

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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

S.C. SUPREME COURT

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

RECORD ON APPEAL VOL. 2

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¹ There is a scrivener’s error on page 1 on this transcript. The correct hearing date was September 29, 2016.

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² All individuals labeled in Index as making County Staff Statements are mislabeled. Rainwater, Roberts, Ballard were Plaintiffs’ witnesses and Harmon, Tyler and Selph were Defendant’s witnesses.

³All exhibits listed as County Exhibits (1-10) are mislabeled and should be labeled Plaintiffs’ Exhibit (3-12).

⁴ See Footnote 3

⁵ Ibid.

⁶ Ibid.

⁷ Ibid.

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¹⁰ See footnote 3

¹¹ The parenthetical "ROA" numbers were placed on documents and presented to the trial judge. This Record on Appeal attempts to maintain those numbers for the purposes of clarity and context.

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¹² Court’s Exhibit 1 (Transcript of Administrative Hearing) has been replaced with Transcript of Administrative Hearing from Plaintiffs’ Record on Appeal so to contain ROA page numbers for reference purposes.

State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2016-CP-40-5431

Robert Gantt and)
Edward K. White,)
Petitioners,)

V.)

Samuel J. Selph as Director,)
and Marjorie Johnson, Adell)
Adams, E. Peter Kennedy, Sylvia)
Holley, and Jane Emerson as the)
Members of the Richland County)
Voter Registration and Election)
Commission, and the Richland)
County Voter Registration and)
Election Commission,)

Transcript of Record

Respondents.)

In re: Petition to disqualify)
Kim Murphy as an Elector in)
Springhill Precinct, Richland)
County.)

September 29, 2016
Columbia, South Carolina

B E F O R E:

The Honorable Jean H. Toal, Judge

A P P E A R A N C E S:

Michael H. Montgomery, Esquire
Attorney for the Petitioners

William M. Spillane, Esquire
Attorney for the Respondents

ALSO PRESENT:

S. Jahue Moore, Esquire

Elizabeth B. Harris, CVR-M-CM
Circuit Court Reporter

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1 THE COURT: All right, this is in the matter of Robert
2 Gantt, plaintiff, against Samuel J. Selph and the election
3 commissioners and the Election Commission and Voter
4 Registration Commission of Richland County, defendants.
5 Mr. Montgomery represents Mr. Gantt, and who is
6 representing Mr. Selph?

7 MR. SPILLANE: William Michael Spillane representing
8 all the respondents.

9 THE COURT: So, you are representing Mr. Selph and the
10 Board of Registration and the Board of ---

11 ~~MR. SPILLANE: And those commissioners.~~

12 THE COURT: --- Election and all of the individual ---

13 MR. SPILLANE: They're all named ---

14 THE COURT: --- commissioners?

15 MR. SPILLANE: --- as commissioners and directors.

16 THE COURT: Right. So, Mr. Spillane is representing
17 all defendants, correct?

18 MR. SPILLANE: All respondents, yes.

19 THE COURT: I mean all respondents as well. You may
20 be seated. Thank you, Mr. Spillane.

21 All right, there has certainly been a lot of
22 conversation, email traffic, and so forth regarding folks
23 who are not parties to this proceeding. The only parties
24 that I see who are parties to this proceeding and who have
25 filed anything asking to be parties in this proceeding are

1 the parties I've just named. So, as I understand it,
2 that's how we are to proceed today is to hear the writ of
3 *mandamus*, motion to compel, and motion and appeal involving
4 the parties I have named who are the parties in the
5 pleadings. Am I right about that?

6 MR. SPILLANE: Your Honor, I, I believe there could be
7 a correction. My understanding -- and the, the notice of
8 the hearing I received is about the appeal.

9 THE COURT: What appeal?

10 MR. SPILLANE: The appeal of Mr. Montgomery's clients
11 ~~to the election board's~~ -----

12 THE COURT: Yes.

13 MR. SPILLANE: --- decision of August 30th this year.

14 THE COURT: Right.

15 MR. SPILLANE: There's also a writ of *mandamus* that
16 was filed on September 7th, I believe.

17 THE COURT: Right.

18 MR. SPILLANE: It was served on September 7th. The
19 period for answering that has not, has not run and ---

20 THE COURT: Well, let me just say this to you, Mr.
21 Spillane.

22 MR. SPILLANE: Yes.

23 THE COURT: These election things, I was in a many of
24 them as a practicing lawyer. They always come up the last
25 minute. They're always very time intensive because of the

1 need to have certainty about how ballots should be prepared
2 and so forth and so on.

3 I think the appeal, which is timely, accomplished
4 everything that needs to be accomplished. I don't know
5 that the court would need to have *mandamus* authority to
6 enforce its order with respect to a named party in this
7 matter. I think if the court has something to enforce --
8 and I'm not saying they do. Maybe the respondents prevail,
9 but if there is an order that this court issues involving a
10 named party to this matter, no *mandamus* is going to be
11 necessary to enforce that. I assume, unless you tell me
12 otherwise, that what this court orders, your clients will
13 comply with just as I assume that about the petitioners in
14 this matter.

15 MR. SPILLANE: Exactly so, Your Honor. We are merely
16 here today to make sure the appeal is, is, is proper. I
17 have a motion.

18 THE COURT: Well, I understand that. You can have
19 some motions about that but, frankly, the issues ---

20 MR. SPILLANE: And, and to ---

21 THE COURT: --- the issues ---

22 MR. SPILLANE: --- and to deliver the record and give
23 the record to the court.

24 THE COURT: The issues of merit are not going to
25 really make much difference when you get past the procedure

1 posture of *mandamus*. The issues of merit have to do with
2 the decisions made by your client about whether a
3 candidate's name could appear on the ballot, and that's the
4 issue of merit, isn't it?

5 MR. SPILLANE: Yes, and my clients would be very happy
6 to spare the expense of answering and appearing at a
7 *mandamus* hearing.

8 THE COURT: Oh, I understand and I don't want to put
9 them in a spot, Mr. Spillane. You are someone I respect
10 greatly and know well, and all you're trying to do is
11 represent your client in a capable and appropriate way.

12 I think we can navigate some of the fears you may have
13 about the implications of a *mandamus*. We're here on an
14 issue of merit ultimately, and your client is kind of in
15 the middle. They don't have a dog in this fight other than
16 applying the law as they saw it. So, I think we can
17 proceed from there. I don't think you have to have any
18 worries that there's some other procedural pitfall that you
19 may fall into. If you see that there is a problem with
20 that at any time along the way, I'm sure you'll let me
21 know.

22 MR. SPILLANE: To the extent that we have to be
23 neutral in this appeal and ---

24 THE COURT: Well, you're going to defend what your
25 client decided. You don't have to be neutral from that.

1 Your client made a decision; you're going to defend it, I
2 would assume.

3 MR. SPILLANE: And, and the defense is in the record,
4 in the transcript.

5 THE COURT: Sure. I understand.

6 MR. SPILLANE: And, and that's beyond the motion and
7 making sure the record is correct. That's why we're here.

8 THE COURT: Understood.

9 MR. SPILLANE: We're saving the taxpayers dollars.

10 THE COURT: Well, that's a good thing.

11 ~~MR. SPILLANE: Thank you.~~

12 THE COURT: Always.

13 All right, anything further before we proceed?

14 MR. SPILLANE: Yes, Your Honor. I'd like to -- I
15 assume the court has all of the material that's been filed.

16 THE COURT: I do.

17 MR. SPILLANE: You have my -- our answer, the
18 respondent's answer and, and my motion and the petition,
19 and I think there's a...

20 THE COURT: Yes, and I also have a document that is --
21 purports to be an answer reserving jurisdictional
22 objections that is ill opposed on behalf of someone who is
23 not a party in these proceedings, that being Kim Murphy.
24 She styles herself as a defendant. She is not a defendant
25 in this action. This action is captioned as between Gantt

1 and White as plaintiffs and Selph, or petitioners and Selph
2 and the other members of the commission, plus the Voter
3 Registration and Election Commission themselves as
4 defendants. So, I see this document, but I don't think
5 that it has any particular pertinence to what we're dealing
6 with today, which is an appeal from a decision your clients
7 made about a matter.

8 MR. SPILLANE: Yes.

9 MR. MOORE: Your Honor, may I explain that document to
10 the court?

11 ~~THE COURT: Mr. Moore, let me just say this. You~~
12 don't have any official status in these proceedings
13 whatsoever, and I think you've made that clear in this
14 thing that purports to be an answer but where you say
15 you're not a party to these proceedings, and your client is
16 not.

17 There have been some rather volatile exchanges between
18 yourself, members of my staff, and of the court about these
19 proceedings. I'm not going to allow any lengthy discussion
20 about all of that. If you've got something to say that
21 bears on your client's status as a party to these
22 proceedings, that's one thing, but I don't want a lengthy
23 explanation of anything other than that.

24 MR. MOORE: Your Honor, we, we were in a posture of
25 trying to determine all along what our status was in this

1 case. We were served by Mr. Montgomery with all of these
2 documents.

3 THE COURT: Well, I ---

4 MR. MOORE: And ---

5 THE COURT: Whether you were served or not -- and I
6 haven't really looked at all that -- you are not a party in
7 these proceedings, a fact which you make clear in your
8 filings.

9 MR. MOORE: The thing -- my problem is this, that --
10 and again I thank you, I thank the court, but the reason
11 ~~we're here is because the clerk's office has instructed us~~
12 to be here.

