THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean Hoefer Toal, Special Circuit Court Judge

Appellate Case No. 2016-002134

Robert Gantt and Edward K. White,..Respondents

v.

Samuel J. Selph as Director, and Majorie Johnson, Adell Adams, E. Peter Kennedy, Sylvia Holley and Jane Emerson as the Members of the Board of Voter Registration and Elections of Richland County, The Board of Voter Registration and Elections of Richland County and Kim Murphy,..Defendants

Of whom Kim Murphy is the...Appellant

FINAL BRIEF OF APPELLANT KIM MURPHY

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STATEMENT OF THE ISSUES ON APPEAL

I. Does the Circuit Court have jurisdiction to hear an appeal of an unsuccessful residence challenge by a county voter commission?

II. Does the Circuit Court have jurisdiction to determine the borders of a county in the absence of a dispute?

STATEMENT OF THE CASE

The instant case is an appeal from a ruling of a Circuit Court that overturned the determination by the Board of Voter Registration and Elections of Richland County ("Board" that Appellant Kim Murphy ("Murphy") is an elector of Richland County and thus a lawful candidate for a Richland County seat on the Board of Richland/Lexington School District Five ("District.")

The instant case was initiated on August 18, 2016 by way of nearly identical petitions filed by the Respondents to the Board seeking to establish that Murphy was a resident of Lexington County. (R. pp. 70-119.) The Board rejected Respondents challenge by way of a three-to-one vote (R. pp. 391-395.) and formal written order. (R. pp. 64-69.)

The instant action was filed with the Court of Appeals on October 14, 2016. This instant appeal was transferred to this Court pursuant to SCACR 204(a) on October 24, 2016. Murphy received a copy of the transcript for the October 6th hearing on April 25, 2017.

STATEMENT OF THE FACTS

In 1997, Murphy's husband[1] purchased the property that was eventually assigned the address of 154 Old Laurel Lane, Chapin SC 29036. A home was constructed on the property and Murphy has resided continuously at that address since 2000. The construction permit for the house was issued by Richland County. (R. p. 13.) Murphy and her husband have paid property taxes for real estate and vehicles to Richland County as her legal residence since 2000. (R. pp. 14-15.) Murphy has received services by and through Richland County since 2000. (R. p. 15.) Murphy registered to vote at the Department of Motor Vehicles and was assigned to vote in the Richland County precinct of Spring Hill. (R. p. 15.) Murphy voted in this precinct as a Richland County resident from 2000 to 2014 without controversy. Murphy ran twice for a Richland County seat for

[1] Murphy's husband is not a party.

the District: unsuccessfully in 2004 and successfully in 2010. (R. p. 15) Each time, the Board accepted her application as a candidate. (R. p. 15.) Murphy has designated Richland County as her county of residence for her state income taxes. (R. p. 958-973.) Her vehicles are also registered in Richland County. (R. p. 15.)

Respondents are Murphy's political opponents. Both are currently board members for the District[2]. Murphy had filed as a candidate in opposition of Respondent Gant and was his only opponent during the election. Respondent Gant in conjunction with Respondent White filed a challenge to Murphy's qualification as a candidate on the premise that Murphy is a resident of Lexington County rather than Richland County based on alleged finding by the South Carolina Revenue and Fiscal Affairs Office ("RFAO") that she was voting in the wrong county.

The instant case was initiated on August 18, 2016 by way of nearly identical petitions filed by the Respondents to the Board seeking to establish that Murphy was a resident of Lexington County. (R. pp. 70-119.) These separate petitions were consolidated and a hearing was held before the Board on August 30, 2016. The Board conducted a hearing and then voted three to one that Murphy was a resident of Richland County. (R. pp. 268-432.) The Board issued formal rulings to both Respondents on August 31, 2016 informing them in writing of their decision. (R. 64-69.)

