A He's got one in Irmo.
Q Okay.
A And he -- he gave me an order for a physical therapist, and my nephew is a physical therapist and does dry needling, and I wanted to have -- see if that might work --
Q Uh-huh.
A -- which it's just -- and he thought I meant a pain -- someone who does cortisone injections, so he set me up with -- can't remember the doctor's name -- with a neurologist. And when it was discovered that it was the needling that I wanted that -- anyhow, I went to the physical therapist. She doesn't do the deep-tissue massage, which was

prescribed, in -- in her -- in her place of business where she works. And she referred me to another physical therapist who does the deep-tissue massage and also does the dry needling. I -- I also have been going to Massage Envy and have also tried acupuncture and acupressure.

Q What is dry needling?

A The therapist will stick an acupuncture-size needle directly into the muscle and manipulate it, in hopes of getting the muscle to twitch, and it sends a signal to the brain to go and fix that area, muscle spasms that just don't let go. Some of the spasms in my -- the lower spasms have -- have -- are -- are gone now. It worked for that.

Q Has Dr. Thompson billed you for your visit with him?

A Yes.

Q How many times did you see him?

A Once.

Q What was the amount of the bill?

A I don't recall.

Q Did he give you a diagnosis, anything that ties your muscle spasms to this lawsuit?

A I don't know. I -- I also went to Chapin Family Practice, and they prescribed some muscle relaxers.

Q Are you on those today?
A No. I'd like to be.
Q Are you on any kind of medication today?
A Yes.
Q What?
A Tylenol, Aleve, and Sudafed.
Q Anything else?
A No.
Q Why are you taking Tylenol, Aleve, and Sudafed?
A It's to try to relieve the muscle --
Q All right.
A -- uncomfortable.
Q Has the cause of the muscle spasms been diagnosed?
A It's just from stress.
Q Who's told you that?
A I -- I guess that's what I attribute it to, and they -- the doctors, I guess, concur.
Q When you say "doctors," I've only heard you talk about one doctor. That was Dr. Thompson.
A Chapin Family Practice.
Q And who was the doctor you saw there?
A Dr. Phillips is who I see, but it was someone who -- it wasn't him. It was another one of their partners.
Q Chapin Family Practice, are they your regular

doctors?
A I'm not a -- I don't visit the doctors regularly, so I -- I went to Dr. Phillips to see if he could help me with my difficulty with attention span. And he -- my daughters go to him.
Q What kind of difficulty do you have with attention span?
A Ever since this issue has come about and then a $10 million lawsuit, I've had issues with my attention span --
Q Okay.
A -- and focusing.
Q Could you describe what those issues are? How do you have difficulty focusing? How does it manifest itself?
A I have difficulty concentrating.
Q Have you had any health professional tie your spasms into anything involved with this lawsuit?
A I don't know.
Q Well, I mean, has Dr. Thompson told you that or --
MR. FRAWLEY: Let's take about a five-minute break.
(Off the record from 3:39 p.m. until 3:49 p.m.)
THE EXAMINATION BY MR. FRAWLEY CONTINUES.

Q Ms. Murphy, we've -- we've had a -- a short break. Are you good to go forward now?
A Yes.
Q Okay. We're going to do some housekeeping, and I'm going to ask a few more questions, and I think we're going to pull the plug in about 15 or 20 minutes, all right, for the day.

I'm going to put in our exhibits that we've gotten marked so I don't have to do this again next time we come in. I'm handing you Defendants' Exhibit Number 1 and Defendants' Exhibit Number 2. The first is our interrogatories to the plaintiff, and the second is our request to produce to the plaintiff, okay? Have you seen those before? Go ahead and look them over.
A Yes.
Q Okay. So that'll be our Defendant's Exhibit Number 1 and 2.
A Yes.
Q All right. Give those to the court reporter over here.

Defendants' Exhibit Number 3 is your answers to Mr. Bowers' interrogatories and request to produce, which we got last week, June 17. I'll hand that to you and ask you to look that over and

if that looks like your answers. It does not include your attachment with you witnesses. I've got that as a separate document.

A I did notice a -- a couple errors in here that --

Q Okay. We'll go over that when we get to the point that there are errors, if you'll remember where they are.

A Okay.

Q Okay. That does look like your responses?

A Yes.

Q Okay. Hang onto that one for a minute.

And then Defendants' Exhibit Number 4 is your -- your list of witnesses that was attached. Go ahead and look that over.

A Yes.

Q Okay. All right. Hold onto that one.

Let's look at Exhibit 3, which is your -- your answers to interrogatories. Now, you said that there were some -- some changes in there, scrivener's errors or corrections. Can you remember where those are?

A I did give a -- a list to Ashley, but --

Q Okay. Well, I tell you what: We don't need to cover those right now, then --

A Okay.

Q -- because we'll cover those again.

Let's look at -- if you could look at, well, Page 1. Interrogatory Number 1 was, "Give the names and addresses of persons known to the parties or counsel to have knowledge concerning the facts of the case." And then Interrogatory Number 2: "For each person known to the parties or counsel to have knowledge concerning the facts of the case, set forth a summary sufficient to inform the other party." You've done that through Exhibit 4; isn't that correct?

A Yes.

Q That's been your listing of your witnesses?

A Yes.

Q Okay. We'll go over that in a moment.

On Page 2, Interrogatory Number 4, you see it toward the top of the page on Page 2 of Exhibit 3? Interrogatory Number 3 -- I'm sorry -- Interrogatory Number 4 says, "Set forth an itemized statement of all damages exclusive of pain and suffering claimed to have been sustained by the party." You see that?

A Yes.

