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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

Case No. 2011-CP-40-2926

Margaret Stroud and D5 Citizens Ensuring the Implementation of
the Referendum, Inc.,.....Respondents

v.

Kim Murphy,.....Appellant

RECORD ON APPEAL

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ATTORNEYS FOR APPELLANT

RECEIVED
FEB 23 2012
SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Margaret Stroud and D5 Citizens Ensuring)
 The Implementation of the Referendum, Inc.)
)
 Plaintiffs,)
)
 Kim Murphy)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-40-2925
**ORDER DENYING DEFENDANT'S
 MOTION TO DISMISS and ORDER GRANTING
 A TEMPORARY RESTRAINING
 AGAINST DEFENDANT MURPHY**

2011 SEP - 1 PM 4:33
 RICHLAND COUNTY
 FILED
 JANE T. W. BRIDGE
 CLERK

This matter comes before me on the Plaintiffs motion pursuant to Rule 65 of the South Carolina Rules of Civil Procedure for the issuance of a restraining order requiring Defendant Kim Murphy to withdraw the appeals set forth on Exhibit A related to permits necessary for the construction of Chapin High School in School District 5 of Lexington and Richland Counties ("District 5") and prohibiting Defendant from filing further appeals in District 5 and for further **filing appeals or actions that would result in the delay or obstruct construction approved by District 5 and the voters who passed the 2008 bond referendum to fund the expansion and renovation project.** The Court also considered Defendant's Motion to Dismiss the Plaintiffs' claims in accordance with Rule 12(b)(1) and (6). A hearing was held on the motions on August 3, 2011 and the Court heard arguments from counsel representing the parties.

After considering the materials provided by counsel and hearing the arguments at the hearing on these motions, the Court denies Defendant's Motion to Dismiss and enjoins Defendant Murphy from filing any further appeals in District 5.

The Court finds, in the light most favorable to Plaintiffs, that Plaintiffs have standing and

have sufficiently plead facts to constitute a cause of action against Defendant Murphy for abuse of process. Spence v. Spence, 368 S.C. 106, 116-17, 628 S.E.2d 869, 874 (2006).

As for the Plaintiffs Motion to enjoin Defendant Murphy, the Court finds that there is a likelihood of success on the merits that Plaintiffs will prevail on its challenge to Mrs. Murphy's standing to file appeals or declaratory actions of District 5 decisions in her own name so long as she is a sitting member of the District 5 school board. In *Newman v. Richland County Historic Preservation Com'n* 480 S.E.2d 72 (S.C.,1997), the Supreme Court stated that it had found no precedent "which permits a disappointed legislator to attack a decision of her own body, either through a declaratory judgment or through a direct "appeal." *Id* at 74.

The Court is not requiring Mrs. Murphy to withdraw the appeals which she has already filed and which are set forth on Exhibit A, but finds that the Plaintiffs are likely to succeed on the merits, that the issue of a public official filing appeals of the directives and decisions of the board on which she sits in her own name is a significant public interest, and, in balancing the harm to the parties by the issuance of an injunction, the Court finds that the Plaintiffs would suffer irreputable harm if future appeals were filed. There is little or no harm to Mrs. Murphy in preventing her from individually filing such appeals while she is a sitting board member.

Therefore, the Court is ordering the following:

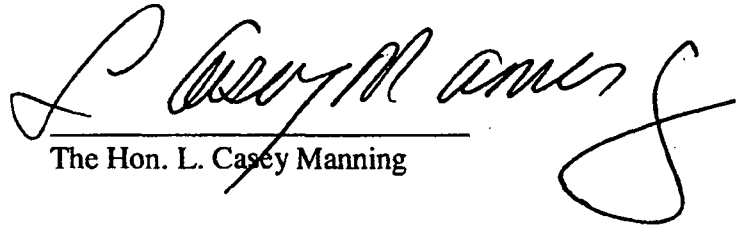
1. That Defendant answer fully the discovery responses served upon her on or before September 22, 2011;
2. That discovery proceed and this matter be heard on the merits as soon as practicable;
3. **That Defendant Murphy, so long as she is a member of the District**

5 school board, is prohibited from filing in her own name any further appeals, actions or challenges at the South Carolina Department of Health and Environmental Control ("DHEC") or any other agency necessary to approve permitting for various construction projects authorized by the District 5 school board and funded by the 2008 referendum passed by the citizens of District 5.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the above stated Agreement is hereby entered into as an Order of this Court.