Respondents filed an appeal to the Circuit Court along with a petition for a writ of mandamus on September 7, 2016. (R. pp. 126-199.) The Board filed a motion to dismiss Respondents' appeal on September 27, 2016 (R. pp. 172-174). Murphy also filed a brief as an amicus curiae on September 28, 2016 as she was not included as a party to Respondents' appeal. (R. pp. 175-182.) A hearing on Respondents' appeal was held before the Honorable Jean H. Toal[3]

[2] https://www.lexrich5.org/Page/558

[3] Retired Chief Justice Toal was serving as a special circuit judge as a substitute because Judge Tanya Gee had passed away. (September 29, 2016 Hearing Transcript, pg. 9)

on September 29, 2016. (R. pp. 433-562) At that hearing, the trial judge dismissed the appeal from the bench and by way of a written order dated October 10, 2016 (R. pp. 61-62.) The Respondents have not appealed this order. But the trial court *sua sponte* gave the Respondents the right to file an amended complaint for a declaratory judgment to determine whether Murphy was a resident of Richland County for the purposes of the ballot. (R. pp. 559-561.) Respondents also agreed to add Murphy as a defendant to that amended complaint. (R. pp. 559-561.)

The Amended Complaint sought a declaratory judgment to challenge Murphy's qualifications as a candidate for the purposes of the ballot. (R. pp. 183-199.) The Respondents abandoned their effort to receive a writ of mandamus. (R. pp. 183-199.) The parties then served responsive pleadings on each other: an amended complaint by Respondents on October 3, 2016 (R. pp. 183-199) and an answer by Murphy on October 4, 2016 (R. pp. 200-207.) The trial judge heard the above-captioned case without a jury on October 6, 2016. (R. pp. 563-1146.) The trial judge then issued a written order on October 10, 2016 and an amended order on October 11, 2016 ruling in favor of Respondents effectively reversing the Board and ruling Murphy is a resident of Lexington County. (R. pp. 10-57.) The ruling directed the Board to remove Murphy's name from the ballot because she was not a resident of Richland County. (R. pp. 10-57.) Murphy filed a motion for a stay of the trial judge's ruling, but that motion was denied. (R. pp. 1-8, pp. 247-267.) This appeal follows.

ARGUMENT

I. The Circuit Court lacked jurisdiction to hear Respondents' challenge to Murphy's status as a candidate.

The Circuit Court did not have subject matter jurisdiction because the relevant constitutional provisions and statutes provides the Board was the exclusive judge of whether

Murphy was a resident, elector, and candidate. Thus, Circuit Court's ruling was without jurisdiction and should be reversed.

A. Circuit Court did not have subject matter jurisdiction.

"Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.' " Dove v. Gold Kist, Inc., 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994) A court without subject matter jurisdiction does not have authority to act. Id. at 238, 442 S.E.2d at 600. "A judgment of a court without subject-matter jurisdiction is void." Coon v. Coon, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005).

"Lack of subject matter jurisdiction can be raised at any time, can be raised for the first time on appeal, and can even be raised *sua sponte* by the court." Badeaux v. Davis, 337 S.C. 195, 205, 522 S.E.2d 835, 840 (Ct. App. 1999) (quoting Lake v. Reeder Constr. Co., 330 S.C. 242, 248, 498 S.E.2d 650, 653 (Ct. App. 1998)). "Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this court." Id. "[I]t is the duty of this court to take notice and determine if the trial court had proper jurisdiction for its actions." Id.

The trial court cited two statutes as the basis for subject matter jurisdiction: the Declaratory Judgment Act[4] and S.C. Code Ann. § 7-5-230. This Court has already held that the Declaratory Judgment Act is not an independent basis for subject matter jurisdiction. Tourism Expenditure Review Comm. v. City of Myrtle Beach, 403 S.C. 76, 81–82, 742 S.E.2d 371, 373–74 (2013). Instead, a justiciable controversy must be presented to the trial court in order for subject matter to be proper under the Declaratory Judgment Act. Id. Additionally, the plain language of the

[4] S.C. Code Ann. §§ 15–52–10 to –140

Declaratory Judgment Act requires a court to have jurisdiction in order to grant relief. S.C. Code Ann. § 15-53-120.