Q All right. Let's go over your answer to that. Were any of your revisions or corrections intended

to be made for your answer to Interrogatory Number 4?
A Yes.
Q Okay. Which one? Where?
A Well, I don't -- I don't know if it's included, but the contributions that have been made to my school board campaign and it might be something that could be included in that first item, but --
Q Okay.
A -- but the funds that I have expended to become elected.
Q Okay.
A And possibly those who contributed to my campaign as well.
Q Okay. And can you quantify that or have you quantified that?
A I have my Ethics Commission statement that would show those amounts.
Q Okay. You can produce that to your attorney, and then she'll produce it to us?
A Yes.
Q All right. All right. Let's go over your answer to Interrogatory Number 4. The first bullet point there as far as the damages: Loss of your position on the school district board and all benefits,

monetary and otherwise, associated with the position. That's what you said, correct?
A Yes.
Q "All benefits monetary and otherwise." As far as monetary benefits, you testified earlier that you'd chosen not to accept any kind of monetary salary, didn't you?
A Yes.
Q Okay. So if you weren't getting any kind of monetary salary before, you're not getting it now, are you?
A At -- at the -- at the time that this was going on, I wasn't getting any and I chose not to. But the budget cycle hadn't started yet for the new year --
Q Right.
A -- which could include a salary for me.
Q But according to what you said to me earlier today, that would not have changed your position on accepting a salary, would it?
A Well, I was giving it some thought. I feel very strongly that this is a job and entails a good bit of work, and I've had expenses that, even though the salary is minor, would help offset.
Q Okay. So your feeling very strongly about that would not be countered by your earlier testimony

where you felt very strongly that it was a voluntary -- essentially a voluntary position?
A It's a --
Q One wouldn't negate the other?
A -- public servant position, what I mean by "voluntary." But there are some expenses that have been involved --
Q Okay.
A -- for me to represent my constituents.
Q Okay. Which you've never sought remuneration for up until now, correct?
A I had not. That's correct.
Q Okay. Do you know what the salary is?
A It's almost $10,000.
Q Per year?
A Yes.
Q Okay. "All benefits monetary or otherwise." We've just talked about the salary. What other benefits would there have been?
A I'm not sure.
Q Is there any kind of health care benefits?
A I'm not sure.
Q Okay. None that you've exercised?
A No. Correct.
Q Okay. The next one: "Attorney fees which amount

to $15,000 at this time." Without going into any attorney-client privilege issues, of that $15,000, is that just for this lawsuit, or is it for this lawsuit and the other one with regard to the Cooper order and then the Benjamin order? Other words, how is that 15 grand split up, or is it split up?

A It's related to the -- as far as I know, the accounting is between the appeal and the counterclaim.

Q Okay.

A I don't know that there's a specific -- that it's been divided.

Q Okay. Do you know if there's different files for what you're getting billed, or is it all on -- on one bill?

A I don't know how -- I don't know how -- I don't know how it works.

Q Okay. That's something that, if we send an inquiry to your attorney since you're asking for attorney fees, you'd be able to authorize your attorney to let us have information on that upon -- upon consulting with your attorney?

A After consulting with my attorney.

Q "Costs of litigation, which amount to approximately $5,000 at this time." Does that $5,000 apply to

this lawsuit, or is a different lawsuit? Because this is the first deposition we've done in this lawsuit.

A I can't -- I can't -- I can't answer that.

Q Okay. In this lawsuit we've got a filing fee, correct?

A Yes.

Q All right. You've got service of process fees on at least three defendants, correct? Or do you know that? Don't know that?

A Sorry.

Q That's fine. "Second car loan." Explain that for me.

A In order to come up with attorneys' fees, I got a car loan --

Q Okay.

A -- on my title.

Q Okay. You got a -- you got a loan. You used your car as collateral for that loan?

A Yes.

Q Okay. So that would actually be duplication of the attorney fees, wouldn't it?

A Well, I have to pay interest.

Q Okay. "Survey expenses." What have you incurred as far as survey expenses?

A I think I have a bill for $1500.
Q Okay. To whom -- from whom?
A John Terry.
Q Could you spell that last name?
A T-e-r-r-y.
Q Okay. Have you given that bill to your attorney to produce?
A Yes.
Q Okay.
A I believe so.
Q Let's talk about the second car loan. Who's the -- who's the second car loan with?
A A friend of a friend.
Q Does that friend of a friend have a name?
A Yes.
Q May I have that name?
A Robbie Dunton.
Q Robbie --
A -- Dunton.
Q D-u-n-t-o-n?
A I think so.
Q What's Robbie's address?
A I'd have to look it up.
Q Okay. Do you have loan documentation?
A Yes.

Q There is a note?
A Yes.
Q There's -- was there a vehicle title that you gave Mr. Dunton?
A Yes.
Q All right. What kind of vehicle was it?
A My Chrysler Town & Country.
Q Now, it says a "second car loan." Was there a first loan on that -- on that car?
A No. I don't . . .
Q In other words, was the first loan paid off and you were lien-free and --
A Yeah.
Q -- then you --
A I --
Q -- pledged it?
A I guess it -- yeah. It's -- I don't -- I don't know why it says "second."
Q Okay. So that -- that car --
A It's a mistake, I guess.
Q -- was lien-free, and then you pledged that to secure --
A Correct.
Q -- the loan from Mr. Dunton?
A Correct.