13 THE COURT: The clerk, I don't know what the clerk's
14 office has done, but the clerk's office has put up with
15 quite a lot in this matter is all I have to say. The
16 clerk's office is doing the best they can in some pretty
17 trying circumstances for all of us here in Richland County
18 with the death of Judge Gee and the attempts by me as fill-
19 in for her to try to keep these matters, particularly
20 matters of time sensitivity, moving along in this court.

21 So, I am not aware of any instruction that you be
22 here, and your staying here is purely at your option. If
23 you want to be here, that is fine with me. This is a
24 public proceeding, but in terms of your status as a
25 participant in these proceedings, unless you can tell me

1 something different, you're not a party in these
2 proceedings. Whether these proceedings have implications
3 that may affect your client is quite another thing, but in
4 this matter I've got all I can say grace over with the
5 folks who are parties and have made the presentation they
6 have made to me.

7 MR. MOORE: We -- I have generally had as a practice
8 when I, when I wound up being served documents and getting
9 notices from clerks -- it has been incredibly an
10 frustrating situation for us as well.

11 ~~THE COURT:~~ Well, yeah. Well, it's been frustrating
12 to receive some of the communications in this affair as
13 well. I think I know where you stand, Mr. Moore, and all I
14 can say is my ruling on this matter, as the judge who is
15 presiding over these matters in the present time, is that
16 you are very -- within any citizen's rights to observe
17 these proceedings, but you nor your client are a
18 participant in this proceedings as best I can tell.

19 MR. MOORE: Thank you, ma'am.

20 THE COURT: All right, sir.

21 MR. SPILLANE: Your Honor, may I approach? This is
22 the sealed transcript of the hearing before the elections
23 board. There are other parts of the record, but they are,
24 they are in the binder that Mr. Montgomery submitted. That
25 is the two petitions against Ms. Murphy, the two notices of

1 -- one notice of the hearing of White. We consolidated the
2 hearings of, of Mr. Gantt and Mr. White. We issued two
3 orders, and I believe that is in the record with the
4 transcript.

5 THE COURT: Well, let me just ask you this. I've got
6 this record on appeal, Gantt and White against the Richland
7 County Vote Registration Commission and others. All right,
8 and it's got various documents, including an administrative
9 hearing transcript. Is that any different from ---

10 MR. SPILLANE: Yes, it is, Your Honor.

11 THE COURT: What is ---

12 MR. SPILLANE: The last page of the record on appeal
13 has, has a document that was not presented at the hearing.

14 THE COURT: Well, hang on a minute. Let's just get
15 that. What document are you talking about?

16 MR. SPILLANE: That's a document about a voter
17 registration in Lexington County by Ms. Murphy -- a voter
18 application, rather, and that is not, I believe, in your
19 sealed transcript.

20 THE COURT: Well, all I can say is we will compare
21 these. Sealed meaning not sealed in the sense that it's
22 not public but sealed in that it's coming fresh from the
23 court reporter to my hands, as I understand it.

24 MR. SPILLANE: Well, yes. Through Mr. Selph, yes.

25 THE COURT: But, I mean, this was a public proceeding,

1 was it not?

2 MR. SPILLANE: Yes. Yes.

3 THE COURT: Okay.

4 MR. SPILLANE: I'm sorry.

5 THE COURT: And this is, this is the court reporter's
6 version of the public proceeding that was held, right?

7 MR. SPILLANE: Very good word, yes.

8 THE COURT: Okay. I understand what it is, and we'll
9 make the comparisons that we need to make at the
10 appropriate times, but any differentiation between what the
11 ~~court reporter says is the record and what Mr. Montgomery~~
12 has submitted, we will take up at the appropriate time and
13 deal with it. Will that be satisfactory to everyone?

14 MR. SPILLANE: Yes.

15 MR. MONTGOMERY: Yes, Your Honor, and I think I was
16 going to, I was going to say that I believe that, that I
17 don't know how that got -- that sheet is in there. It is
18 actually part of our petition before this court as an
19 exhibit to our petition.

20 THE COURT: Well, good. Why don't you come in here
21 right now and take it out, and that will solve that
22 problem.

23 MR. MONTGOMERY: Yes, ma'am.

24 THE COURT: And then I will have a transcript that's
25 just like the one Mr. Spillane's just offered.

1 MR. MONTGOMERY: And I think that's correct. That was
2 just a part of the petition that was...

3 THE COURT: All right, just do what you need to do?

4 (A PAUSE.)

5 THE COURT: All right. Now, Mr. Spillane, I'm looking
6 at something that is entitled Mail Application and it's
7 Exhibit E, and I'm going -- it's been taken out of the
8 record.

9 MR. SPILLANE: Thank you, Your Honor.

10 THE COURT: So, now I think we are both on the same
11 page about the materials that are before us.

12 MR. SPILLANE: Very good.

13 THE COURT: Am I right?

14 MR. SPILLANE: Very good. Yes. Yes, Your Honor.

15 THE COURT: All right. Now, are we ready to go to the
16 merits now?

17 MR. SPILLANE: I have a motion.

18 THE COURT: All right, sir.

19 MR. SPILLANE: I have a very simple motion to dismiss,
20 with a couple of cases.

21 THE COURT: Well, have you filed that and given it to
22 Mr. Montgomery?

23 MR. SPILLANE: Yes, and I will give you a copy.

24 THE COURT: Very good. I don't know that I'm aware of
25 that. Have you filed it?

1 MR. SPILLANE: Yes.

2 THE COURT: When?

3 MR. SPILLANE: The 27th. It was served the 26th.

4 THE COURT: All right.

5 MR. SPILLANE: Basically a motion to dismiss for lack
6 of jurisdiction and standing, and the motion is quite
7 straight on the face, and beyond the little history of the
8 case, which you already know, I'll skip to the appeal
9 reserved for disqualified electorics.

10 It's our position based upon the statute 7-5-230(c),
11 7-5-240, and 7-5-250, that the only appeal from an
12 elections board decision about the status of an elector in
13 the county is in the hands of the disqualified elector.

14 THE COURT: I understand. I understand your argument.

15 MR. SPILLANE: And it says any person denied in
16 7-5-230 restoration or denied registration. 7-5-240 has
17 the same language, and then going up to the Supreme Court
18 it says the applicant, which is clear reference ---

19 THE COURT: I understand.

20 MR. SPILLANE: --- a clear reference to the applicant.

21 THE COURT: Your position about this matter is
22 protected. I received this motion to dismiss. We're going
23 to hear this matter on the merits. My guess is that Mr.
24 Montgomery will argue that there are many other sections
25 that deal with decisions that voter registration and

1 election commissions make that are not litigated between a
2 disqualified elector and board, and those matters regularly
3 come up on appeal. And I'm guessing that he probably
4 considers himself within the ambit of those things. You
5 say this is a matter that just involves a ---

6 MR. SPILLANE: That, that is my ---

7 THE COURT: --- disqualified elector.

8 MR. SPILLANE: --- position on the motion with two
9 cases backing up that I'd like to submit.

10 THE COURT: Good. Well, you can hand it up. You
11 know, it depends. It's kind of like a kaleidoscope. It
12 depends on how you turn it. This is certainly also a
13 matter that involves whether the ballot is proper, and
14 that's really what I regard the petition is and the summons
15 is directed towards. It's not so much -- this is not an
16 action to disqualify or challenge a voter. This is an
17 action to determine the validity of a proposed ballot, and
18 there are other sections that bear on that, but you've got
19 your position protected.

20 I just don't think we need to spend a whole lot of
21 time on it right now. It will obviously have to be ruled
22 on at the end, and my suggestion is let's go on and cut to
23 the chase on this and come back to this issue if it needs
24 some argument.

25 MR. SPILLANE: Two more minutes, please, Judge.

1 THE COURT: All right.

2 MR. SPILLANE: I'm, I'm disagreeing with you on the
3 validity of the public ballot. That, that deadline from
4 the state election commission has already passed. It's
5 September 16th by a letter that I've seen in the file.

6 Secondly, in researching this I couldn't find any
7 cases on these two statutes because nobody appeals their
8 neighbor's elector status. If that were the case, my board
9 would have hearing appeals all the time which are just
10 spats between neighbors. Most all of these appeals come in
11 the, in the cases you see with respect to post-election: he
12 won; he's not living in this district; check on this. And
13 then the, the town of Manning made it, made the decision,
14 and the Judicial Merit Selection Committee made a decision.
15 There's the thrust of those two cases.

16 So, we are urging you to not see it as a ballot but
17 see it as a statutory requirement so that every Tom, Dick,
18 and Harry doesn't come to my client appealing his
19 neighbor's election -- elector status. Thank you, Your
20 Honor.

21 THE COURT: All right. I understand. Of course, it
22 strikes me that had that been the position of your client,
23 then you would never have heard this matter to begin with.

24 MR. SPILLANE: My, my ---

25 THE COURT: Had your client -- maybe they didn't have

1 your excellent legal advice when they ---

2 MR. SPILLANE: Well, Your Honor ---

3 THE COURT: --- heard this matter, but they heard a
4 matter that involves precisely what is up here.

5 MR. SPILLANE: Let me -- give me two more minutes, and
6 I have two more arguments on that. Number one, my client
7 is -- they're, they're all volunteers, civilians.

8 THE COURT: Mr. Spillane, don't, don't go there.

9 MR. SPILLANE: They didn't know ---

10 THE COURT: Don't go there.

11 MR. SPILLANE: They took advice from the state
12 election commission.

13 THE COURT: Mr. Spillane.

14 MR. SPILLANE: Ordered the ---

15 THE COURT: Don't go there.

16 MR. SPILLANE: Secondly, Your Honor, had they refused
17 these petitions by Mr. Gantt and Mr. White, we'd have been
18 right into court any day.