S.C. Const. art. V, § 11 states that the [c]ircuit [c]ourt shall be "a general trial court with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law." However, the General Assembly may also divest the Circuit Court of jurisdiction by granting another entity exclusive jurisdiction particularly if the subject matter is of a political nature. Rainey v. Haley, 404 S.C. 320, 323, 745 S.E.2d 81, 83 (2013). A court must look to the relevant statute to determine whether the Legislature has given another entity exclusive jurisdiction over a case. Dema v. Tenet Physician Servs.–Hilton Head, Inc., 383 S.C. 115, 121, 678 S.E.2d 430, 433 (2009). The Declaratory Judgment Action will not provide an independent basis for jurisdiction if the Legislature has denied it to the Circuit Court. Rainey, supra (Beatty, concurring.)

The General Assembly has established a comprehensive statutory scheme pursuant to S.C. Const. art. II, § 9 and Title Seven of the South Carolina Code for the regulation of candidates, voters, and elections. S.C. Const. art. XVII, § 1A also provides "Every qualified elector is eligible to any office to be voted for, unless disqualified by age, as prescribed in this Constitution." These constitutional provisions and statutory scheme deprives the Circuit Court of subject matter jurisdiction except for the narrow circumstance provided for by Article II, § 9 which has been incorporated into statute. S.C. Code Ann. § 7-5-230. This statutory provision provides as follows:

> (A) The county boards of voter registration and elections to be appointed under Section 7-5-10 **shall be the judges of the legal qualifications of all applicants for registration. The board is empowered to require proof of these qualifications as it considers necessary.**
>
> **Once a person is registered, challenges of the qualifications of any elector,** except for challenges issued at the polls pursuant to Sections 7-13-810, 7-13-820, and 7-15-420 **must be made in writing to the county board of voter registration**

and elections in the county of registration. The board must, within ten days following the challenge and after first giving notice to the elector and the challenger, **hold a hearing, accept evidence, and rule upon whether the elector meets or fails to meet the qualifications set forth in Section 7-5-120.**

(B) When a challenge is made regarding the residence or domicile of an elector, **the board must consider the provisions of Section 7-1-25(D).**

(C) **Any person denied registration or restoration of his name on the registration books shall have the right of appeal from the decision of the county board of voter registration and elections denying him registration or such restoration to the court of common pleas of the county or any judge thereof and subsequently to the Supreme Court.**

(Emphasis added.)

The statutory provision in subpart C regarding the appeal of elector registrations follows S.C. Const. art. II, § 9 *verbatim.* S.C. Code Ann. § 7-5-240 governs this appeal process and repeats the language that the only persons entitled to judicial review before the Circuit Court are persons who have denied registration or restoration. These constitutional and the statutory provisions clearly make the county boards of registration and elections—and not the circuit court—"the judges" of whether a voter meets the statutory definition of "resident" for the purpose of their candidacy for elected office. The Board was provided its own discretion to determine whether a person is properly an elector by whatever proof "it considered necessary." Id.

This Court has already ruled that the determination of residency for candidacy is a non-justiciable political question. In S.C. Pub. Interest Found. v. Judicial Merit Selection Comm'n, 369 S.C. 139, 142–43, 632 S.E.2d 277, 278 (2006), this Court held that the determination of residency of a judicial candidate was a political question and that a declaratory judgment action was inappropriate. This Court specifically pointed to the process established in S.C. Code Ann. § 7-5-230 as the appropriate forum to resolve the issue of residency. Id. It is important to note that the Respondents themselves recognized this since the Board is where they initially filed their challenge

to Murphy's qualifications. The Respondents changed their theory of their case after their appeal to the Circuit Court was denied.

There no ambiguity in the language of S.C. Code Ann. § 7-5-230. That code section made the Board—and the Board alone—the sole arbiter of propriety of Murphy's candidacy. The Board was empowered to apply whatever standard it (the Board) deemed appropriate. It also clearly provides a right of appeal to the Circuit Court only for persons who have been removed or denied registration. The intent to limit the right to appeal to only those who have been removed or denied the right to vote is evident as the same identical language from Article II, § 9 that is repeated by the General Assembly in S.C. Code Ann. § 7-5-240. This interpretation is consistent with the rules of statutory construction and Constitutions of the United States and South Carolina.