IT IS SO ORDERED.

Sept 1, 2011


The Hon. L. Casey Manning

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
Margaret Stroud and D5 Citizens Ensuring The Implementation of the Referendum, Inc.)	)	CASE NUMBER: 2011-CP-40-2926
)	
Plaintiffs,	)	ORDER DENYING DEFENDANT'S
	)	MOTION FOR RECONSIDERATION
Kim Murphy	)	AND INCORPORATING EXHIBIT
	)	TO THE COURT'S ORDER OF
Defendant.	)	SEPTEMBER 1, 2011

FILED
 RICHLAND COUNTY
 2011 OCT 10 PM 2:15
 JENNIFER McBRIDE
 C.C.P. 56 G.S.

This matter comes before me on Defendant's motion pursuant to Rule 89 of the South Carolina Rules of Civil Procedure for Reconsideration of the Court's Order of September 1, 2011 Denying Defendant's Motion to Dismiss and Ordering a Temporary Restraining Order Against Defendant Murphy.

The Court considered the arguments set forth in Defendant's Motion and denies her Motion to Reconsider.

For the purpose of clarification, the Court does however incorporate into its September 1, 2011 Order, Exhibit A attached hereto setting forth the Appeal/Filings of Kim Murphy as of September 1, 2011.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the above stated Agreement is hereby entered into as an Order of this Court.

IT IS SO ORDERED.


 The Hon. L. Casey Manning

Oct. 10, 2011

**AS OF SEPTEMBER 1, 2011,
APPEALS/FILINGS in DISTRICT 5 OF KIM MURPHY**

DATE	SUBJECT OF APPEAL	CURRENT STATUS OF APPEAL
June 15, 2010 Administrative Law Court	401 Water Quality Certification	Appeal Denied, 401 Certification affirmed
August 16, 2010 KIM MURPHY Files Notice of Candidacy To Run District 5 School Board		
November 2, 2010 Kim Murphy Elected to District School Board		
June 24, 2011 SC Court of Appeals (Appeal of Court Ruling)	401 Water Quality Certification	Pending to SC Court of Appeals
March 10, 2011 Administrative Law Court	Wastewater Construction Permit	Declined by DHEC review Board Appeal Pending before Administrative Law Court – no hearing date set
July 7, 2011 DHEC Request for Review William Grant Kim Murphy Cheryl Vaeth Leisha Huffstetlar Wayne Duncan	Storm Water Permit	Declined By DHEC review Board Murphy Has 30 days to appeal to the Administrative Law Court



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
Margaret Stroud and D5 Citizens Ensuring The Implementation of the Referendum, Inc.)	)	CASE NUMBER: 2011-CP-
Plaintiffs,	)	COMPLAINT
Kim Murphy,	)	(JURY TRIAL DEMANDED)
Defendant.)	

JEANETTE H. HARRIS, CLERK
 C.C. & G.S.
 2011 MAY -3 AM 10:39
 RICHLAND COUNTY
 FILED

The Plaintiffs above-named, complaining of the Defendant, allege and say:

1. Plaintiff Margaret Stroud is eighteen years of age, a student and President of the student body of Chapin High School and a citizen and a resident of the State of South Carolina, County of Richland. Stroud has a direct and intrinsic interest in the case in controversy and has and will further suffer actual damages as a result of the actions of Kim Murphy.

2. Plaintiff D5 Citizens Ensuring the Implementation of the Referendum, Inc. ("D5 Citizens") is a South Carolina nonprofit organization comprised of citizens and residents of School District 5 of Lexington and Richland Counties ("District 5"), State of South Carolina, who are taxpayers and have a direct and intrinsic interest in the case in controversy and has and will further suffered actual damages as a result of the actions of Kim Murphy.

3. Defendant, Kim Murphy ("Murphy"), is, upon information and belief, a citizen and resident of the County of Richland, State of South Carolina, whose actions, individually and outside the scope and in direct contravention to her duties as a school board member for District 5, has caused the Plaintiffs' damages and will do further damage with her actions.