19 THE COURT: And ---

20 MR. SPILLANE: So, the justiciable thing to do was for
21 my commission to go ahead and have an open hearing, a
22 three-hour open hearing and incur those expenses, and they
23 did that out of being good citizens.

24 THE COURT: And was that issue raised at any point in
25 time during that hearing?

1 MR. SPILLANE: That issue was not raised during that
2 hearing because, you know, my, my clients, being the
3 arbiter, did not raise that issue, nor did any of the
4 litigants, petitioners, and respondents. Thank you, Your
5 Honor.

6 THE COURT: Well, the failure to intervene can
7 sometimes have consequences. I think a lot of folks are
8 wanting to step on various sides of this controversy all at
9 one time. Ms. Murphy did not intervene in the matter
10 before y'all; Ms. Murphy has not intervened here. So,
11 that's the status of the record at the present time.
12 Below, this issue of standing and justiciability was not
13 raised. So, that's why I'm not saying I'm not going to
14 look at it very carefully, and it may be well be that the
15 statutes you cite control, but we're going to hear this
16 matter on the merits right now.

17 MR. SPILLANE: I'd like a balance for my board also
18 because they cannot be hearing these hearings every day by
19 everybody.

20 THE COURT: Well, right now Pandora's box has not been
21 opened. So, I think ---

22 MR. SPILLANE: Very good. Thank you, Your Honor.

23 THE COURT: --- you'd be -- just wait until we see
24 what we do in here first.

25 All right, Mr. Montgomery, I think without anything

1 further, the ball is in your court.

2 MR. MONTGOMERY: Your Honor, would you like to hear
3 any response to that motion that's been made?

4 THE COURT: Not at the present time. What I will do
5 is let's go with the substance of this thing. If we need
6 to return to the other matter, we'll do it.

7 MR. MONTGOMERY: Thank you, Your Honor. May it please
8 the court? I believe that we provided the court and the
9 parties with a pretty extensive brief in this matter, and I
10 don't believe the facts in this matter are at all in
11 dispute.

12 The simple issue that's before the court is, is Ms.
13 Murphy a qualified elector in this Springhill precinct, and
14 if she is a qualified elector in the Springhill precinct,
15 then she was properly allowed to file to run for School
16 District 5 board from Richland County. If she's not a
17 qualified elector of the Springhill precinct but, as we
18 believe the record and facts show, is actually a qualified
19 elector who should properly be in the Chapin precinct of
20 Lexington County, then she is not eligible to run, and
21 she's not a qualified elector in, in Richland County who's
22 eligible to serve in that seat.

23 Now, one of the things that we talk about, and I think
24 the process here is, is appropriate, and I think the
25 Supreme Court has actually made that clear in the cases

1 cited by Mr. Spillane, the *South Carolina Public Interest*
2 *Foundation vs. Judicial Merit Selection Commission*. In
3 that, in that case, an opinion by then Chief Justice Jean
4 Hoefer Toal, the court very specifically set out 7-5-230 as
5 a basis to challenge the qualification of a candidate for
6 office.

7 In that case, which the court actually decided in
8 favor of the defendant on other grounds, the court held:

9 Under the present facts, the Foundation and
10 Herring ---

11 And those were the two people challenging the Judicial
12 Merit Selection Commission's finding that a candidate was a
13 resident.

14 --- could properly challenge the residency of
15 Mullen as provided in the code.

16 And they specifically cite 7-5-230. And while I agree
17 there are other issues that arise, including how a
18 candidate is certified and the oath that a candidate has to
19 take to be certified, and any number of the statutory
20 bases, our view is that for purposes of comity and judicial
21 efficiency, that this is a little different than the
22 scenario that Mr. Spillane enumerates: to wit, the idea
23 that the purpose here is to challenge any elector.

24 This is a unique situation where the public has a
25 profound interest in determining that a qualified candidate

1 offers for election. \ And if a candidate isn't qualified
2 yet remains on the ballot and potentially is elected, then
3 a plethora of trouble arises, and that trouble can be
4 manifested in some of the proceedings that are of record in
5 this case.

6 The proceedings that have been before this court where
7 Ms. Murphy has previously been found by an order of this
8 court -- and I would note an unstayed order of this court
9 -- that she lives in Lexington County. And despite that
10 order which she had notice of, and despite the fact that
11 she has heard repeatedly testimony from Mr. Rainwater's
12 office at the state, the official maintainers of the
13 precinct maps, that she doesn't reside in the precinct --
14 and as the record reflects, Your Honor, the fact that even
15 in the records of Richland County, Richland County's own
16 records reflect that Ms. Murphy's residence in Senate
17 District 18, which interestingly is Senator Cromer's
18 district in, in Lexington County, and that she is located
19 also in a Lexington County house district, and that's
20 Richland County's own records.

21 The record here, and I'm just going to show this to
22 Your Honor, and I apologize. It's behind you, but I think
23 that we've taken some things from the record here that,
24 that will make this particularly easy to see and go
25 through, and the record -- the facts here are pretty

1 simple.

2 Ms. Murphy, without doubt, resides at 154 Old Laurel
3 Lane in Chapin; they acquired that property in 1997. At
4 the time the property was acquired, a subdivision plat was
5 filed, and the court will see in the record that there's
6 actually a letter from Richland County talking about the
7 fact that in setting up their GIS mapping system, that
8 Lexington County relied -- that Richland County relied on
9 the plat. On that plat is a line that is marked
10 approximate county line, and in adopting their GIS rather
11 than looking at any other official documents, Richland
12 County relied upon that plat.

13 Based upon that plat, Richland County took Ms.
14 Murphy's residence into Richland County, and she continued
15 to reside in Richland County as far as she knew. She paid
16 taxes. She registered to vote, and in 2004 she ran for
17 office for the school board and was not elected. In 2010,
18 she ran for office again and was elected.

19 In 2012, following a routine state budget proviso,
20 what was then the Office of Research and Statistics in the
21 Budget and Control Board, discovered, among other things,
22 among other -- several other residents that Ms. Murphy's
23 home was actually located in Lexington County in a
24 Lexington County precinct. They brought that to the
25 attention of a number of people, and ultimately Mr. Gantt,

1 who is my client who at that time was chair of the board of
2 the school district, learned this, consulted with district
3 counsel about what to do. And obviously as anyone would
4 know, having someone who is not a qualified, properly
5 elected member presents problems. So, after consulting
6 counsel, they asked for an official opinion, which they
7 received from Mr. Rainwater's predecessor, Mr. Bowers. And
8 that opinion found that, based on three different tests,
9 that Ms. Murphy's residence was located in Lexington
10 County.

11 A hearing ensued, and a number of hearings ensued, in
12 fact, Your Honor, and ultimately the school board had a
13 hearing and pursuant to applicable law removed Ms. Murphy
14 from that seat as she was not a resident of Richland
15 County, which is where she was elected.

16 Interestingly enough, Ms. Murphy didn't seek a stay of
17 that decision. She left the board at that time. She
18 appealed that decision, and Judge Benjamin heard that
19 appeal and issued an order, and her order unequivocally
20 says that Ms. Murphy resides in Lexington County and that
21 her residence in Lexington County was proven and
22 demonstrated by clear and convincing evidence.
23 Nonetheless, Ms. Murphy appealed that order. Did not
24 petition or seek a stay of that order.

25 So, an unstayed order is, in fact, the law of the case

1 and our position is, and I think it's correct, that because
2 that order is unstayed, that Ms. Murphy is collaterally
3 estopped from challenging it at this point. There is no
4 automatic stay on an appeal from an administrative agency.

5 So, Ms. Murphy has continued to reside in the same
6 place, and on August 16th of this year she filed to run --
7 excuse me, on August 15th she filed to run for school board
8 for Richland County. Mr. Gantt and Mr. White, being
9 concerned, knowing the history of this, stepped forward as,
10 as private citizens and as private citizens filed petitions
11 ~~challenging her status pursuant to 230 and pursuant to 230~~
12 largely based, as I said, upon the court's decision in the
13 public interest found in the *Foundation vs. Judicial Merit*
14 *Selection Commission* case which strongly suggested --
15 provided that that was the appropriate way to challenge the
16 qualification of a candidate.

17 A hearing was heard, and we got to the record, and
18 really we have just two tests that the, that the board or
19 the commission had to decide. There was only one question
20 offered, and that is under 7-5-120 is Ms. Murphy a resident
21 of the county and in the polling precinct in which the
22 elector offers to vote.

23 Now, Ms. Murphy and her counsel have tried to do a
24 great number of things to obfuscate whether the county line
25 issue was resolved, but our position with the court is even

1 if you grant that, which we feel very strongly is, is not
2 an issue, but if you grant an issue that there is some
3 argument about the county line, I would suggest to the
4 court there's not. There's no map that sets the county
5 line differently except for the Richland County GIS map,
6 which even Richland County has to acknowledge is based upon
7 the plat and the approximate county line shown on the plat.
8 So, our question is, is she, in fact, a resident of the
9 county and in the polling precinct in which she offers to
10 vote.

11 And of course, as the court is aware, the official
12 precinct maps of the state are dictated by the legislature.
13 They're maintained by the state. The counties receive
14 those precinct maps and operate upon them based upon them
15 being provided by the state, and the statutory authority
16 sets the agency and the division of the former Budget and
17 Control Board that has the Office of Precinct Demographics
18 within, and that office defines the precincts. So, what we
19 have in this case is that Ms. Murphy is neither a resident
20 of the Springhill precinct, nor is she a resident of
21 Richland County.