The Respondents' sole remedy if the Board had violated state law in determining Appellant was elector was to appeal their decision to the Executive Director of the State Election Commission (SEC) pursuant to S.C. Code Ann. § 7-3-25 and not the Circuit Court. This statute vests the Executive Director of the SEC the authority to investigate noncompliance with the law by county election boards with an appeal directly to this Court. This statute makes it clear that the General Assembly intended the process of contesting the status of an elector is meant to be a purely executive branch process and not one for the judicial branch.

The learned trial judge did not have subject matter jurisdiction to substitute her judgment in place of the place of the Board charged by statute. The Respondents received whatever relief they were entitled to receive under the statute and Constitution when the Board held a hearing and failed to pursue the redress for the adverse determination to the appropriate administrative entity.

B. Circuit Court did not have appellate jurisdiction to conduct a ballot challenge.

The Circuit Court lost appellate jurisdiction when it allowed the Respondents to convert their appeal into a ballot challenge. The conversion by Respondents of their residency challenge into a ballot challenge while on appeal to the Circuit Court subverted the constitutional and statutory provisions relevant to ballot and election challenges. As discussed *supra*, Respondents' failure to timely challenge Murphy's candidacy before the South Carolina Election Commission likewise deprived the Circuit Court of appellate jurisdiction.

1. Circuit Court cannot allow amended appeal to assert new claims not presented below.

The only challenge filed by Respondents to the Board was a residency challenge and that was what they appealed to the Circuit Court. (Appeal and Petition for Writ of Mandamus.) The respondents did not file a ballot challenge to the Board but instead that theory was only asserted to the Circuit Court.

It is axiomatic that "one cannot present and try his case on one theory and thereafter advocate another theory on appeal." White v. Livingston, 231 S.C. 301, 306, 98 S.E.2d 534, 537 (1957); see also Indigo Associates v. Ryan Investment Co., 314 S.C. 519, 523, 431 S.E.2d 271, 273 (1993). But that is exactly what the Circuit Court did in the instant case. It allowed Respondents to convert their unsuccessful appeal—made unsuccessful by its own ruling—into a ballot challenge.

This Court has already ruled that a Circuit Court is an appellate court in the instance of a municipal election. Challenges in a municipal election are governed by S.C. Code Ann. § 5–15–140 which provides, in part, "[w]ithin ten days after notice of the decision of the municipal election

commission, any party aggrieved thereby may appeal from such decision to the court of common pleas." Blair v. City of Manning, 345 S.C. 141, 144, 546 S.E.2d 649, 651 (2001).

As referenced, *infra*, the relevant statute to this appeal is S.C. Code Ann. § 7-5-240. This section gives the circuit court appellate jurisdiction in only two limited circumstances where an elector has been removed or denied restoration. Neither of these two circumstances apply to the instant action. The Circuit Court's ruling dismissing Respondents' appeal ended this matter.

2. Circuit Court lacked jurisdiction to conduct a ballot challenge.

The Circuit Court cites no authority for its exercise of power over the ballot to be used by the voters in Richland County. "Under the common law there is no right to contest an election. The right to contest an election exists only under the [state] constitutional and statutory provisions, and the procedure prescribed by statute must be strictly followed." Butler v. Town of Edgefield, 328 S.C. 238, 245–46, 493 S.E.2d 838, 842 (1997); Taylor v. Roche, 271 S.C. 505, 248 S.E.2d 580 (1978); See 29 C.J.S. Elections §§ 246, 247, 252 (1965); 26 Am.Jur.2d Elections §§ 316, 318. There is no process outlined in the statute to contest a person's candidacy apart from the process outlined in S.C. Code Ann. § 7-5-230 and S.C. Code Ann. § 7-5-240.