Q What was the amount of the loan?
A 3500.
Q Have you actually paid $15,000 in attorney fees at this point, or is that what you've been billed?
A I don't know what the total is I've paid so far.
Q Okay. Did you provide that number, or was -- did that number come from your attorney?
A I provided bits and pieces of stuff. I didn't add it together, so.
Q Okay. Does this include Mr. Kincannon's bill?
A Yes. I believe so.
Q Does Mr. Kincannon still represent you?
A No.
Q Any other survey expenses, other than the 1500 that you just mentioned?
A No.
Q Have you provided the Chrysler Town & Country loan documentation to your attorney?
A I don't think so.
Q Okay. If we request that from your attorney in writing, would you be able to provide that to her?
A (Nods head up and down.)
Q Answer is yes?
A Yes.
Q "Computer and supplies, $1800." Explain that for

me, please.
A In order to produce discovery and massive amount of e-mails that I have on Gmail, I needed to get a new computer that could handle -- that could process the turning them into Adobe PDFs and storing them so I could give them to y'all.
Q Okay. So you've done that and you've produced that and you're done producing it with that computer?
A I have -- well, I don't know if I'm done with it yet, but I have some, you know, external hard drives and flash drives I had to purchase to store the information.
Q Okay. When we're done with this case, will you be able to keep that computer and the hard drives and whatever other ancillary equipment you've got? Will you still be able to keep that and use it?
A I could.
Q I mean, you will, won't you? Or are you going to give it away?
A Well, I still have my other computer with all my stuff on it.
Q Okay.
A This is just the -- mostly for the case.
Q Okay. But you'll be able to sell it or do something with that, won't you? You'll still have

the computer, won't you?
A I guess I could, I suppose.
Q Okay. Where'd you get that computer from?
A Best Buy.
Q Best Buy. Do you still have your receipts?
A Yes.
Q So if we ask your attorney for them in writing, you'll be able to provide them to her?
A Yes.
Q Okay. "Reputational harm, which is undeterminable at this time." What do you mean by "reputational harm"?
A Because of what's happened to me, I cannot seek election in either county.
Q Why? Why can't you run in Lexington County?
A Because the county lines show I'm in Richland County.
Q Not according to a state entity that determines that, correct?
A The state entity doesn't determine that. The counties determine it.
Q Okay. That's part of your argument today, isn't it, in this lawsuit, that you are a Richland County resident, correct?
A There -- there has been no change to the county

line, and the county lines show me in Richland County.

Q Okay. That's your argument in this lawsuit, correct?

A No. That's -- I mean, that's -- there's been no change to the county line.

Q Bobby Bowers, the entity that he works for, they made a determination that you no longer lived in Richland County, if you ever did, that you lived in Lexington County. That's what they did, correct?

A The -- the -- the lines have not been changed. The precincts lines have not been changed.

Q That's your argument in this position, but somebody's taken a position that you live in Lexington County, haven't they?

A They have taken that position, but the county lines have not changed. The --

Q Pursuant to what authority? What authority has said that the county lines have not changed?

A Bobby Bowers' office -- the legislature just approved the precinct lines for Richland County, and the county lines on that have not changed. They don't . . .

Q What act or legislative enactment are you talking about?

A It just -- it just passed.
Q What is it?
A I don't -- I don't know, but --
Q What bill is it? You don't know -- you can't cite it?
A I have a copy of it.
Q Okay. You can provide that to your attorney if we --
A Yes.
Q -- request it?
A Yes.
Q So if I ask for a copy of the legislative act that you maintain has set the -- the -- the county line, you'll know what we're talking about?
A Yes. And the precinct line -- the -- the county line in that official map does not jive with the -- with the county boundary that Mr. Bowers says is the county boundary.
Q You understand Bobby Bowers individually isn't saying what the county boundary is? He's doing it under the auspices of the -- the -- the entity -- the governmental entity that he works for; you understand that, right?
A But I -- I suppose he's certifying that that's the county line. I --

Q But his -- his -- his governmental entity is the one that's certifying it through his act; you understand that?
A Ask the question again.
Q I mean, he has a job -- a -- a function that he fulfills for that governmental entity, and that governmental entity, through his acts, is -- is what's established that line; you understand that?
A Which line?
Q The line that said that you no longer -- you -- you don't live in -- in Richland County; you live in Lexington County.
A Well, it's that same body that just approved this precinct map, and the lines don't jive with each other.
Q And you have documentation of that?
A Yes.
Q And you can provide that to your attorney when I request it?
A Yes.
Q Okay.

MR. FRAWLEY: I've got no further questions today. Thank you, ma'am. And we're going to --

MS. STORY: Just so we're clear for the

record, we're going to close the deposition now, and we'll reconvene at a later date that we can all determine works for everybody.

MR. FRAWLEY: Right. And you're going to produce what --

MS. STORY: Yes.

MR. FRAWLEY: -- you've got to produce.

MS. STORY: Yes. Yes.

MR. FRAWLEY: And we'll send follow-ups with regard to whatever I mentioned.

FURTHER DEPONENT SAITH NOT.

(Whereupon, there being no further questions, the deposition was adjourned at 4:12 p.m.)

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(**Certificate accompanies sealed original only.)

State of South Carolina	)	
	)	
County of Richland	)	
Kim Murphy,	)	2014-CP-40-4666
	)	
Plaintiff,	)	Continuation of the
	)	
v.	)	Deposition
	)	
Richland-Lexington School District 5 Board of Trustees, Robert Gantt, and Bobby Merle Bowers, in their individual capacities,	)	of Kim Murphy
	)	
Defendants.	)	

Date: July 22, 2015

Time: 10:24 a.m.

Location: J. Lewis Cromer & Associates, LLC,

1418 Laurel Street, Columbia, South Carolina

Reported by
Olivia Michelle Crocker

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Robert Gantt

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EXHIBITS

Defendants' Exhibit Number 4, List of witnesses. 12

STIPULATIONS

It is stipulated by and between counsel for the respective parties that all objections are reserved until the time of trial, except as to the form of the questions.

This deposition is being taken pursuant to the South Carolina Rules of Civil Procedure.

- - - -

The reading and signing of this deposition is reserved by the deponent and counsel for the respective parties.