4. Murphy moved to Chapin in 1998.

5. Murphy ran for the District 5 school board in 2004 and was defeated.

6. Prior to running for the District 5 school board again in 2010, Murphy worked as

an advocate, personally opposed and eventually ran her political campaign for school board trustee of District 5 touting her opposition of the 2008 Referendum.

7. Despite Murphy's extensive efforts to oppose the Referendum, the citizens of District 5 passed the Referendum in November 2008.

8. As part of District 5's planning and through the funding authorized by District 5 citizens, Chapin High School was to be renovated and expanded. These renovations and expansion would include, but not be limited to, expanding the school's wastewater collection system, providing for more classrooms and larger hallway spaces so that more than twenty (20) portable classrooms could be eliminated, improving school security and the life safety, providing for an expansion of athletic facilities including practice fields, improving and increasing student parking, and adding an access road.

9. District 5 applied for and sought all necessary state certifications, permits and federal permits needed for the construction of the renovations and expansions to Chapin High School.

10. As part of preparation for renovating and expanding Chapin High School, District 5 obtained a May 6, 2010 decision from the South Carolina Department of Health and Environmental Control ("DHEC") issuing a 401 Water Quality Certification ("401 Certification") to District 5. The 401 Certification authorized the placement of fill material in five hundred fifty-three (553) linear feet of jurisdictional intermittent stream and one hundred seventy-four (174) linear feet of jurisdictional perennial stream ("Subject Stream").

11. Murphy first opposed District 5's application for the 401 Certification on December 16, 2009.

12. At the time Murphy began opposing District 5's implementation of the Referendum by attacking the necessary permitting for the Chapin High School project, Murphy

had personally never visited the Subject Stream.

13. Murphy filed her appeal to the May 6, 2010 decision of the South Carolina Department of Health and Environmental Control ("DHEC" or "Department") to issue a 401 Certification to District 5 on July 13, 2010.

14. Murphy did not personally visit the subject stream until after her filed appeal.

15. In furtherance of her political objectives and to gain favor with political supporters, Murphy filed her appeal with DHEC less than a month before she again filed to run for the District 5 school board on August 16, 2010.

16. In November 2010, Murphy was elected as a trustee of the District 5 school board.

17. On March 11, 2011, as a sitting board member of the District 5 school board, Murphy filed a new action in the Administrative Law Court appealing the decision of DHEC to issue a Wastewater Construction Permit related to the same renovations and expansion at Chapin High School.

18. Upon information and belief, Murphy appealed the 401 Certification and the Wastewater Construction Permit not because she suffered or was in imminent danger of suffering a personal injury in fact, but for an ulterior purpose.

19. Plaintiffs assert that Murphy filed the appeal of the 401 Certification and the Wastewater Construction Permit because she opposed the 2008 Referendum approved by the citizens of District 5 and her efforts are in furtherance of slowing or stopping the implementation of the Referendum for her political gain and that of her political supporters. Further, Murphy's actions related to this Chapin High School project is consistent with her obstruction of other District 5 projects.

20. Murphy's appeals, and any such appeals in furtherance of stopping the implementation of the 2008 approved Referendum, cannot be maintained in her capacity as a sitting trustee of the District 5 school board.

21. As of the date of this filing, despite written and verbal appeals by the District 5 school board, parents, students and citizens of District 5 and the costs incurred by the people of District 5, Murphy has offered no feasible alternatives to the planned and permitted design for the Chapin High School renovations and expansion project.

22. Murphy attempts to circumvent the will of the people of District 5.

23. Murphy's actions are based on the political objective of a defeated advocate and amounts to an attack on the elected body that she serves, the District 5 school board.

24. As a result of Murphy's actions, Plaintiffs are adversely affected, aggrieved and damaged.

FOR A FIRST CAUSE OF ACTION
(Abuse of Process)

25. Plaintiffs reallege the allegations of the previous paragraphs as if fully set forth herein.

26. Murphy's appeals of the 401 Certification and Wastewater Construction Permit are willful acts of using a lawful process of appeal for an ulterior purpose.