A ballot challenge that exists under the law is a challenge to the casting of a ballot by an individual voter under S.C. Code Ann. § 7-13-810 and S.C. Code Ann. § 7-13-830. However, that statutory process does not provide the circuit court jurisdiction if it were applicable to the instant action. This ballot challenge for any "county officer and less than county offices" must first be heard by the relevant county board. S.C. Code Ann. § 7-17-30. The challenger is required to file a copy of the challenge with the chairman of the board and serving a copy on "every candidate in the race." Id. The appeal for a ballot challenge is to the SEC and on to this Court by petition for writ of certiorari. S.C. Code Ann. § 7-7-60, S.C. Code Ann. § 7-17-210, S.C. Code Ann. § 7-17-

270. That is certainly not the process Respondents followed in the instant action. Instead, Respondents received whatever redress they were entitled to under a ballot challenge by the Board, and then they failed to properly perfect their appeal by failing to turn to the SEC.

S.C. Code Ann. § 7-3-20(C)(14) charges the Executive Director of the State Election Commission (SEC) with the preparation and distribution of all ballots pursuant to the Uniform and Overseas Citizens Absentee Voting Act (UOCAVA) 52 U.S.C.A. § 20301, *et seq.*. 52 U.S.C.A. § 20302(a)(8)(A) requires that all absentee ballots be sent to all UOCAVA qualified electors at least 45 days prior to the general election. The Executive Director set a deadline to file ballot challenges of September 16, 2016 as required by S.C. Code Ann. § 7-15-740 and § 7-13-350(B) in order to resolve all ballot changes for the SEC to comply with the deadline required by UOCAVA. (R. pp. 168-169.) S.C. Code Ann. § 7-15-760 limits the jurisdiction of the circuit court to issuing equitable relief to either a "covered voter" or an election official. Respondents did not file a ballot challenge with the Executive Director and they do not meet either of these qualifications.

The instances where any court was allowed to intervene in the electoral process prior to the election involved this Court interpreting the statutes concerning the conduct of a primary and/or certification of the winning candidate by the political parties. In Anderson v. South Carolina Election Com'n, 397 S.C. 551, 725 S.E.2d 704 (2012), this Court interpreted a statute to hold that a political party could not waive the requirements to simultaneously file a paper copy of the Statement of Economic Interest (SEI) at the same time and with the same official with whom the individuals file a Statement of Intention of Candidacy (SIC). This Court in Florence Cty. Democratic Party v. Florence Cty. Republican Party, 398 S.C. 124, 129–30, 727 S.E.2d 418, 421 (2012) required the removal from party primary ballots all candidates who had not complied with Anderson. Finally, this Court affirmed the ruling of a Circuit Court that a special primary was

required where a candidate was disqualified for failure to simultaneously file a SEI and SIC. Tempel v. S.C. State Election Comm'n, 400 S.C. 374, 381, 735 S.E.2d 453, 456 (2012). Anderson, Florence, and Tempel relate to the decisions made by political parties under S.C. Code Ann. § 8–13–1356 and S.C. Code Ann. § 7–11–55. None of these cases relate to decisions on status as an elector made by a county voter board.

A broad assertion of power by the Circuit Court to review ballot challenges without regard to the decisions made by county election boards would effectively negate the constitutional provisions which delegate authority to the General Assembly over the electoral process. "All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute." State v. Sweat, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010). The constitution and laws clearly delegate the authority to set limits on electoral and ballot challenges. In the exercise of that power, the General Assembly did not give the Circuit Court a role in most of that process. It unnecessarily involves the judicial branch in political questions which are solely the province of electoral officials charged by statute.

II. The Circuit Court erred when it used an ill-defined border to overrule the Board's determination of Murphy's domicile.

The Circuit Court erred when it resolved a non-existent border dispute between Lexington and Richland counties in order to determine Murphy was a resident of Lexington County. The trial court lacked subject matter jurisdiction to define the county border per the controlling statute, S.C. Code Ann. § 27-2-105.

The Circuit Court lacked the subject matter jurisdiction to determine Murphy was a resident of Lexington County. S.C. Code Ann. § 27-2-105 sets out an administrative and judicial process

to clarify the borders of the counties and resolve any disputes between the counties and any interested party. The statutory process to clarify the border between Lexington and Richland County has not been initiated by anyone. Even if it had, the court with exclusive jurisdiction to resolve the county border is the Administrative Law Court.