Whereupon,

Kim Murphy, being duly sworn and cautioned to speak the truth, the whole truth, and nothing but the truth, testified as follows:

EXAMINATION

BY MR. FRAWLEY:

MS. STORY: Before we get started, really quickly --

MR. FRAWLEY: Uh-huh.

MS. STORY: -- I spoke to Ms. Murphy this morning. And there was some information about her job history that she remembered since the last time that we were here, so I wanted her to be able to share that with you if you would

like to hear it. And she can also recall her psychiatrist's name.

And she was reading in the transcript from the last deposition and wanted to make a correction. She wasn't sure if it was her error or the court reporter's, so she wanted to make that correction on the record for y'all this morning.

Q Okay. All right. Ms. Murphy, we're here for the continuation of the June 22nd start of your deposition, which we adjourned that day. Do you remember being here that day and being deposed?

A Yes.

Q All right. You're still under oath. And I'll have some questions, and the other gentlemen will have some questions as well. And I understand from your attorney that -- well, let me ask you this: Are you under the influence of any drug -- drugs, medication, or -- or prescription medication that might influence or impair your ability to understand my questions or respond to my questions?

A I -- I don't believe so. I could tell you what medication I'm taking right now.

Q Okay. If you could, tell me what you're on or what you've taken today.

A Naproxen.
Q Okay.
A Early this morning.
Q Okay.
A Tylenol.
Q Okay.
A Vyvanse.
Q Could you spell that for me, please?
A Uh-huh. I think it's V-y-v-a-n-c-e.
Q Okay. Anything else?
A I -- I think that's it.
Q Okay. What's the Vyvanse for?
A It's an amphetamine.
Q Okay. And what do you take that for?
A Help with concentration.
Q Okay. How about the Tylenol? What are you taking that for? Pain?
A That's for the pain.
Q Okay. And what's the pain from?
A Stress, muscle spasms in my neck and --
Q Okay. And the Naproxen, what are you taking that for?
A That's the same thing.
Q Okay.
A Did not want to take any prescription pain

medication today.
Q Okay. But you can understand my questions and --
A Yes.
Q -- you can go through the thought process and respond to my questions, correct?
A Yes.
Q All right. Your attorney said that you had some more specific recollections about your job history. Could you give those to me, please?
A I had some difficulty recalling that period of time right after I graduated from college.
Q Okay.
A And I had several full-time jobs as well as supplemented with other jobs, which I've mentioned for --
Q Okay.
A -- extra income. I also worked for First South Realty. And I mentioned First South. I also mentioned Century 21, and Sothebys is one I failed to mention. I forgot about that.
Q Could you spell that, please?
A S-o-t-h-e-b-y-s.
Q Sothebys. Okay.
A International.
Q And when you worked for -- for Sothebys, where --

where was that office?
A That was in Hilton Head. And that was a real estate --
Q Okay.
A -- sales man.
Q Any others?
A That's it that I can recall.
Q Okay. Your attorney also mentioned that you -- you now have the name of your -- is it psychiatrist or psychologist?
A Psychiatrist.
Q Psychiatrist.
A Dr. Evan Shaw.
Q S-h-a-h?
A S-h-a-w.
Q A-w. Okay.
And when did you see Dr. Shaw?
A I haven't seen him yet. We had e-mail and phone communication.
Q Okay. So you're -- you're in the -- well, are you in the process of -- of setting up meetings to see him? Or have you only consulted him by e-mail and telephone?
A I anticipate having more --
Q Okay.

A -- conversation with him.
Q In person?
A Yes.
Q Okay. And why -- why are you seeing him? Why do you feel the need to see him? Stress?
A Anxiety.
Q Okay. Have you consulted with any other psychiatrist other than Dr. Shaw?
A No. I have not.
Q Okay. Then your attorney mentioned that there was an issue with the first part of your deposition, which I understand you've had a chance to read --
A Yes.
Q -- that you thought there -- there was an inaccuracy in there. Could you tell me what that was or explain what that is?
A Yes. In the -- in the transcript, I indicated that two of Bobby Bowers' employees had wives that worked for School District 5. And the transcript said "employees -- employees had employees." And that word, that second "employees" was supposed to be "wives." And I don't know if I inadvertently said "employees" or the court reporter . . .
Q Okay. And you -- you had said that in your answers to interrogatories as well -- in answering our

interrogatories that -- that I think a Mr. Roberts and then another employee who worked in the same department as Mr. Bowers had wives that worked for Lexington School District 5 --

A Correct.

Q -- I believe you said, correct?

A Yes. That's correct.

Q All right. That's what you meant to say in the -- in the deposition?

A Yes. I --

Q Okay. And you recall having said that or indicated that in your answers to interrogatories?

A Yes. It was in the answers --

Q Okay.

A -- to the interrogatories --

Q Okay.

A -- as well.

Q Anything else?

A I answered several questions as, "I can't answer that question." And it wasn't that I wouldn't answer the question. It's that I didn't know the answer to the question.

Q Okay.

A So I didn't want it to be interpreted that I wouldn't answer the question.

Q Okay. So what you said was, "I can't answer that question" --
A Yes.
Q -- meaning you didn't have the ability or didn't have the knowledge or --
A Yes. Correct.
Q -- whatever to answer the question. And do you want to make sure that wasn't interpreted as you're saying, "I know the answer, but I'm not going to tell you"?
A Exactly.
Q Okay. Well, that's not how I took it, but that's fine. Anything else?
A No. I don't think so.
Q All right. I'm handing you a 34-page document, which was attached to your interrogatories supplementing your answer to Interrogatory Number 2. It was attached to your answers to interrogatories. Look that over, and tell me if you recognize that as your list of witnesses in response to Interrogatory Number 2.
A Yes.
Q I will tell you for purposes of that question that Interrogatory Number 2 that we sent reads, "For each person known to the parties or counsel that

have knowledge concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witnesses, or provide a copy of any written or recorded statements from -- taken from such witnesses." And your answer to Interrogatory Number 2 was, "Plaintiff's response as follows: See attachment." And what you have in your hand there is the attachment.