22 If you look at the map on the screen, which is Exhibit
23 6 before the board, it is the official state precinct map
24 superimposed on GIS. The representative, the official
25 representative of the state came and presented that map.

1 And Your Honor, if the court would take judicial notice, I
2 actually have the official maps provided by the statute
3 here.

4 THE COURT: Any objection?

5 MR. MONTGOMERY: To present to the court.

6 MR. SPILLANE: No objection, Your Honor.

7 THE COURT: Without objection.

8 MR. MONTGOMERY: And, Your Honor, I'll go over them
9 later, but they ---

10 THE COURT: Just one second. Let's let the court

11 reporter keep up with what's being done. In these
12 proceedings, you've offered the official demographic map
13 from the state as Petition's Exhibit 1.

14 MR. MONTGOMERY: I have two, Your Honor, because one
15 is for the Lexington County voting precincts which is
16 identified in the statute P-63-14, and we can make that
17 Exhibit 1. The other is ---

18 THE COURT: So, Exhibit 1 is Lexington precinct?

19 MR. MONTGOMERY: Yes, ma'am.

20 THE COURT: And ---

21 MR. MONTGOMERY: The second is P-79-15, which is the
22 Richland County voting precincts.

23 THE COURT: All right.

24 MR. MONTGOMERY: These are the official maps and, Your
25 Honor, I have Mr. Rainwater and Mr. Roberts here from the

1 state who are prepared to authenticate them if that is a
2 question.

3 THE COURT: Very good. Just hold for a minute. Let
4 the court reporter keep up. Let her affix exhibit tags to
5 those.

6 (MAP OF LEXINGTON COUNTY VOTING PRECINCTS MARKED INTO
7 EVIDENCE AS PETITIONER'S EXHIBIT NUMBER 1.)

8 (MAP OF RICHLAND COUNTY VOTING PRECINCTS MARKED INTO
9 EVIDENCE AS PETITIONER'S EXHIBIT NUMBER 2.)

10 THE COURT: Mr. Montgomery, pay attention that she
11 gets the right one.

12 MR. MONTGOMERY: She has, Your Honor.

13 THE COURT: Very good, and -- all right, Mr. Spillane
14 does not offer any objections, so I assume we're okay with
15 not having them authenticated by Mr. Rainwater?

16 MR. SPILLANE: He's saying they are official maps?

17 THE COURT: Yeah. He's saying these are the official
18 maps from the state. The effect of that is a question of
19 law that I'm going to have to decide, right?

20 MR. SPILLANE: Thank you, Your Honor. No...

21 MR. MONTGOMERY: And, Your Honor, the official map,
22 when superimposed over the graphics which was offered at
23 the hearing below, shows that this is the Springhill
24 precinct on the right side of this red line. On the left
25 side of the red line is the Chapin precinct in Lexington

1 County. Ms. Murphy's residence is shown here, and as the
2 court can clearly see, it is located in the Chapin precinct
3 of Lexington County according to the official state maps.

4 You can also look at the other official maps that are
5 maintained which are the house district map, the senate
6 district map, and the official U.S. census map, which are
7 all part of the record. And in each of those cases, she's
8 placed in a Lexington County precinct. She's placed in
9 House District 85, which is a Lexington County house
10 district and does not have any Richland County

11 representation. It's not part of the Richland County
12 delegation. She's placed in Senate District 18, which
13 again is part of the Richland County -- excuse me, the
14 Lexington County delegation. That's Ronnie Cromer's
15 district. He'd be real surprised to think that he had
16 voters in Richland County that were supposed to be voting
17 for him. Your Honor, again the official census map places
18 her in that, and all that information is in the record
19 below.

20 You'll also note -- just to show here is the house
21 district, the official house district map. You'll see
22 District 71, which is a Richland County district, District
23 85, which is a Lexington County District, and again Ms.
24 Murphy's residence. Again, senate district, you see Senate
25 District 18 and her residence located therein, and again

1 that's a Lexington County district.

2 Your Honor, the interesting thing is if you even look
3 at Richland County's own records, which this is a copy of,
4 Richland County's own records show that Ms. Murphy is
5 located in Mr. Cromer's and Mr. Huggins's district.

6 THE COURT: Now, we're looking here at records of who?

7 MR. MONTGOMERY: This is Richland County's tax page
8 reflecting the information about the property at 154 Old
9 Laurel Lane, Your Honor, and it reflects that the senate
10 district is 18, Ronnie Cromer. The house district is Chip

11 Huggins. And as you see, there's a disclaimer on the
12 bottom that we'll talk about a little bit more which is
13 about their tax map system as well. I've got it a little
14 enlarged, but if you look at that political section and you
15 blow it up, what you see is it shows her county council
16 district is one Bill Malinowski, which is a Richland County
17 district, but yet it shows her senate district is 18, which
18 is Mr. Cromer. Her house district is 85, which is Mr.
19 Huggins.

20 This is in Richland County's own records, Your Honor,
21 and I would suggest to the court that it reflects that the
22 problem with the boundary is wholly within Richland County
23 and Richland County Board of Voter Registration Election
24 Commission. It is not within the state maps or the county
25 line maps because their own records give a conflicting

1 inference. And if you look at that, you would have to say
2 how can she be in these districts when they are not part of
3 Richland County, and yet their own mapping software
4 reflects that. Your Honor, just for ---

5 THE COURT: Let me ask you something just out of
6 curiosity. If she is in Richland County and the election
7 commission -- maybe this is better directed at Mr. Spillane
8 and his client, but she's in Richland County and she's in
9 presumably the house districts and the county council
10 districts and so forth, then do they maintain a -- what do
11 they do about allowing her to vote? If the records of this
12 county say that she's in Lexington Senate District 18 and
13 House District 85 but she's voting in this precinct that is
14 a Richland precinct, how does she get to vote for her house
15 members and her senator?

16 MR. MONTGOMERY: My understanding, Your Honor, is that
17 she has been placed by Richland County in her voting
18 precinct. She's been voting for district 71, House
19 District 71, which is Mr. Ballantyne, and Senate District
20 -- I believe it is 20, which is Mr. Courson.

21 THE COURT: So, even though the county records show
22 the boundaries as you have suggested it, she is allowed to
23 vote for these other candidates?

24 MR. MONTGOMERY: That is correct, Your Honor, because
25 those are the candidates that represent the Springhill

1 precinct.

2 THE COURT: All right. Well ---

3 MR. MONTGOMERY: And although they have treated her
4 and registered her ---

5 THE COURT: Mr. Spillane, you're going to get an
6 opportunity to talk about this, but you just know that that
7 is a question in my mind.

8 MR. SPILLANE: The court said maybe the question
9 should be directed to me.

10 THE COURT: Well, you're going to get a full
11 opportunity, full opportunity to discuss your point of
12 view.

13 MR. SPILLANE: Might not remember this.

14 THE COURT: Well, I'm sure you will.

15 MR. MONTGOMERY: Your Honor, this is just a page from
16 the legislature website, and it shows the Richland County
17 delegation. Again, it demonstrated neither that district
18 85 nor district 18, house and senate respectively, are in
19 the Richland County delegation because they're not in
20 Richland County.

21 Likewise, the record below contains the official maps
22 maintained by the state geodetic survey. And one of the
23 things that you heard from the testimony in the, in the
24 record below was that there is no official map since 1916
25 that places Ms. Murphy's residence within the

1 state-delineated boundaries of Richland County, the only
2 map we have. The only issue that we have here is that,
3 based upon the approximate line in the survey, there's been
4 this mistake put into Richland County GIS and that Richland
5 County, for whatever reason, even though the record
6 reflects that they were put on notice by the state in a
7 letter dated January 11, 2013, the Richland County board
8 was put on notice that, in fact, Ms. Murphy's residence was
9 located in Lexington County and that she needed to be
10 changed. Nothing was done. Richland County has pled

11 helplessness. That they need someone else, the state,
12 perhaps a court, to tell them that they have to fix this.

13 Again, the record includes Judge Benjamin order, and
14 Judge Benjamin's order very clearly says and it concludes:

15 Based on the foregoing findings of fact,
16 analysis, and conclusion of law, court finds by
17 clear and convincing evidence that: one,
18 Appellate Murphy is a resident of Lexington
19 County, not Richland County; and two, appellate
20 does not meet the requirements and lacks the
21 legal capacity to hold the office of board
22 trustee under South Carolina Act 32 of 2002,
23 Section 9. The court, therefore, affirms the
24 board's decision to remove appellate from the
25 office under South Carolina Code Annotated,

1 Section 59-16-60.

2 This, Your Honor, is the, is the disclaimer that is on
3 the Richland County GIS page.

4 THE COURT: What does GIS, for the record, stand for?

5 MR. MONTGOMERY: It stands for Geographic Information
6 System, and it is the ---

7 THE COURT: And it is maintained by what department of
8 Richland County?

9 MR. MONTGOMERY: It's maintained by the Richland
10 County GIS department.

11 THE COURT: What is that under?

12 MR. MONTGOMERY: It works under the county
13 administrator, Your Honor. It's a, it's a division of the
14 county that works ---

15 THE COURT: Is this the department that maintains the
16 tax mapping?

17 MR. MONTGOMERY: They maintain the tax mapping, yes,
18 Your Honor. And if you look at that disclaimer which is on
19 the bottom of the page that I showed you that you can't
20 read, it says that:

21 The data depicted here have been developed with
22 extensive cooperation from other county
23 departments, as well as other federal, state, and
24 local government agencies. Reasonable efforts
25 have been made to ensure the accuracy of this

1 map.