S.C. Code Ann. § 27-2-105(A)(1) provides:

> Where county boundaries are ill-defined, unmarked, or poorly marked, the South Carolina Geodetic Survey **on a cooperative basis shall assist counties** in defining and monumenting the locations of county boundaries and positioning the monuments using geodetic surveys.

(Emphasis added)

By a plain reading, there are two relevant but distinct issues: an ill-defined border and a dispute between the affected counties. If the border is well defined, then an examination of S.C. Code Ann. § 27-2-105 does not reveal any role for SCGS. The **only** role for SCGS is in the instance of an ill-defined border.

If a border between two or more counties is ill-defined, then the analysis of S.C. Code Ann. § 27-2-105 turns to whether there is a dispute about where the line should be. S.C. Code Ann. § 27-2-105(A)(2) requires the South Carolina Geodetic Survey ("SCGS") to act as a "mediator" in the event of a dispute "between two or more counties." By operation of the rule of statutory construction "*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius,*" there is nothing for SCGS to do in the absence of a dispute between the counties in the event the border is ill defined but to certify the boundary where drawn by the counties. The General Assembly specifically included a provision within S.C. Code Ann. § 27-2-105 that 105 does not limit the authority or ability of the counties to adjust the boundaries further. S.C. Code Ann. § 27-2-105(C). S.C. Code Ann. § 27-2-105(B)(7) requires SCGS to prepare a unique boundary description for

counties once the borders are defined and forward that description in a form suitable for the General Assembly to amend county boundaries as described in Chapter 3, Title 4.

The statute then requires the publication of a certified plat, written notice to the affected counties and parties, and notice to the public. S.C. Code Ann. § 27-2-105(A)(3). Once that process is finished, any affected party[5] who disagrees with the proposed border then files a request for hearing before the Administrative Law Court with an appeal to the Court of Appeals. S.C. Code Ann. § 27-2-105(B); S.C. Code Ann. § 1-23-610. This statutory scheme leaves absolutely no role or jurisdiction for the Circuit Court to resolve the issue of an ill-defined border between two or more counties.

The Circuit Court ruled that the border between Richland County and Lexington County was "well defined" as a "matter of fact." The determination of whether this was well-defined is an interpretation of statute and not a question of fact. The interpretation and application of a statute is a question of law. Layman v. State, 376 S.C. 434, 444, 658 S.E.2d 320, 325 (2008). The current borders of Richland County are set forth in S.C. Code Ann. § 4-3-460. The current borders of Lexington County are set forth in S.C. Code Ann. § 4-3-370. Both of these statutory provisions make reference to a geographical feature known as Rocky Ford. The testimony rendered as whether the various plats were consistent with statutes was actually an improper legal conclusion. State v. Commander, 396 S.C. 254, 269, 721 S.E.2d 413, 421 (2011)

The location of Rocky Ford had to be located using an alleged extensive investigation by SCGS. (R. pp. 657-663.) There was testimony that placed the line in various places. (R. p. 666.) It ignores the testimony an official map reflecting the county lines does and the testimony regarding the review of the historical documents and prior surveys to figure out where Rocky Ford should

[5]"Affected parties" is a statutorily defined term that includes Murphy and Respondents. S.C. Code Ann. § 27-2-105(B)(2).

be. (R. pp. 592-597, p. 696.) The only set of coordinates established in evidence had been done for that hearing before the circuit court and no opportunity had been given by Murphy or any other interested parties—Richland County in particular—to challenge the placement of Rocky Ford by SCGS. (R. pp. 596-597) No stakes to fix the location of the border have been set because the process had not been finalized and locations of the stakes could change. (R. pp. 599-600.) There was no official, filed plat which defined the border. (R. pp. 602.) It also ignores Respondents' witness testimony that he did not do a survey of Murphy's property line to determine exactly where the county line crossed her property. (R. pp. 671-672.) This witness also agreed that because a portion of Murphy's property was in both counties the only method by which he could would determine which county Murphy's house was in was by a survey. (R. p. 672.) The person charged with maintaining the tax maps and parcels for Richland County, Lee Harrell, could not determine precisely where the county line near Murphy's property was located. (R. pp. 695-696.) Harrell testified that he attempted to locate Rocky Ford in the early 1990s with employees from his staff and SCGS but was unable to do so. (R. pp. 697-698.) But, based on the information he possessed, Harrell testified Richland County claimed Murphy's house and part of her acreage for taxation purposes and has done so for more than twenty years. (R. pp. 702-703.)