A Okay.

Q Okay. And looking through that, do you recognize that as -- as the attachment with the names that you provided your attorney?

A Yes. I do.

Q Okay. All right. We're going to go over these names, find out who these people are. Number 1 -- well, let's mark this as Exhibit -- I think we left off with 3, so this would be 4.

A Is this my copy?

Q That would be the --

MS. STORY: (To the deponent) Court reporter's copy.

Q -- court reporter's copy. We can make a copy of it when we're done.

A Okay.

THE DEPONENT: (To the court reporter) Do you want to put 4 on there?

Defendants' Exhibit Number 4, List of witnesses.

MR. FRAWLEY: (To all counsel) Do the other attorneys have a copy, or do we need to make two more copies? Mike, do you have a copy?

MR. MONTGOMERY: I think I have a copy, but I -- it might be easier to get another copy.

MR. FRAWLEY: Okay. Can we do that? David, you got a -- you got a hard copy?

MR. MORRISON: Yes.

MR. FRAWLEY: Okay.

MS. STORY: I -- I think I took all your -- you didn't put any more notes on it?

MR. FRAWLEY: No, no, no, no, no.

MS. STORY: Okay. All right.

MR. FRAWLEY: I wouldn't have put the notes in the first place.

MS. STORY: Anybody else need a copy?

Q All right. Let's go. All right. This is Exhibit Number 4. The first name listed is, "Ed McMullin, political consultant to Meka Childs." Tell me what, as far as you know, Mr. McMullin knows that would have any impact on your claim against Bobby

Bowers.
A He worked very closely with R.J. May, who is the second witness listed.
Q With who?
A With the second witness listed.
Q Okay.
A And he shared with me that he believes that the action to have me removed by Bobby Bowers was political.
Q All right. Let's clarify that. There was no action brought by Bobby Bowers to have you removed, was there?
A He was involved with initiating that action by drawing boundaries that were fictitious.
Q By initiating that action. What action are you talking about? Bobby Bowers checked the boundaries and checked where your -- your residence was, whether it was Lexington County or -- or Richland County. I say Bobby Bowers. The -- the governmental entity for which Bobby Bowers worked did that; isn't that correct?
A Bobby Bowers did that specifically to draw me out of my county of residence so that I would be removed --
Q Okay.

A -- from the school board.
Q All right. And what evidence do you have that Bobby Bowers, individually, did that?
A E-mails.
Q Which e-mail? I'm trying to find out what evidence you have other than you and Mr. McMullin believing something. I want to know what evidence you've got that I can hold in my hand. Or if it's testimony that I can -- I can depose that witness. What -- what evidence do you have?
A I have e-mails in -- in evidence of the transcript from the February 15th, 2013 meeting, e-mails from his employees to other government entities, from my conversation with individuals within these government entities. It was done to have me removed from the board.
Q You said a February 15, 2015 meeting.
A Excuse me. February 15, 2013.
Q Okay. Of what entity? Whose meeting?
A That was a hearing that District 5 had.
Q At which Mr. Bowers testified?
A Correct.
Q Okay. You understand he was there as a witness?
A Yes. He and other witnesses testified, and it's clear to see in the testimony that -- that what

they did was contrived.
Q This was the hearing that you chose not to attend, correct?
A At the advice of my attorney, I did not attend that meeting. I chose not to --
Q Right. We -- we --
A -- attend.
Q -- spent 15 minutes going over whether you -- it just happened or whether you chose not to attend. You chose not to attend after having received advice from your attorney, correct?
A Correct.
Q Okay. So you weren't at that meeting -- or that hearing, were you?
A I was not.
Q You -- you read a transcript after the fact, correct?
A I read a transcript with evidence that was presented and also listened to the audio tape of that hearing.
Q Now, you said "his employees." You're talking about Bobby Bowers' employees?
A Correct.
Q Is it your understanding that Bobby Bowers, individually, is the person who ran that -- that

division, that that was Bobby Bowers and not a -- an agency of the State of South Carolina?

A I understand that Bobby Bowers directed them to -- to draw these fictitious lines and attempt to have the counties -- county -- Richland County remove me from the voter rolls in order to oust me from the school board.

Q Okay. What evidence do you have that what they found was fictitious other than the fact that you differ from it?

A The lines that are represented are not lines that can be used to determine someone's residency.

Q And -- and who told you that? Do you have an expert in that field who will say that the lines that Mr. Bowers' agency for which he worked determined were in place were fictitious? Somebody besides yourself or Mr. McMullin, a political consultant?

A Yes.

Q Okay. Who do you have?

A I will have a witness who will testify to that.

Q All right. That's fine. But we're sitting here today on July 22nd, and you are under oath. And you used the term "fictitious findings" with regard to that line, which leads me to the -- the

conclusion that you've got somebody in place who's already told you that. Do you have someone who -- who knows what they're doing in this field who has told you that this line was fictitious, as opposed to a political consultant or somebody who believes that there was some conspiracy to have you ousted from the Richland School District?

A Yes. I do.

Q Okay. Who? And what have they told you?

A The head of mapping at Lexington County.

Q Who is that?

A Ralph Ford.

Q Ralph Ford. Is Mr. Ford listed on your witnesses here?

A Yes. He is.

Q Where is he? Number 23. It's on Page 4. Do you see him there?

A Yes.

Q Okay. You've got him listed as a "senior cartographer, planning and GIS."

A Yes.

Q Okay. "It is believed that witness has knowledge as to the process used by Defendants and others in determination of the alleged county line." That's what you say, correct?