2 Most importantly:

3 However, the information presented should be used
4 for general reference only. Richland County
5 expressly disclaims responsibility for damages or
6 liability that may arise from the use of the
7 information presented herein.

8 So, what we have here, Your Honor, is while they
9 didn't make specific findings, it was clear from the
10 context of the hearing that the board made this decision
11 based upon the fact that under Richland County's maps as
12 they describe them, Ms. Murphy lived in Richland County.
13 And because they had allowed her to register to vote
14 previously and because she was paying taxes in Richland
15 County, based upon these maps and her choice, I would
16 suggest to the court -- seems to me that when she had a
17 court order in 2013 saying she lived in Lexington County,
18 she could have taken that to Lexington and said I'd like to
19 pay a little less tax. How about putting me here in
20 Lexington County where the court says I belong and, in
21 fact, Lexington County's maps say she belongs, the state's
22 map say she belongs, but she didn't do that. Rather, she,
23 she chose to insist that she lived in Richland -- Lexington
24 -- in Richland County apparently for her own political
25 purposes.

1 Your Honor, the, the interesting thing is, and this is
2 some testimony from the hearing that's in the record, but I
3 think it's interesting because it establishes clearly what
4 the facts are. And the facts are that in appearing and in
5 trying to defend her position, the only evidence that was
6 offered is exactly what we have reported to the court, that
7 being that Ms. Murphy had, had -- since she moved into the
8 house in 2000 paid taxes in Richland County, registered
9 vehicles, done everything that you do when you think you
10 live in a county. Once she knew, she didn't do anything.

11 Mr. Harmon was called. He came and he said very
12 simply ---

13 THE COURT: He says: My name is Ronnie Tyler. And
14 then it says Ronnie Harmon. What's the ---

15 MR. MONTGOMERY: I, I believe if you look at the top
16 paragraph starting at page 106 on line 7.

17 THE COURT: That's Chris Harmon.

18 MR. MONTGOMERY: Yes, ma'am. He said:

19 I really have nothing to add except that Ms.
20 Murphy has paid property tax in Richland County
21 for her home. A small portion of her property
22 has been taxed as ag use for years, and that is
23 on track to be the case for 2016.

24 Again, as the court is aware, counties often make
25 arrangements between themselves for parcels that stand on

1 the line. And the fact that a county taxes a property is
2 not dispositive of, of where its location is. The state
3 map is and the official county line is. Ms. Murphy ---

4 THE COURT: Let me just get you to, one more time, to
5 help me out with this. Chris Harmon, I understand you just
6 read the quote from his testimony. Below that is: Ronnie
7 Harmon, surveyor, testified that.

8 MR. MONTGOMERY: Yes, ma'am.

9 THE COURT: And then it says: My name is Ronnie Tyler.

10 MR. MONTGOMERY: Mr. Tyler was an expert witness that
11 Ms. Murphy used in one of these cases.

12 THE COURT: Is there also a Ronnie Harmon who was a
13 witness?

14 MR. MONTGOMERY: No, ma'am. There's a Chris Harmon
15 and a Ronnie Tyler.

16 THE COURT: Well, then you've got some mistake there.

17 MR. MONTGOMERY: I'm sorry. There's a typo in our
18 presentation.

19 THE COURT: Okay.

20 MR. MONTGOMERY: I apologize to the court.

21 THE COURT: Very good.

22 MR. MONTGOMERY: I have to take responsibility for
23 that; I think I did that typing.

24 THE COURT: All right.

25 MR. MONTGOMERY: And that's probably -- when the

1 lawyer's doing the typing, that's when we get in the danger
2 zone.

3 But anyway, Mr. Harmon testified essentially the same
4 thing. Mr. Harmon adopted the position that, that, that
5 Richland County has tried to adopt here, is that there's no
6 defined boundary line because there's a dispute about it.
7 Well, again, you know, we can have disputes in our own
8 mind, and I would suggest to the court that the only
9 dispute about this boundary line is in Richland County's
10 mind.

11 THE COURT: What is the procedure for adopting these
12 GIS maps? Are they formally adopted by anybody? They're
13 obviously used by the office and everybody else to get up
14 the tax rolls. But this can't be the only mistake, if it
15 is a mistake, in these things. How do they get adopted,
16 and how to they get corrected?

17 MR. MONTGOMERY: Well, Your Honor, what I'm informed,
18 and I'm just giving you what I am informed, generally when
19 -- pursuant to the budget proviso that essentially is
20 passed every year, that affords Mr. Rainwater's office the
21 opportunity or the obligation in certain circumstances at
22 the behest of the election commission to run reports as to
23 individuals who are perhaps not voting in the proper
24 precincts. What I am informed is that generally when the
25 counties are notified, they correct those situations. In

1 this case, that hasn't occurred.

2 THE COURT: The state statute has the responsibility
3 for these geodetic surveys in the hands of what used to be
4 the old statistics division of the Budget and Control Board
5 that's now ---

6 MR. MONTGOMERY: It was the Office of Research and
7 Statistics.

8 THE COURT: Right.

9 MR. MONTGOMERY: And now they have a ---

10 THE COURT: And that's the official state agency that
11 draws all these boundaries and sends all the information,
12 and then counties use those to draw up the GIS maps?

13 MR. MONTGOMERY: Yes, ma'am, and what counties also do
14 -- and again the record includes the Richland County
15 assessor's -- a letter that the Richland County assessor
16 wrote to Seth Rose, who's a Richland County councilman,
17 describing the assessor's position on that, and the
18 assessor's position is very simple. The assessor used that
19 plat -- and, as if the court will take, I think, judicial
20 notice. The techniques of surveying get better and better
21 all the time as instruments become better, et cetera, so
22 often plats change. And in this case what the Richland
23 County assessor says is that they relied upon the 1987
24 plat, which was a plat provided by a licensed surveyor.
25 While they seem to want to neglect the idea the estimated

1 line is not the line, they adopted that line. And their
2 position was that they wouldn't change the GIS maps unless
3 either they got something from Mr. Rainwater's office using
4 a statutory proceeding which, quote, clarifies the location
5 of the county line, or somebody provided him an updated
6 plat that they would record. So, Richland County has just
7 basically said unless we get another plat, we're not going
8 to change this regardless of what we know.

9 And so there was a, there was a statute passed in June
10 2014 that allows for the adjustments of county lines by the
11 geodetic survey, and one of the issues -- there have been a
12 couple of circumstances that I understand have occurred
13 that have been where counties like in this situation have
14 not been willing to correct their records, and so the
15 legislature actually gave the geodetic survey a means to
16 compel them to do that. And that has a due process
17 component to it that requires someone to receive notice,
18 have public hearings, and other things.

19 Our position here is that that process isn't necessary
20 because the line is not in dispute. The only thing that's
21 in dispute is where Richland County places it, not where
22 the state places it, nor where it is otherwise.

23 You'd also notice Mr. Selph testified during the
24 hearing. He's testified pages -- about two pages of the
25 record -- 110, 14, to 112, 1 where he was cross-examined,

1 and in that instance, interestingly enough Mr. Selph
2 indicated that the information that they got was quote:
3 From the official maps of Richland County. And obviously
4 the state law says that's not where they get their maps.
5 They get their maps from the state maps, from the official
6 precinct maps provided by the state. And so I would
7 suggest to you that that admission reflects what's wrong in
8 this case and why the appellants are correct. That the
9 official maps of Richland County as they are constituted --
10 while Richland County can use them for their internal
11 purposes, and Richland County may certainly use them for
12 the purpose of taxation or anything they, they wish to use
13 them, they are not binding on the state. They are not
14 binding from an election standpoint, and they are certainly
15 not binding as to the location of the precinct line.

16 So, Mr. Selph has admitted that the Richland County
17 GIS maps, in fact, are what they use, their tax maps, and
18 that those tax maps are what his board and commission is
19 relying upon to make these determinations. So, they're
20 relying on the wrongful source, and obviously sometimes
21 when you rely on the wrong source, you get the wrong
22 answer when you try to look at it, and that's what occurred
23 here.

24 Ms. Murphy testified on her behalf. If the court
25 reviews her testimony, there's nothing new or different in

1 here. It is that, you know, she believed that she lived in
2 Richland County, and she acted accordingly. Of course, she
3 did that until she was informed otherwise, but then she
4 continued to believe or choosed to believe that she was in
5 Richland County. That was -- she says:

6 I had -- guess I had all kind of records that
7 showed documentation of vehicle taxes that show
8 we're in Richland County, and no one has disputed
9 that until I obtained a seat on the board in
10 2010.

11 In fact, no one challenged that until the geodetic
12 survey and the Office of Precinct Demographics determined
13 that there was a mistake and that needed to be fixed.

14 Mr. Selph also just looking at 113, line 25, to 115,
15 line 4 in the record again indicates that the -- he's heard
16 the arguments but that he's not doing anything. I asked
17 him:

18 Do you have any factual basis to question the
19 authority of that office ---

20 Meaning the state.

21 --- established by Section 1-11-360 of the South
22 Carolina code to set these lines?

23 And his answer is:

24 I have no authority. This is as I've -- been
25 said, an ongoing dispute. I'm hoping we'll bring

1 it to some kind of conclusion. I can offer no
2 testimony as to, you know, the question that
3 you're asking. I have no testimony. I cannot
4 speak authoritatively on that.

