

The Supreme Court of South Carolina

John S. Rainey, Appellant,

v.

Nimrata Nikki R. Haley, Respondent.

Appellate Case No. 2012-211048

ORDER

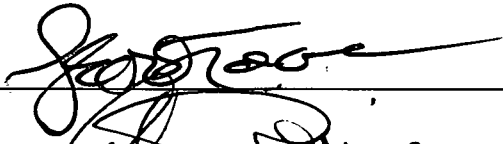
Appellant moves to strike a letter submitted by respondent to the Clerk of this Court regarding appellant's initial reply brief. Respondent has filed a brief in opposition to the motion to strike. Appellant has filed a reply to the return, requesting respondent's brief in opposition to the motion to strike also be stricken.

We grant appellant's request to strike the letter and the brief in opposition to the motion to strike. We find both are improper. In lieu of a letter, respondent should have filed a motion to strike appellant's initial reply brief. Instead, the improper letter resulted in appellant's motion to strike, which prompted an improper response from respondent. Respondent should have filed a return to the motion to strike, addressing the basis for the motion, not a full brief that includes argument on the merits of the underlying issue. Rule 240(e), SCACR.


However, we also strike appellant's initial reply brief. An appellant may not use a reply brief as a vehicle to argue issues not argued in the appellant's opening brief or raised in the respondent's brief. *Bochette v. Bochette*, 300 S.C. 109, 386 S.E.2d 475 (Ct. App. 1989). Because the separation of powers argument was not made in appellant's opening brief, and is not properly responsive to respondent's brief, it is hereby stricken.¹

¹ While we realize subject matter jurisdiction can be raised at any time, *see Bardoan Prop., NV v. Eidolon Corp.*, 326 S.C. 166, 485 S.E.2d 371 (1997), and subject matter jurisdiction is the focal point of this appeal, the issue appellant seeks to raise for the first time pertains to the *validity* of the law upon which the circuit court relied in finding it lacked subject matter jurisdiction. Because appellant did not challenge the validity of the law on separation of powers grounds in

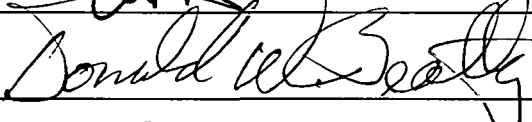
Appellant has also filed a motion to strike items four and nine from respondent's designation of matter to be included in the record on appeal. Respondent has filed a brief in opposition to the motion to strike,² and appellant has filed a reply. The motion is granted.³ Rule 209(b), SCACR (a party may only designate materials that are properly included in the record on appeal); Rule 210, SCACR (the record on appeal shall not include matter not presented to the lower court). Appellant shall serve and file an amended record on appeal within twenty days of the date of this order.



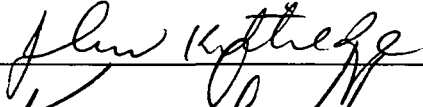
C.J.



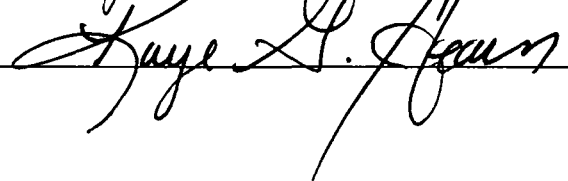
J.



J.



J.



J.

Columbia, South Carolina
December 6, 2012

cc:
Graham L. Newman
Kevin A. Hall

the lower court, this Court, in deciding the subject matter jurisdiction issue, must determine if the circuit court erred in finding the law as it is written vests subject matter jurisdiction exclusively with executive and administrative tribunals or allows for the exercise of subject matter jurisdiction by the courts.

² We do not strike this brief because although entitled a brief, it is actually in the format of a return, not a brief, and does not include argument on extraneous matter.

³ Again, while issues of subject matter jurisdiction can be raised at any time, and arguably documents can be submitted in support of the issue even if not submitted previously, the documents appellant seeks to have stricken are not relevant to the issue of subject matter jurisdiction.

M. David Scott
Karl Smith Bowers, Jr.
Richard A. Harpootlian
Christopher Phillip Kenney
Matthew Todd Carroll