A Yes.
Q All right. When did you last talk to Mr. Ford?
A Yesterday.
Q And what'd you and Mr. Ford talk about?
A The line that's drawn in the area photographs that was used to oust me, that came from Bobby Bowers' office, does not represent the line referenced in statute and shown on the original annexation plat.
Q Okay. That's what Mr. Fold told you on July 21st, 2015, which was yesterday?
A Yes.
Q Okay. Had Mr. Ford told you that he's gone out there and -- and checked it, that he has -- tell me what Mr. Ford had done to arrive at that conclusion to be able to tell you that information.
A A hundred years ago when the survey took place to draw the true county line, surveyor went out there measuring with a 66-foot-long chain up and down the terrain across the creek, around trees, and from -- from one corner and headed to the next corner. The line distance and direction is approximate and is not meant to be exact in determining where the line is. It's meant to help find the corner in the ground, the corners that determine the line.
Q Okay. Mr. Ford told you all that?

A Mr. Ford told me that, "A line that's drawn exactly to the length listed in the coordinate is not going to be the line that represents the true line of the county boundary."
Q All right. When you talked about what a line was meant to portray in what you just described, did Mr. Ford tell you where the -- whoever the individual was that was meaning that came from or where he got that information? Or are you editorializing?
A Can you ask your question again?
Q Yeah. You used the term, this line, it was "meant to do this; it was not meant to" do something else. Where did that intent come from? Did Mr. Ford tell you that? And if so, where did he get that -- that information?
A I'm sorry. I still don't understand the question.
Q You used in describing what happened when somebody was walking out there a hundred years ago with a 67-foot length of something measuring something off that the line was not -- was not meant to do something. You used the word "meant" two times. Who -- who's intending that?
A It's a 66-foot-long chain. And the surveyor -- original surveyor used the coordinates to help

locate -- to -- to help whoever is looking for the corners again to find out where the line is.

Q This was a surveyor a hundred years ago?

A Yes.

Q What was his name?

A I have the maps in evidence -- the plats in evidence.

Q All right. Did Mr. Ford give you this information?

A Which information?

Q Okay. First, let's back up a little step. You have nothing in evidence. There's nothing in evidence right now. You may have produced 9,000 documents to us, some of which we've gone through, some of which we haven't gotten to yet. But nothing is in evidence right now. Do you understand that? We're not in a court of law yet. And --

A Okay.

Q -- nothing is in evidence. Okay?

A Okay. I've --

Q It may have --

A -- produced --

Q -- been that you produced it.

A -- documents.

Q If you produced it, that's fine.

A Okay.
Q We'll -- we'll correct our terminology there. But as far as this -- this original surveyor 100 years ago going out with a 66-foot chain and using coordinates to help locate something, where did you get that information? From Mr. Ford when you talked to him yesterday or elsewhere?
A When a surveyor is reestablishing a political boundary --
Q Okay. I need you to answer my question. My question was: Where did you get that information?
A What specific information?
Q The information you just gave me about the original surveyor a hundred years ago going out there with a 66-foot chain using coordinates to help locate something and certain things were not meant or were not intended. Did you get that from Mr. Ford, or where did you get that information? The story you've just told us.
A Through surveyors I've talked to through Mr. Ford, through the research I've done, through case law I've looked at.
Q So I asked you originally about -- about what your conversation was with Mr. Ford. You gave me this story, and you've gotten it not only from possibly

Mr. Ford, but from other surveyors and from research -- your own research, correct?

A Yes. Mr. --

Q All right. Going back about three questions, I'd like to know what you and Mr. Ford specifically talked about yesterday. That was my original question.

A Mr. Ford said that a line drawn on an aerial photograph to the exact distance as what's noted on the original plat of the surveyor, by the surveyor, will not represent the true county boundary --

Q Okay.

A -- because the surveyor a hundred years ago calculated distance differently than it's calculated today.

Q Okay.

A A straight line drawn on an aerial that's exactly 9,405 feet would not bring you to the corner that's placed in the ground or indicated from the original surveyor.

Q Okay.

A It's a field note. It does not represent the line.

Q All right. Do you concede that surveying is more technologically advanced now than it was 100 years ago when this guy did his original survey?

A Yes.
Q All right. And that there are -- there are tools that can be used now to more accurately find surveying posts, surveying dimensions more accurately than they had 100 years ago? Do you concede that?
A I would say they would better define the measurements between two corners.
Q Okay. And if you have better defined measurements between two corners, they may move a line, won't it?
A Absolutely not.
Q Absolutely not?
A Corners --
Q Okay. And what do you base that -- that answer on?
A The corners determine where the line is.
Q But if the corners move, the line can move, can't it?
A If you physically move the corners, then the line could move, but it shouldn't move.
Q All right. What else did you and Mr. Ford talk about yesterday?
A The new law that Bobby Bowers passed -- had passed.
Q How did Bobby Bowers pass a law?
A Bobby Bowers gave a law to -- a -- a bill to Ronnie

Cromer to sponsor, and it passed last year.
Q All right. Let --
A Related to county boundaries.
Q What is your understanding of what Bobby Bowers, individually -- what -- what was his position with the state at the time that your ouster from the school board came about? What was your understanding of what his position was with the state?
A Head of mapping.
Q Head of mapping with what -- what -- what agency?
A I think it was a budget control board back then.
Q Okay.
A Head of research. And I'm not exactly sure what the title was back then.
Q All right. And what was your understanding of what his duties and responsibilities were in that role?
A He does the redistricting when there's a -- a census.
Q He does all by himself, or does he -- does he supervise a group of employees in that agency?
A He would direct his employees. And I . . .
Q You don't really know, do you?
A I can't call -- I don't know all that he does, but . . .