5 Again, we talked about the polling precinct, and he
6 agrees that that's what's been established in the hearing,
7 but yet when he's asked:

8 And, in fact, that the South Carolina Office of
9 Precinct Demographics indicates as an official
10 state map that Ms. Murphy's polling precinct, her
11 proper polling place is, in fact, the Chapin
12 precinct and not the Springhill precinct, she's
13 not properly registered to vote in the Springhill
14 precinct, is she?

15 His response is:

16 Based upon the information that was stated here
17 today, that's the position taken, but I can offer
18 no definitive information to counter that or in
19 support of that.

20 So, that's the basis that the board and commission
21 make their decision. Basically, Your Honor, I think,
22 again, the facts aren't in dispute here. The, the issue is
23 that for political purposes or whatever purpose there is,
24 that Ms. Murphy has chosen in spite of a court order to the
25 contrary, in spite of repeated notice that she lives in, in

1 Richland -- in Lexington County, in spite of the fact that
2 -- in 2014 she testified, Your Honor, that she went to
3 Lexington County and, in fact, she and her family filed
4 applications to register to vote in Lexington County. She
5 indicated or testified that that was done on some
6 conditional or contingent basis, but she said in case this
7 worked out wrong, I wanted to be able to vote anyway. So,
8 she had a perfect vehicle and had the opportunity to
9 register and correct this, and she's, for whatever reason,
10 chosen not to.

11 ~~But the fact is there -- and there just isn't any~~
12 question of fact that she doesn't live in the Springhill
13 precinct. She's not properly an elector in the Springhill
14 precinct, and as she is not properly an elector in the
15 Springhill precinct, she's ineligible to be on the ballot.
16 She's ineligible to serve, and she's ineligible to run, and
17 the public has a profound interest in being sure that their
18 candidates are appropriate.

19 Interestingly enough, Your Honor, when she signed to
20 run, when she filed to run, the statute requires her to
21 file a certification, and the certification that she signed
22 under section 7-13-352 is under oath. And under oath she
23 was obligated to affirm in writing that:

24 He meets or will meet by the time of the election
25 or as otherwise required by law the

1 qualifications for the office sought.

2 And the board has an obligation to investigate that,
3 and they have an obligation to make a determination that a
4 candidate who does not or will not by the time of the
5 general election or as otherwise required by law meet the
6 qualifications for the office sought shall not have her
7 name placed on the ballot.

8 In this case, again, the evidence was there. Richland
9 County's own records create a question of fact that
10 compelled them to investigate and to correct their records,
11 ~~yet they didn't do it. When it was brought to their~~
12 attention by Mr. White, Mr. Gantt in their petitions, they
13 didn't do it. When they look at Judge Benjamin's order,
14 when they look at the special referee's report of Judge
15 Cooper, who also found that Ms. Murphy lived in Lexington
16 County, they didn't do it.

17 And the simple fact is that what we have here is a
18 situation where we have an individual who's choosing to
19 offer as a candidate and trying to ride as hard as they can
20 on a county's mistake for some purpose or advantage, and
21 it's wrong. It shouldn't be allowed. And these gentlemen
22 representing the public as individuals who come before and
23 taking the time and undertaking to try to fix or right this
24 wrong and looking out for the public interest of having
25 qualified candidates who were eligible to serve on the

1 ballot deserve to had -- have had their position considered
2 properly. They deserve to have had the Richland County
3 board make the proper decision. They did not make the
4 proper decision. The facts and the law clearly mandate and
5 describe that, and we are just asking the court to right
6 that wrong. You know, it's one of those questions, Judge,
7 if not when -- if not now, when? And if not who, you?
8 Thank you; Your Honor.

9 THE COURT: Mr. Montgomery, let me ask you to do this,
10 if you can.

11 MR. MONTGOMERY: Yes, ma'am.

12 THE COURT: Have you got handy there a copy of the
13 statute that creates the qualifications for elective office
14 for the office she seeks?

15 MR. MONTGOMERY: Your Honor, I have -- I do not have
16 it handy. That was -- it's an act that is referenced. I
17 believe I may have a text with me, but I do not have an
18 actual copy of the statute, but it requires -- and it's a
19 -- it was amended. It used to be that there were five
20 Lexington County and two Richland County electors on the
21 school board. In 2002 it was amended so that there are
22 four Lexington County and three Richland County, and the
23 statute requires that three, three members of that board
24 reside in Richland County and four members of that board
25 reside in Lexington County. I can give you the act number,

1 but I do not have -- the act numbers are actually reflected
2 in Judge Benjamin's opinion, which is quoted in our brief.

3 THE COURT: Have you got Judge Benjamin's opinion
4 handy?

5 MR. SPILLANE: Judge Benjamin's opinion is in the
6 record, Your Honor, attached to our position, and I'll give
7 you a record reference I can look at and give Your Honor.

8 (A PAUSE.)

9 MR. MONTGOMERY: Your Honor, that is -- it starts in
10 the record at page 11.

11 THE COURT: Is this Exhibit B?

12 MR. MONTGOMERY: Your Honor, it's Exhibit B to Mr.
13 White's petition. We're at page 11 in the record.

14 THE COURT: Okay. Now let's just look and see if it's
15 got...

16 (A PAUSE.)

17 MR. MONTGOMERY: It's at number 326, 2002, Section 9
18 at 59-19-60.

19 THE COURT: Now, Act 326.

20 MR. MONTGOMERY: Of 2002, Section 9 and Section
21 59-19-60. It's referred into the record on appeal at page
22 18, Your Honor, the third line from the bottom. I think
23 the court order there says ---

24 THE COURT: It references it; it gives the same
25 citation you give.

2 THE COURT: This is a piece of local legislation.

3 MR. MONTGOMERY: Yes, ma'am, although it's unique
4 local legislation that both the Richland and Lexington
5 County delegations have to ---

6 THE COURT: Yes. I mean, you're allowed to adopt them
7 because they're about school boards, and they are an
8 exception to the otherwise ---

9 MR. MONTGOMERY: Yes, ma'am.

10 THE COURT: --- prohibition against local legislation,
11 at least one of them, but this would be enacting joint
12 resolutions for 2002.

13 (A PAUSE.)

14 THE COURT: Because that is what is really at play
15 here, and it would have seemed to me that you at least

16 would have had the statute and that Mr. Selph and his
17 people would have had the statute in front of them. I'm
18 just curious to see how the statute words this. Does this
19 word it a qualified elector who is resident? Does it read
20 a person who is resident? I mean, what are the
21 qualifications for being elected to this school board? Do
22 you have to be both a qualified elector as well as resident
23 in because there's a difference. People can ---

24 MR. MONTGOMERY: Well, Your Honor, if ---

25 THE COURT: A lot of people don't register to vote

1

(A PAUSE.)

1 even though they live in a certain place.

2 MR. MONTGOMERY: I, I believe the constitution,
3 Article 6, Section 1 and Article 7, Section 1 both require
4 that you be a qualified elector to serve.

5 THE COURT: To serve on the Richland County School ---

6 MR. MONTGOMERY: No. To serve in any elected office
7 in South Carolina.

8 THE COURT: I get all that. I'm real familiar with
9 that one. It's a highly technical thing, but it bears on
10 what the question is before this court, which is what the
11 meaning of the qualifications are in Act 326 and whether

12 she meets those qualifications. This is not about her --
13 no one is trying to strike her from the Richland County
14 rolls so much as they are trying to strike her from the
15 ballot that Richland County is going to place before the
16 voters. That's what at play here.

17 It's a hypertechnical distinction, but it is a
18 distinction. It's based on what's before this court to
19 construe and what is -- and what was before Mr. Selph.
20 They seem to think they were all bound up in the question
21 of whether to strike her as an elector, but that's not what
22 was before them. What was before them was the ballot they
23 were about to place before the voters of Richland County
24 and whether or not her name could appear on that ballot.
25 That's what we got in front of us, is it not?

1 MR. MONTGOMERY: I think to a large extent, yes, Your
2 Honor.

3 THE COURT: I know Mr. Spillane may have a different
4 view of that, and you will have plenty of time to assert
5 it, Mr. Spillane.

6 MR. MONTGOMERY: And, Your Honor, I, I don't have
7 eidetic memory to tell you my recollection of that act, but
8 my recollection ---

9 THE COURT: We don't need to have a recollection.
10 What we need is a copy of that statute in this record, and

11 I will obtain it at some point in time when we take a
12 break, but that's what's important because that's what
13 they're being asked to do. There are other things that
14 come into play when you try to strike people from the
15 rolls. Sometimes they do it without the people ever
16 knowing it because they get data from all kind of people
17 about where residences are and, you know, they do all kinds
18 of things, but this is about the ballot that is going to be
19 issued by the election commission.

20 MR. MONTGOMERY: Thank you, Your Honor. I have
21 nothing further unless the court has further questions.

22 THE COURT: All right, sir.

23 Mr. Spillane, the floor is yours.

24 MR. SPILLANE: Your Honor, thank you. May I stay
25 here?

1 THE COURT: You certainly may.

2 MR. SPILLANE: All right.

3 THE COURT: Wherever you're comfortable is ---

4 MR. SPILLANE: Your question is so apropos. The
5 petitions by Mr. White and Mr. Gantt before the election
6 commission were to disqualify her as an elector. They did
7 not mention striking from ballot, but that's the clear
8 implication.