27. Murphy's appeals of the 401 Certification and Wastewater Construction Permit are not proper in the regular conduct of the proceedings, but were filed under the guise that she was an aggrieved landowner who would suffer harm if the District 5 plan was undertaken when her true objective was not a legitimate use of the process.

28. Murphy's appeal of the 401 Certification and Wastewater Construction Permit is a misuse of legal process to accomplish her political objective unrelated to the subject stream.

29. Murphy's objective, among other politically motivated reasons, is to slow, obstruct or stop District 5's implementation of the 2008 Referendum for the purpose of placating her political allies.

30. Defendant's actions have caused and will cause future damages and personal injury to the Plaintiffs.

SECOND CAUSE OF ACTION
(Injunctive Relief)

31. The Plaintiffs repeat and reiterate the allegations contained above.

32. There is a significant public interest in Murphy's appeals of approved permitting necessary to proceed on projects like Chapin High School's renovation and expansion.

33. To allow a sitting member of a governing body the ability to file collateral appeals to circumvent the will of the people has caused and would cause great harm and damages to the Plaintiffs.

34. Public policy would prohibit Murphy, when a District 5 vote is acted upon that does not meet her political needs, the unrestricted ability to attack that decision by improperly using the courts to halt or slow the action for her own political purpose.

35. The appeals process surrounding the permitting of the Chapin High School renovation and expansion project is normally opened to any truly aggrieved party, but public policy and Murphy's position as a school board member prohibit her from asserting a right what would otherwise be afforded to the citizens of District 5.

36. The appeals have caused a delay in District 5's issuance of bonds for funding the

approved 2008 Referendum projects and will cost millions of dollars in additional costs over the term of the bonds.

37. The Plaintiffs, as a student, parents and citizens of District 5 have and will suffer irreparable harm should the Court not issue a permanent injunction prohibiting Murphy's appeals from proceeding and barring such collateral attacks of District 5 approved plans in the future.

38. Defendant, who does not have standing and is not an aggrieved party, would not be prejudiced by the issuance of an injunction.

39. Plaintiffs have a likelihood of success on the merits in that the Defendant does not have standing to file the subject appeals and the ulterior purpose of Defendant's actions will be made clear through this claim.

40. Plaintiffs are informed and believe that they are entitled to a permanent mandatory injunction ordering Defendant to withdraw her appeals.

41. Money damages are not an adequate legal remedy in that Plaintiffs have and will suffer damages in the millions of dollars should the delay continue and, presumably, Murphy does not have the required means to pay the damages. Further, Murphy has not sustained, nor is she in immediate danger of sustaining, a direct injury as a result of the South Carolina Department of Health and Environmental Control's Water Quality Certification issued pursuant to Section 401 of the Federal Clean Water Act (CWA) ("401 Certification") to District 5 to the United States Army Corps of Engineers ("Corps").

42. Further, the Court and Plaintiffs have a significant compelling interest in ensuring that individual members of a governing body do not have the power to institute lawsuits, or file appeals in their own names involving matters the governing body on which they sit rightfully pursues. Such a result could create judicial as well as political chaos.

WHEREFORE, the Plaintiffs are informed and believe that they are entitled to and hereby respectfully request that the Court issue a Permanent Injunction to ENJOIN, RESTRAIN, and PROHIBIT Defendant from:

- A. Continuing her appeals of South Carolina Department of Health and Environmental Control's Water Quality Certification issued pursuant to Section 401 of the Federal Clean Water Act to District 5 to the United States Army Corps of Engineers and the Wastewater Construction Permit;
- B. Find that Kim Murphy, or any other member of the District 5 school board, lacks standing to challenge decisions in either their official capacity or as citizen and taxpayer as it relates to the will of the people of District 5 and the implementation of the 2008 Referendum.

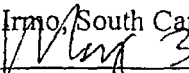
WHEREFORE, the Plaintiffs further pray for a judgment against the Defendant for actual and punitive damages and costs associated with the Plaintiffs' claims and for such further relief that the Court deems appropriate considering the facts of the case.

RESPECTFULLY SUBMITTED,
LAW OFFICE OF TODD ELLIS, P.A.