Q So when you say, "Bobby Bowers did this, Bobby Bowers did that -- Bobby Bowers passed a law," you understand Bobby Bowers is not in the general assembly, nor was he, correct?
A Well, according to Ronnie Cromer, Bobby Bowers gave him a bill and asked him to sponsor it.
Q Okay. And for purposes of the record, who is Ronnie Cromer?
A Senator Ronnie Cromer.
Q Okay. State Senator Ronnie Cromer?
A Correct.
Q With what county?
A He's Saluda, Lexington. He may cover other areas. I'm not exactly sure of his . . .
Q Is he your senator?
A No.
Q No. Because you don't live in Lexington County, right?
A That's correct.
Q All right. What -- what brought about the meeting with -- with Mr. Ford yesterday? Did you just meet him by chance, or was that meeting set up for purposes of this deposition?
A I had asked him to provide me with some information.

Q Okay. Did you -- did you call him and -- and pass that on, or did you send him an e-mail?
A It was -- I had a -- I met with him several weeks ago.
Q Okay. What was that meeting about?
A Trying to get some more background information on what happened, what they were responsible . . .
Q I didn't catch that.
A What they were responsible for, what -- what -- I was trying to get more background information about my situation.
Q Okay. Have you had any contact with Mr. Ford other than for purposes of this lawsuit?
A I spoke with him immediately after receiving a copy of Bobby Bowers' letter and Robert Gantt's letter alleging that I don't live in Richland County.
Q Okay. Bobby Bowers indicating to Mr. Gantt what his findings were or what his agency's finding were, correct? I mean you understand the distinction I'm making between your use of the word "allegations" or "alleged where you lived" and -- and -- and Bobby Bowers' agency's findings based on their investigation. Do you understand the distention between those two? It's not just a matter of someone saying, "I believe this to be

true." He actually had some findings that he provided to Mr. Gantt; isn't that correct?

A But what he presented was contrived.

Q Contrived. What do you mean by "contrived"? His agency does some work. They go out to the site. They do what they do. They have findings. They provide those findings. How do you determine that those are contrived as opposed to actually the findings of their investigation?

A Mr. Bowers knows how to reestablish a political boundary, and he did not do that.

Q Okay. And we're getting close to what I'd like to -- the core of what I'd like to get at. What evidence do you have that the methodology that -- that Mr. Bowers' agency used in determining these boundaries was improper other than your believing it or a political consultant believing it or a Lexington County cartographer, who -- who may not have even been out there believes?

A I have produced documents and audio recordings that will indicate that it was contrived and --

Q You've produced hours of audio recordings, which I've barely even gotten into, some of which I -- I see are -- are board meetings. What -- what do those board meetings have to do with Bobby Bowers

and whether his agency's findings were contrived? Because let me -- let me tell you where this is going to go. I'm going to listen to those, or my associate's going to listen to them or my paralegal or my project assistant. Somebody from my office is going to spend countless hours listening to those audios or viewing those videos, part of which, at one point, involves your attorney -- not this attorney, but a previous attorney, complaining about a $15,000 bill not getting paid. What does any of that have to do with my defending Bobby Bowers in this claim?

We're going to spend hours doing that. You've produced a bunch of stuff, most of which it appears to me, doesn't apply to this case or your claim against Bobby Bowers.

A You just made a statement about a $15,000 bill that didn't get paid from a previous attorney, and I don't know what you're referring to there.

Q It's something in there for an audio that -- that my project assistant picked up on, and -- and I'm trying to think, "What does that have to do with this case at all?"

A I am not familiar with what you're talking about there.

Mr. Bowers and Robert Gantt worked together to find a way to remove me from the board. Bobby Bowers has a reputation of moving lines when he wants them to be moved to --

Q Where do you get that? What reputation, and who's told you that?

A People that I have talked to --

Q What people?

A -- in trying to research.

Q What people? Names?

A It's -- I cannot recall names, but it --

Q Well, you make a bold statement like he's got a reputation for doing something borderline unethical, and you say it's a reputation. But you can't give me names --

A That's what happened --

Q -- where you get that from?

A -- to me. That's what he did to me.

Q That's what you think happened to you. That's what you've alleged, and that's what we're here on this case about. What I'm trying to find out is: What evidence do you have that it happened to you? And evidence is more than what you believe or what someone -- some unattributed reputation hearsay said. I'm trying to find out what you've got.

What evidence do you have? And I keep getting oblique references to reputations or "it is believed" or "a surveyor a hundred years ago walking a field with a 66-foot chain." Give me some evidence that I can have a compelling reason to go to my adjustor and say, "You know, here's an issue that we've got that -- that she can prove," because I haven't seen anything yet. That's why I'm asking you the questions.

So talk about the reputation. Give me the names that you're talking about.

A I cannot remember names, but they would be people who would have an opportunity to know Bobby Bowers and the position that he has.

Q You can't remember the names, but you know what kind of people they are?

A I'm -- I can't remember the names.

Q Okay. Let's switch gears. When you held your office, you were a public official, weren't you?

A Yes.

Q All right. You -- there was an electorate that -- that voted you into office, correct?

A Yes.

Q All right. And you'd been in the media, and you -- you'd -- you were a public figure. Would you agree

with that statement?
A Yes.
Q Okay. And you recognize that the school board electorate, those people that elected you, they have a legitimate interest in making sure that you lived where you should be living in order for them to elect you. Would you agree with that statement?
A Yes.
Q Right. I mean the electorate has an interest in making sure that the people who appear on the ballot actually are representative of them. You agree with that statement?
A Yes.
Q Okay. And you would also understand and agree that the school board has some oversight with regard to the members that come in to make sure that they are, in fact, eligible to be elected. Would you agree with that statement?
A Yes.
Q And eligibility to be elected includes, among several things, the residency. Do you agree with that statement?
A Yes.
Q Okay. Now, you understand that the agency for which Bobby Bowers worked, one of the things they

determine is where people -- they can find where people actually reside for purposes of voting districts, for purposes of school board elections. Do you understand that?