9 When Mr. Montgomery says it's a profound public
10 interest, that's a code word for profound interest by the
11 people bringing this petition. Two people whom he claims
12 to be these gentlemen who come here to right that wrong, I
13 believe, are on that board, and one of them might be a
14 nominee for that particular position Ms., Ms. Murphy is
15 applying for. So, your question gets to the absolute
16 political nature of the controversy which I've mentioned in
17 my, my court case on the South Carolina Public Interest
18 Authority. Beyond that, I will comment to say we are
19 standing on the record, and then I will comment on some of
20 Mr. Murphy's [sic] comments.

21 We're standing on the record. My commission was bums
22 rushed into a hearing, ten days' notice. They followed the
23 law. For better or worse, we held that hearing. We held
24 that hearing, and that hearing upheld the elector status of
25 Ms. Murphy. It was not a hearing about the election.

1 THE COURT: Well, it's splitting hairs. It's
2 splitting hairs. We know what the question is.

3 MR. SPILLANE: Okay. Very good.

4 THE COURT: Mr. Spillane.

5 MR. SPILLANE: Very good.

6 THE COURT: The only reason that they brought that was
7 to clarify who'd be on the ballot for this district. Now,
8 what your client did was to say two things. Number one ---

9 MR. SPILLANE: That, that -- she's not, she's not my
10 client.

11 THE COURT: No. I'm talking about your client, the,
12 the ---

13 MR. SPILLANE: Yes. Okay.

14 THE COURT: --- voter registration commission. I'm
15 not talking about her. I'm talking about what they did.
16 What they did was two things. They said that she was a
17 qualified elector because that's what the Richland County
18 maps say, and I don't know what they really did say about
19 the question of whether she remains on the ballot. What
20 did they say about that?

21 MR. SPILLANE: Number one, that that -- wasn't ---

22 THE COURT: Did they make an attempt to deal with
23 that?

24 MR. SPILLANE: That wasn't in front of them. Number
25 two, it was moot when they voted to deny the petition.

1 THE COURT: Why? Why was it moot?

2 MR. SPILLANE: Denying the petition would keep her on
3 the ballot. She's a qualified elector. That, that, that
4 was, that was not before them, Your Honor. It was strictly
5 the testimony about where she lives, Richland County or
6 Lexington County.

7 THE COURT: But if she -- but that inevitably leads to
8 the issue of whether she's a qualified elector, and if you
9 go back to the report of Judge Cooper when he was asked to
10 weigh in on this issue, although a lot of time was spent

11 talking about her status as a qualified elector, he
12 indicated the seriousness of it was that the actions of the
13 school district could be called into rather severe question
14 if you had a person serving on the school board who was not
15 qualified to serve because they were not a qualified
16 elector.

17 MR. SPILLANE: I don't want to challenge Judge
18 Cooper's reasoning, but any school board can ratify prior
19 actions, contracts, whatever, that were taken when there
20 was a question about the proper folks. So, I'm not going
21 to go into Cooper.

22 The whole notion, Your Honor, about the ballot is the
23 urgency issue created after, after the hearing, the urgency
24 issue. And my understanding is, number one, the absentee
25 ballots overseas for servicemen had gone out.

1 THE COURT: They have faced that situation ---

2 MR. SPILLANE: Okay.

3 THE COURT: --- several times before.

4 MR. SPILLANE: Let me talk about urgency, and I'm
5 going to stick with the record because my people are
6 standing on the record.

7 I think specifically in the Benjamin hearing, they
8 state that the election commission is not a party to this
9 hearing. This commission could have been brought in in
10 the Benjamin hearing, which was about the validity of

11 kicking her off the board. That wasn't done. After the
12 Benjamin order, they could have presented a challenge to
13 her residency to Mr. Selph and the commission long before
14 these ---

15 THE COURT: Well, why would they present it if she's
16 off the board until she files on August the 15th? They
17 wouldn't have anything to present to them about.

18 MR. SPILLANE: They could have presented a challenge
19 to her elector status, which is what they presented in
20 August.

21 THE COURT: Well, you say they can't do that. You say
22 that ---

23 MR. SPILLANE: No, they didn't.

24 THE COURT: You say there's no ---

25 MR. SPILLANE: They could have.

1 THE COURT: They, they ---

2 MR. SPILLANE: They could have and my board, being the
3 judicious group they are, knowing that it would eventually
4 be in this courtroom, would have conducted the hearing.

5 THE COURT: Well, now, wait a minute.

6 MR. SPILLANE: And so we would ---

7 THE COURT: Let me get, let me get straight what you
8 say. I thought your projection was that there's no
9 pre-election ability to challenge the qualification of a
10 voter. That the only way a qualification of a voter can be
11 challenged under the statute you cited is to challenge it
12 at the time of voting and then have a hearing thereafter.
13 Am I wrong? Did I ---

14 MR. SPILLANE: No, Your Honor. That -- that's, that's
15 not what I'm saying. I'm speaking to the urgency question,
16 that Mr. Montgomery has said urgency, profound urgency.
17 You even mentioned it before the case. The urgency
18 question existed when they first decided she must be in
19 Lexington County.

20 THE COURT: Well, the urgency position here exists in
21 this case only after she files. Just because she takes the
22 position that Judge Benjamin's order is wrong does not
23 present the election commission with any problem that
24 relates to her appearance on the ballot. The only time the
25 appearance on the ballot gets to be an issue is when she

1 decides she's going to run for office, right?

2 MR. SPILLANE: That's true. That's when it gets ripe,
3 but it was there before. All I'm doing in my first point
4 is speaking to the urgency issue, and I'll go on because we
5 disagree.

6 But she wasn't brought in back then. Could have,
7 could have been resolved. They could have brought
8 Lexington's commission into the Benjamin case, but no. The
9 profound public interest, speaking of the clearing of the
10 ballot, all of these questions about whether contracts
11 would be honored and all is, is, is a fake issue, and it's
12 not an issue that my board considered. It's speculative
13 with respect to the amount of millions of dollars that
14 would be involved.

15 Thirdly, there is no *res judicata* against the
16 elections commission with respect to Judge Benjamin's
17 order. I think it was 2014. There's no *res judicata*. Mr.
18 Montgomery mentioned Judge Benjamin's position -- order,
19 and it's in the record seven times. There's no *res*
20 *judicata* as to this board, which has to conduct the
21 hearing, given the situation.

22 THE COURT: Well, let me ask you something about that.
23 Certainly the parties are different. The Judge Benjamin
24 matter was not something that either the election
25 commission or members of the district that are petitioners

1 here were involved in. This was Ms. Murphy's petition.

2 MR. SPILLANE: This was Ms. Murphy's petition.

3 THE COURT: And it was a petition against the school
4 district and its board of trustees.

5 MR. SPILLANE: It was an on appeal, appeal.

6 THE COURT: An appeal of the decision that that board
7 of trustees ---

8 MR. SPILLANE: Right.

9 THE COURT: --- conducted under the statutes that
10 allowed them to conduct it about her status as a legitimate
11 member of the board of trustees, right?

12 MR. SPILLANE: Right. I, I guess.

13 THE COURT: Now, there was an order passed that
14 declared that because she is not a qualified elector of the
15 precinct in Lex -- in Richland, that she would have to be a
16 qualified elector in, in order to be a Richland trustee.
17 The judge found that the board's action was proper in
18 taking her off the board, right?

19 MR. SPILLANE: Yes, Your Honor, but ---

20 THE COURT: Well, all I'm asking ---

21 MR. SPILLANE: I want to state ---

22 THE COURT: All I'm asking ---

23 MR. SPILLANE: --- on the record -- yes.

24 THE COURT: --- is this. Is that decision not binding
25 on your client at all? Is that the position you're taking?

1 MR. SPILLANE: That decision -- my clients were not
2 party to that.

3 THE COURT: I'm not, I'm, I'm ---

4 MR. SPILLANE: Yes, *res judicata*.

5 THE COURT: I'm agreeing with you, but ---

6 MR. SPILLANE: It's not binding on my, on my client.

7 THE COURT: You say that because they weren't parties,
8 they are not bound, and if the South Carolina Supreme Court
9 ultimately decides this case and declares that Judge
10 Benjamin is right, are you telling me that your clients
11 will not be bound by that?

12 MR. SPILLANE: I don't think bound by that. They
13 might change their opinion, but I wouldn't say bound by
14 that.

15 THE COURT: Well, if they're going to change their
16 opinion ---

17 MR. SPILLANE: Well ---

18 THE COURT: --- based on what the state Supreme Court
19 says, why would they not equally change their opinion based
20 on what a Richland County judge says when it's not been
21 stayed?

22 MR. SPILLANE: It was evidence that they considered,
23 and Ms. Murphy's counsel explained the non-*res judicata*
24 effect of it. We were not a party to the action. That's
25 all I'm saying.

1 Let me go on. The key, the key issue here is where is
2 the county line? The counties don't have a dispute between
3 themselves. The county line has not been determined for,
4 for purposes of setting the boundary. The statute, with
5 respect to setting the county line, is laid out in Liz
6 McDonald's letter which Mr. Montgomery pointed to and it's
7 in evidence and it's in the, it's in the, it's in the
8 record.

9 THE COURT: Where are you in the record?

10 MR. SPILLANE: Liz McDonald. It was put in...

11 ~~MR. MONTGOMERY: Your Honor, if I may? That's at page~~
12 405 of the record.

13 THE COURT: How about take a look at that, Mr.
14 Spillane, and see if that's where you ---

15 MR. MONTGOMERY: 244.

16 THE COURT: 244?

17 MR. MONTGOMERY: Record, page 404, yes.

18 (A PAUSE.)