By: 

Todd R. Ellis, Esquire
7825 Broad River Road
Suite 300
Irmo, South Carolina 29063
(803) 732-0123
(803) 732-0124

Attorneys for Plaintiffs

Irmo, South Carolina
, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Margaret Stroud and D5 Citizens Ensuring)
 The Implementation of Referendum, Inc.)
)
 Plaintiffs,)
)
 Kim Murphy)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-

**AFFIDAVIT AND VERIFICATION
 of COMPLAINT**

2011 MAY -3 AM 10:40
 FILED
 RICHLAND COUNTY
 JENNIFER M. BRIDGES
 C.C.P. & G.S.

Now Comes, William Wolfe, President and Chairman of D5 Citizens Ensuring the Implementation of the Referendum, Inc., personally appearing before me, who being duly sworn states that the statements, allegations and complaints contained within the Complaint are true and correct to the best of her knowledge and belief.

William E. Wolfe
 William E. Wolfe

[Signature]
 Sworn to before me this 2 day of May, 2011.
 Notary Public for South Carolina
 My Commission expires 2011

Aman Ty Mingie
 Sworn before me this 3 day of May 2011.
 Notary Public for South Carolina
 My commission expires 8/13/2020

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Margaret Stroud and D5 Citizens Ensuring)
 The Implementation of the Referendum, Inc.)
)
 Plaintiffs,)
)
 Kim Murphy)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-

**NOTICE OF MOTION AND MOTION
 FOR A INJUNCTION**

JEANE L. HARRISON
 C.C.P. & G.S.
 2011 MAY 03 PM 1:54

RICHLAND COUNTY
 FILED

TO: DEFENDANT KIM MURPHY

PLEASE TAKE NOTICE that the Plaintiffs, pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, will move before the Presiding Judge of the Court of Common Pleas for Richland County at the Richland County Courthouse, Richland County, South Carolina, within ten days from the date of filing or as soon thereafter at the Court's convenience and after notice to the Defendant, for an Order issuing an Injunction enjoining Defendant as set forth below:

1. This lawsuit involves whether Defendant Kim Murphy ("Murphy"), a citizen and resident of the County of Lexington, South Carolina, and a sitting school board member for District 5 of Lexington and Richland Counties ("District 5"), has standing to file an appeal of the May 6, 2010 decision of the South Carolina Department of Health and Environmental Control ("DHEC") to issue a 401 Water Quality Certification ("401 Certification") to District 5.

2. The Plaintiffs further allege that Murphy's appeal of the 401 Certification, that was necessary for District 5's renovation and expansion of Chapin High School, was a willful act of using a lawful process for an ulterior purpose. Plaintiffs have asserted an abuse of process claim against Murphy.

3. Murphy had been a resident of Chapin since 1998 and had previously unsuccessfully run for the District 5 school board in 2004 before being elected in 2010.

4. Before her election in November 2010, Murphy was an adamant voice opposing the 2008 Referendum proposal that would ultimately pass in November 2008.

5. The 2008 Referendum was the funding mechanism for the subject renovation and expansion of Chapin High School.

6. These renovations and expansion at Chapin High School would include, but not be limited to, expanding the school's wastewater collection system, providing for more classrooms and larger hallway spaces so that more than twenty (20) portable classrooms could be eliminated, improving school security and the life safety, providing for an expansion of athletic facilities including practice fields, improving and increasing student parking, and adding an access road.

7. District 5 obtained all necessary state certifications, permits and federal permits needed for the construction of the renovations and expansion to Chapin High School.

8. As part of preparation for renovating Chapin High School, District 5 obtained a May 6, 2010 decision from the South Carolina Department of Health and Environmental Control ("DHEC") issuing a 401 Water Quality Certification ("401 Certification") to District 5. The 401 Certification authorized the placement of fill material in five hundred fifty-three (553) linear feet of jurisdictional intermittent stream and one hundred seventy-four (174) linear feet of jurisdictional perennial stream ("Subject Stream").

9. Despite never having personally visited the Subject Stream, Murphy first opposed District 5's application for the 401 Certification in December 16, 2009.

10. Murphy filed her appeal to the May 6, 2010 decision of the South Carolina Department of Health and Environmental Control ("DHEC" or "Department") to issue a 401

Certification to District 5 on July 13, 2010. Murphy did not personally visit the subject stream until after she filed her appeal.