A Ask your question again, please.

Q All right. The agency for which Bobby Bowers worked that did this -- this work, made this determination, part of the thing that they do is determine residences and -- and county lines for purposes of voting districts and school boards. Do you understand that?

A Yes.

Q Okay. And when there are -- when they, as a state agency, are requested to -- to check on something, that's part of what their duties are. You agree with that?

A Yes.

Q Whether you like the way they do it, whether you agree with their conclusions, that's part of their duty, isn't it?

A Yes.

Q Okay. And when they respond to an inquiry about someone's residency, they do the work; they make a finding; they pass that finding on, they're passing it on, if they pass it on to the entity that has

requested it through the proper channels, aren't they?

A They have an obligation to do the job without -- without bias and with integrity in doing it correctly.

Q Okay. Which all sounds very nice, but it's not the question I asked you. The question I asked you was: If there's an inquiry and they do the work in the manner in which you just described, they have an obligation to pass that on to the person who -- or the entity that made the inquiry. And that's the proper channel for them, isn't it?

A It doesn't give Bobby Bowers the authority to abuse his position.

Q Which also sounds good, but the question I have was: Passing that information from the findings on to the person who inquired, that's the proper channel for them to pass that information; isn't it?

A I'm -- I'm not sure. I'm not sure who Bobby Bowers can give the information to as far as being the proper procedure.

Q Okay. So if you're not sure about the proper channel, but there is another entity that can -- can provide what that proper channel is, you're not

going to contest that, right, because you're not sure?
A Say that again, please.
Q You're not sure what the proper channel is, are you?
A I'm not sure that Bobby Bowers can -- that the school board is entitled to get that information directly from Bobby Bowers.
Q Okay. If they -- if the school board makes the request -- and you just said the school board has an interest in making sure that its members are eligible to be elected, which includes their residency -- if the school board makes that request and Mr. Bowers' agency does the inquiry and is ready to report the results of that inquiry, who are they supposed to pass that information on to, if not the school board -- if not the requesting entity?
A I don't know the chain of how it would get to the school board. And it may be that he can go straight to the school board with that information.
Q Okay. So you would agree that whatever the chain is that the report of that investigation and its results should be made to the proper channels? You'd agree with that statement, whatever those

channels are?
A Yes.
Q Okay. Now, you had access to that information as well, didn't you? Didn't you call his office and speak with a Mr. Roberts?
A Yes.
Q And Mr. Roberts provided you information, didn't he?
A Yes.
Q They didn't try to obscure the information, did they?
A Yes. I believe they did.
Q Okay. This was even after your follow-up inquiries, where Mr. Roberts gave you additional information, including a color -- a multicolored map?
A Within the 13 days that I spoke with him, I could not get the specific information that I was looking for until the end of that period.
Q But you did eventually get it?
A I eventually got it. And because he knew that the information that he gave me was contrived, he sent me to somebody else to talk to.
Q Okay. Because he knew that the information that was sent to you was contrived, who's the "he"

you're talking about?
A Will Roberts.
Q Okay. And how do you know that Will Roberts knew that the information he was passing on to you was contrived?
A Because Bobby Bowers and his department know how you are to determine the location of a political boundary, and the way they did it with me was not the way it's supposed to be done.
Q That's your conclusion; isn't it? You -- you disagreed with what they said, so you called it -- you call what they've done "contrived." Isn't that's what's happening here?
A They thought that just by drawing two lines on an aerial photograph that happened to be the same coordinates referenced in statute that, for the purpose of removing me, that's all he needed to do.
Q Okay. We've got several pronouns there. "They thought" and "that's all he needed to do." Who's the "they" you're talking about?
A Bowers and Gantt.
Q And how do you know that's what they thought? You're -- you're surmising that, aren't you? You're -- you're deducing that from -- from your opinion and from what you learned has happened?

A I know that Gantt and the board have been trying to remove me -- come up with anything they possibly can. They've been malicious in their actions against me. And Bobby Bowers basically said, "I'll do it." The lines he drew do not represent the county boundaries and are not sufficient to use to determine someone's county of residency.

Q Okay. Who do you have that's going to come in and testify to that who's got a little bit more knowledge about the area than you or possibly Mr. Ford? Is Mr. Ford your guy?

A He's -- he's one.

Q Well, tell me who the others are.

A The --

Q I want to know how you're going to prove this.

A The surveyor, case law --

Q Case law is not proof, ma'am. Your -- your attorney can take care of that part. Your attorney can read case law probably better than I can at this point in her career.

But what proof do you have -- who's going to come in and testify and put it down in front of a judge and jury and say, "Here's why -- why Mr. Bowers' agency was wrong"? Ford's one of them. Who else you got?

A The head of mapping for North Carolina.
Q What's his name?
A He's listed on the witness list.
Q Okay. Where is he? Because we're going to go over it one way or the other. Let's do it now.
A Gary Thompson.
Q Where is he?
A Number 4.
Q "Gary Thompson, chief, North Carolina Geodetic Survey. Has knowledge of the legal process for resolving county boundaries disputes in North Carolina. Served on SC/NC Boundary Commission with Defendant Bobby Bowers." Okay. What knowledge does he have of the legal process for resolving county boundary disputes in South Carolina?
A He and Mr. Bowers worked very closely on the North Carolina/South Carolina boundary commission. They were required to -- in order to determine the political boundary to locate the corners. Bobby Bowers did not locate the corners.
Q In this case?
A In my case.
Q All right. So if -- if we go up to North Carolina and take Mr. Thompson's deposition, what -- what is Mr. Thompson, in your estimation, going to testify