It is undisputed that neither Respondents, SCGS, Lexington County nor Richland County have initiated the process outlined in S.C. Code Ann. § 27-2-105. The counties have not asked SCGS to act as a mediator. A certified plat has not been prepared. (R. p. 602.) Public notices have not been issued or has a public hearing taken place within the ambit of the statue. (R. p. 594.) Even if this process had been followed, the process would have involved an appeal to the Administrative Law Court and not the Circuit Court. Richland County was amenable to changing the line if the

location of the line became known, but it would not do so until the S.C. Code Ann. § 27-2-105 process was complete and official plat finalized. (R. pp. 706-707.)

It is also equally undisputed that Lexington County, Richland County and the Board agree where the line should be and that Murphy should be a resident of Richland County. While describing it as a "gentleman's agreement," the counties have agreed that Murphy is a resident for Richland County for the purposes of taxation, law enforcement, and voting. Respondents' witness agreed that the official Richland County map showed Murphy was a Richland County resident. (R. pp. 675-676, pp. 705-707.) The Board held a hearing and determined Murphy was a Richland County resident. These agencies are charged with the administration of taxation and election laws by statute, and their interpretation of these various statutes—most especially S.C. Code Ann. § 4-3-460 was accorded no respect by the trial court.

An agreement between two or more counties is clearly contemplated by the statute as it does not restrict the power of the General Assembly to move the lines as they see fit based on some future agreement by the counties. S.C. Code Ann. § 27-2-105(C). The lines contained within Chapter 3, Title 4 are not inviolate and are subject to change based on the findings of new surveys or these agreements as contemplated by S.C. Code Ann. § 27-2-105(B)(7).

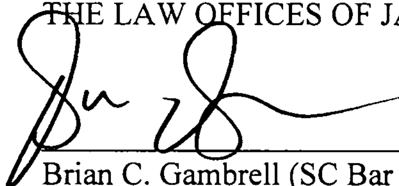
CONCLUSION

For the reasons set forth herein, Appellant Kim Murphy hereby requests this Court REVERSE the decision of the Circuit Court and reinstate her status as an elector in Richland County.

Respectfully submitted,

Respectfully submitted,

THE LAW OFFICES OF JASON E. TAYLOR, P.C.



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THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
Jean Hoefer Toal, Special Circuit Court Judge

Appellate Case No. 2016-002134

Robert Gantt and Edward K. White,..Respondents

v.

Samuel J. Selph as Director, and Majorie Johnson, Adell Adams, E. Peter Kennedy, Sylvia Holley and Jane Emerson as the Members of the Board of Voter Registration and Elections of Richland County, The Board of Voter Registration and Elections of Richland County and Kim Murphy,..Defendants

Of whom Kim Murphy is the..Appellant

CERTIFICATE OF SCACR 211(b) COMPLIANCE

The undersigned as counsel for Appellant Kim Murphy hereby certifies that the final briefs comply with Rule 211(b), SCACR.

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CERTIFICATE OF SERVICE

I, Brian C. Gambrell, the attorney for Appellant, do hereby certify that I served Final Brief of Appellant, Final Reply Brief of Appellant, and Certificate of 211(b) Compliance on Respondents' counsel via hand delivery on November 22, 2017.

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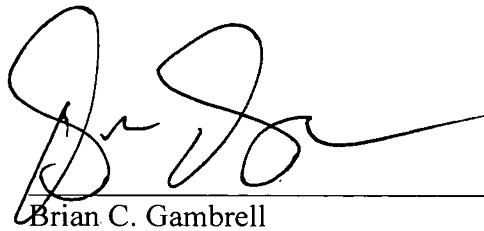

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