11. In furtherance of her political objectives and to gain favor with political supporters, Murphy filed her appeal with DHEC less than a month before she again filed to run for the District 5 school board on August 16, 2010.

12. In November 2010, Murphy was elected to the District 5 school board.

13. On March 11, 2011, as a sitting board member of the District 5 school board, Murphy filed a new action in the Administrative Law Court appealing the decision of DHEC to issue a Wastewater Construction Permit related to the same renovations at Chapin High School.

14. This claim asserts Murphy appealed the 401 Certification and the Wastewater Construction Permit not because she suffered or was in imminent danger of suffering a personal injury in fact, but for an ulterior purpose, and the Plaintiffs' state that Murphy lacks standing to file the appeals and the appeals cannot be maintained in her capacity as a sitting trustee of the District 5 school board.

15. Plaintiffs assert that Murphy filed the appeal of the 401 Certification and the Wastewater Construction Permit because she opposed the 2008 Referendum approved by the citizens of District 5 and her efforts are in furtherance of slowing or stopping the implementation of the Referendum for her political gain and that of her political supporters.

16. The Plaintiffs seek an injunction from this Court as a significant public interest exists in prohibiting a sitting member of a governing body from filing collateral appeals to circumvent the will of the people when the vote does not meet their political objectives.

17. The appeals process surrounding the permitting of the Chapin High School renovation and expansion project is normally opened to any truly aggrieved party, but public

policy and Murphy's position as a school board member prohibit her from asserting a right that what would otherwise be afforded to the citizens of District 5.

18. The appeals have caused a delay in District 5's issuance of bonds for funding the approved 2008 Referendum projects and will cost millions of dollars in additional costs over the term of the bonds. The opposition to the appeal has caused District 5 to expend hundreds of thousands of dollars in attorney fees and will cause the Plaintiffs damages.

19. The Plaintiffs, as a student, parents and citizens of District 5 have and will suffer irreparable harm should the Court not issue a permanent injunction prohibiting Murphy's appeals from proceeding and barring such collateral attacks of District 5 approved plans in the future.

20. Defendant, who does not have standing and is not an aggrieved party, would not be prejudiced by the issuance of an injunction.

21. Plaintiffs have a likelihood of success on the merits in that the Defendant does not have standing to file the subject appeals and the ulterior purpose of Defendant's actions will be made clear through this claim.

22. Plaintiffs are informed and believe that they are entitled to a permanent mandatory injunction ordering Defendant to withdraw her appeals.

23. Money damages are not an adequate legal remedy in that Plaintiffs have and will suffer damages in the millions of dollars should the delay continue and, presumably, Murphy does not have the required means to pay the damages. Further, Murphy has not sustained, nor is she in immediate danger of sustaining, a direct injury as a result of the South Carolina Department of Health and Environmental Control's Water Quality Certification issued pursuant to Section 401 of the Federal Clean Water Act (CWA) ("401 Certification") to District 5 to the United States Army Corps of Engineers ("Corps").

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

MARGARET STROUD AND DS)
CITIZENS ENSURING THE)
IMPLEMENTATION OF THE)
REFERENDUM, INC.,)

CASE NO. 2011-CP-40

NOTICE AND MOTION

PLAINTIFFS)

VS.)

KIM MURPHY,)

DEFENDANT)

JEANETTE W. HARRIS
C.C.P. & G.S.

2011 JUN -2 PM 4:28

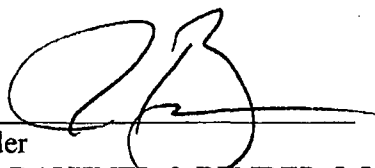
RECEIVED
JUN 2 2011

TO: TODD R. ELLIS, ESQ., LAW OFFICE OF TODD ELLIS, P.A., ATTORNEY FOR PLAINTIFFS

PLEASE TAKE NOTICE that ten (10) days hereafter, or as soon thereafter as counsel may be heard, defendant will move through the undersigned pursuant to Rule 12 (b)(1), SCRCP to dismiss the within-captioned action on grounds that this court lacks jurisdiction over the subject matter, and pursuant to Rule 12(b)(6) to dismiss the matter on grounds that the plaintiffs have failed to state facts sufficient to constitute a cause of action for abuse of process, all in the following particulars:

1. Plaintiffs' challenge to defendant's standing to initiate an appeal of permits issued by the South Carolina Department of Health and Environmental Control (DHEC) may not be considered by this court in that the determination of standing in such an appeal is to be made exclusively by the executive branch in the contested case proceeding before the Administrative Law Judge as provided in 25A S.C. Code Regs. 61-101(G)(4) (Supp. 2010), and usurpation of that jurisdiction by this court would be a violation of the separation of powers delineated in the Constitution of South Carolina;
2. plaintiffs have failed to allege that any process has been served on them;

3. plaintiffs have failed to allege that defendant's appeal of the grant of permits by DHEC involves the utilization of process;
4. plaintiffs have failed to allege that any process has been employed to perform any function not proper in the regular conduct of the contested case proceeding; and,
5. plaintiffs lack standing in that they have not alleged any particularized harm to themselves, thereby failing to establish that either is a real party in interest.



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ATTORNEYS FOR DEFENDANT

Columbia, South Carolina
June 2, 2011



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

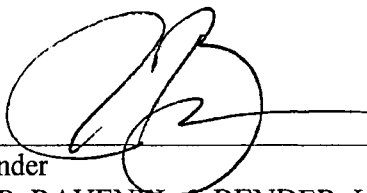
MARGARET STROUD AND D5)
CITIZENS ENSURING THE) CASE NO. 2011-CP-40-2926
IMPLEMENTATION OF THE)
REFERENDUM, INC.,) NOTICE AND MOTION
) FOR RECONSIDERATION
)
PLAINTIFFS)
)
VS.)
)
KIM MURPHY,)
)
)
DEFENDANT)
)
_____)

TO: TODD R. ELLIS, ESQ., LAW OFFICE OF TODD ELLIS, P.A., ATTORNEY FOR PLAINTIFFS

PLEASE TAKE NOTICE that ten (10) days hereafter, or as soon thereafter as counsel may be heard, defendant will move through the undersigned pursuant to Rule 59, SCRCP to alter or amend the order of September 1, 2011, which was received by the undersigned on September 15, 2011, on the following grounds (a copy of the order is attached hereto as Exhibit A and incorporated herein by reference):

1. The order makes a finding that plaintiffs have a likelihood of success on the merits when there was no evidence to support such a finding;
2. The order appears to exceed the permissible scope of a temporary injunction, which has as its sole purpose the maintenance of the *status quo*, by prohibiting defendant from proceeding with further appeals, actions or challenges, notwithstanding that appeals and challenges were pending prior to initiation of plaintiffs' suit,

3. The order makes reference to appeals set forth on Exhibit A, but the order contains no Exhibit A, and
4. The order compresses the time for defendant to respond to plaintiffs' discovery requests when no showing was made that such a compression was either necessary or appropriate.



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ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

September 22, 2011

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Margaret Stroud and D5 Citizens Ensuring)
 The Implementation of the Referendum, Inc.)
)
 Plaintiffs,)
)
 Kim Murphy)
)
 Defendant.)
)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

CASE NUMBER: 2011-CP-40-2926

**ORDER DENYING DEFENDANT'S
 MOTION TO DISMISS and ORDERING
 A TEMPORARY RESTRAINING
 AGAINST DEFENDANT MURPHY**

2011 SEP - 1 PM 4: 33
 RICHLAND COUNTY
 FILED
 JANE E. W. BRIDGE
 CLERK, P. S. C.

This matter comes before me on the Plaintiffs motion pursuant to Rule 65 of the South Carolina Rules of Civil Procedure for the issuance of a restraining order requiring Defendant Kim Murphy to withdraw the appeals set forth on Exhibit A related to permits necessary for the construction of Chapin High School in School District 5 of Lexington and Richland Counties ("District 5") and prohibiting Defendant from filing further appeals in District 5 and for further **filing appeals or actions that would result in the delay or obstruct construction approved by District 5 and the voters who passed the 2008 bond referendum to fund the expansion and renovation project.** The Court also considered Defendant's Motion to Dismiss the Plaintiffs' claims in accordance with Rule 12(b)(1) and (6). A hearing was held on the motions on August 3, 2011 and the Court heard arguments from counsel representing the parties.

After considering the materials provided by counsel and hearing the arguments at the hearing on these motions, the Court denies Defendant's Motion to Dismiss and enjoins Defendant Murphy from filing any further appeals in District 5.

The Court finds, in the light most favorable to Plaintiffs, that Plaintiffs have standing and

L-STATE LEGAL®
 Exhibit
 A
 23

have sufficiently plead facts to constitute a cause of action against Defendant Murphy for abuse of process. *Spence v. Spence*, 368 S.C. 106, 116-17, 628 S.E.2d 869, 874 (2006).

As for the Plaintiffs Motion to enjoin Defendant Murphy, the Court finds that there is a likelihood of success on the merits that Plaintiffs will prevail on its challenge to Mrs. Murphy's standing to file appeals or declaratory actions of District 5 decisions in her own name so long as she is a sitting member of the District 5 school board. In *Newman v. Richland County Historic Preservation Com'n* 480 S.E.2d 72 (S.C.,1997), the Supreme Court stated that it had found no precedent "which permits a disappointed legislator to attack a decision of her own body, either through a declaratory judgment or through a direct "appeal." *Id* at 74.

The Court is not requiring Mrs. Murphy to withdraw the appeals which she has already filed and which are set forth on Exhibit A, but finds that the Plaintiffs are likely to succeed on the merits, that the issue of a public official filing appeals of the directives and decisions of the board on which she sits in her own name is a significant public interest, and, in balancing the harm to the parties by the issuance of an injunction, the Court finds that the Plaintiffs would suffer irreputable harm if future appeals were filed. There is little or no harm to Mrs. Murphy in preventing her from individually filing such appeals while she is a sitting board member.

Therefore, the Court is ordering the following:

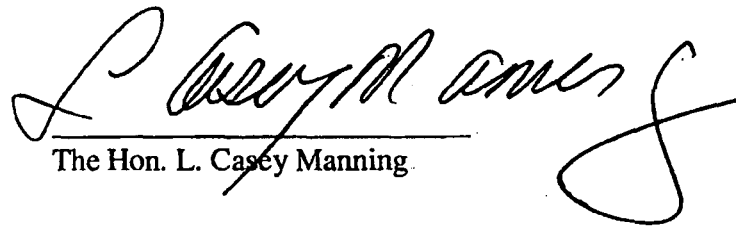
1. That Defendant answer fully the discovery responses served upon her on or before September 22, 2011;
2. That discovery proceed and this matter be heard on the merits as soon as practicable;
3. **That Defendant Murphy, so long as she is a member of the District**

5 school board, is prohibited from filing in her own name any further appeals, actions or challenges at the South Carolina Department of Health and Environmental Control ("DHEC") or any other agency necessary to approve permitting for various construction projects authorized by the District 5 school board and funded by the 2008 referendum passed by the citizens of District 5.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the above stated Agreement is hereby entered into as an Order of this Court.

IT IS SO ORDERED.

Sept 1, 2011


The Hon. L. Casey Manning

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

A handwritten signature in black ink, appearing to be 'JB', written over a horizontal line.

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ATTORNEYS FOR APPELLANT

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
L. Casey Manning, Circuit Court Judge

Case No. 2011-CP-40-2926

Margaret Stroud and D5 Citizens Ensuring the Implementation of
the Referendum, Inc.,.....Respondents.

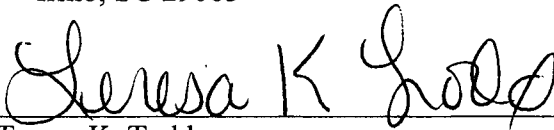
v.

Kim Murphy,.....Appellant.

PROOF OF SERVICE

I, Teresa K. Todd, Legal Assistant to Jay Bender, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with a Record on Appeal by having a copy of same hand delivered to counsel at the following address:

Todd R. Ellis
7825 Broad River Road, Suite 300
Irmo, SC 29063



Teresa K. Todd

February 23, 2012