19 MR. SPILLANE: 404 is, is ---

20 THE COURT: Is that what you're referring to, Mr.
21 Spillane?

22 MR. SPILLANE: Yes. This is ---

23 THE COURT: Let me catch up with you, if you would.

24 MR. SPILLANE: Sure.

25 (A PAUSE.)

1 THE COURT: All right, this is the assessor's office,
2 right?

3 MR. SPILLANE: Yes. This is the Richland County
4 assessor's office. For some reason, they went to
5 Councilman Seth Rose. The assessor wrote a letter, and
6 basically this was put in evidence by Mr. Moore. But on
7 the second page, on the second page of the letter, she
8 outlines again the steps. If the counties disagree on a
9 line, then the Geodetic Survey does all this surveying.
10 They call it surveying, surveying. A lot of the precinct

11 things you have are map overlays. Survey. A certified
12 registered land surveyor needs to do the line, and the
13 steps are the counties get together. Geodetic people are
14 mediators. Every affected resident is notified, and then
15 there's a hearing if someone complains that it's not
16 correct, but there's a very, very long procedure involved.

17 The testimony you will see in the record, Your Honor,
18 elicited by Mr. Moore was that they hadn't done any of
19 those things. Maybe the first step or the second step, but
20 there are no surveyors of the, of the county line. There
21 is no dispute actually between Richland and Lexington
22 County, and they -- the experts testified that they're so
23 busy up in the North Carolina boundary line, they haven't
24 got around to it, so on and so forth. But it is in the
25 record, and I want to stick with the record, Your Honor,

1 and I ask you to take that into consideration.

2 Those maps are just superimposed, you know, with --
3 super -- they're, they're just -- some of them presented in
4 the case in chief was simply aerial photographs with
5 superimposed lines, and whose maps were they? They weren't
6 Richland County's; they weren't Lexington County's.
7 They're not approved by the legislature as per the statute
8 as Liz McDonald lays it out generally.

9 Fourthly, Richland County tax maps have a disclaimer
10 for citizen Joe who uses those to determine his boundaries
11 and build his house and doing that, and they're basically
12 telling the public this is our stuff. These are our maps.
13 Don't you use them for building your house and for figuring
14 out your boundaries and so on and so forth.

15 Mr. -- Ms. Murphy did say she filed for a conditional
16 registration in Lexington County. That's in the record, a
17 conditional registration. My understanding is she has not
18 voted. My understanding outside the record is that is on
19 hold, I guess, pending today's judgment. But it was a
20 conditional registration understood by Lexington County
21 authorities.

22 THE COURT: What do you regard as the significance,
23 Mr. Spillane, of the directives to the old Bureau of
24 Statistics, the Geodetic Survey folks, by state statute to
25 establish boundary lines for the precincts or house

1 districts, senate districts, and the county lines? As I
2 understand it, there are statutes that direct that that
3 office of what used to be the old Budget and Control Board
4 accomplish all that and come out with this a series of
5 maps. What, what is...

6 MR. SPILLANE: And those have to do with precinct
7 districts, not county line districts. One of the issues, a
8 big issue here is ---

9 THE COURT: I mean, come on.

10 MR. SPILLANE: --- there is a line.

11 THE COURT: The general public is not going to
12 understand that kind of weasel word at all, Mr. Spillane.
13 The precinct lines and the county lines -- I mean, they are
14 supposed to create the county lines, the precinct lines,
15 the house district lines, the senate district lines. Any,
16 any kind of geographic lines that have to do with voting
17 and precincts and so forth, they are supposed to establish
18 those, and the General Assembly relies on them when they
19 redistrict and all that kind of thing.

20 MR. SPILLANE: Yes.

21 THE COURT: What's the legal status of ---

22 MR. SPILLANE: And, and, and, Your Honor, they needed
23 finally to say when we enlarge a precinct or remove a
24 precinct or do this or that and who can gets voted in where
25 because that's constantly changing. So, there's a final

1 source for ---

2 THE COURT: Well, right now we know what it is.

3 MR. SPILLANE: We know what it is.

4 THE COURT: And some of these maps show us what it ---

5 MR. SPILLANE: But there's, there's no dispute with

6 the county line between Lexington and Richland.

7 Lexington's not trying to tax her house, so on, so forth.

8 I want to stick with the record.

9 THE COURT: Well, I get all that, but I'm going to try
10 to ask the questions that I think need to be asked to

11 ~~resolve this, and the hypertechnical distinction that the~~

12 Richland officials and the Lexington officials themselves

13 have not gotten into this dispute won't solve the issue.

14 The issue revolves around what her status is as a candidate
15 on the ballot, and that's going to have to be answered by

16 looking at the lines that the state agency charged with

17 drawing those lines create. And they are the agency, for

18 purposes of voting and creating ballots and so forth, that

19 is charged with the responsibility of creating county

20 lines, precinct lines, house district lines, senate lines,

21 school district lines when they have a multi-member

22 district or simple-member district thing. The county's

23 status for their tax map purposes is not cranked into that

24 state legislation at all.

25 MR. SPILLANE: I know, and that's the best evidence,

1 but the testimony in the record admits -- I believe you
2 can read it as admitting we haven't done this county line.
3 We have not done this county line. I heard that. I said
4 it ---

5 THE COURT: The testimony is the record is from -- is
6 it the state geodetic people?

7 MR. SPILLANE: From his witnesses and ---

8 THE COURT: You're saying the testimony ---

9 MR. SPILLANE: --- geodetic people and the state
10 people.

11 THE COURT: You're saying that the state geodetic
12 people have not established the county line?

13 MR. SPILLANE: They have not, they have not addressed
14 this problem, as Liz McDonald points out in the letter
15 bringing the two counties together.

16 THE COURT: She's talking about the statute, when the
17 counties decide they're going to dispute it under those
18 procedures. That's how ---

19 MR. SPILLANE: No, they have not ---

20 THE COURT: I get that the counties have not decided
21 to get into this, but what has happened is that there's a
22 good bit of dispute about this form or this ballot and her
23 status under the statutes that control that. And in that
24 dispute, as I understand it, the line-drawing people are
25 these state geodetic people. Am I wrong about that?

1 MR. SPILLANE: That's what they testified to, and I
2 believe they testified that they hadn't gotten around to
3 it. It's in the record. That's as far as I can go.

4 THE COURT: Okay. All right.

5 THE COURT: Under my commission, Judge, that's as far
6 as I can go.

7 THE COURT: I understand.

8 MR. SPILLANE: If you give me a second, Judge, the
9 damages claimed are speculative, of course, and the
10 Geodetic Survey does have -- the 2014 statute -- the power
11 to correct the lines, but I don't think anything's been
12 approved. Nobody's been brought together. Nobody's been
13 notified of a change. There have been no hearings as per
14 Code Section 2 -- 27-2-105. That's the code section you
15 were asking about earlier.

16 THE COURT: How do you deal with the contention that
17 from a state establishment of lines, geodetic survey point
18 of view, this property has always been in Lexington County?
19 The way we've gotten off track with this issue is that for
20 some reason or another, Richland County has got tax maps
21 that, because they rely only on plats, have created the
22 lines-they've created. But the contention is -- and I want
23 to know if it's true or false -- that the state has always
24 -- its boundary lines have always shown this property as in
25 Lexington County. Is that wrong or right?

1 MR. SPILLANE: Point one, Lexington County hasn't
2 provided a plat by a registered land surveyor showing the
3 property in Lexington.

4 THE COURT: Yeah. I ---

5 MR. SPILLANE: Point two ---

6 THE COURT: I'm not, I'm not asking what Lexington or
7 Richland has done.

8 MR. SPILLANE: Okay.

9 THE COURT: Apparently they go their own way and ---

10 MR. SPILLANE: Well, point two ---

11 ~~THE COURT: --- do their own thing.~~

12 MR. SPILLANE: --- Lexington -- the 2014 statute, it's
13 kind of addressed for these problems, but they haven't
14 gotten around to it.

15 THE COURT: That's, that's again not my question.

16 MR. SPILLANE: And it's not -- these maps are not
17 based upon registered land surveys.

18 THE COURT: Right. I understand all that, and this is
19 not the only county where that's true. You should see some
20 of these boundary lines in Williamsburg, Charleston
21 involving all these islands and everything else. But what
22 the state did when these lines became important for voting
23 purposes is they had a state research and statistics group
24 set up to set up all these maps that set up these lines.
25 And as I understand it, by statute those are the lines that

1 are required to be used. Mr. Montgomery makes the
2 assertion that the lines they are using have been there for
3 many, many years. Do you do know whether that's true or
4 not true?

5 MR. SPILLANE: No. He had some 1912 plats and 1918
6 plats. My client had a survey presented by, by the -- by
7 Ms. Murphy from a registered land surveyor showing it in
8 Richland County, and nobody's contested it until the
9 political thing erupts.

10 THE COURT: Sure, and I understand the dispute between
11 ~~the surveyors, Mr. Spillane. Let me see if I can make it~~
12 clear what I'm asking about. You got all these surveyors
13 out here, and they certainly communicate a lot with the tax
14 mapping people in all the counties, but then you got this
15 arm of state government that says, well, for purpose of
16 setting up these voting lines, that's their responsibility.
17 They have -- the old Bureau of Statistics for years
18 developed these maps, these geodetic survey maps that
19 showed you where the county lines were, and that's now the
20 responsibility of the Geodetic Survey people.

21 Where has this property been located on those lines in
22 the past? Same as the way it is now in terms of ---

23 MR. SPILLANE: I, I don't know. I don't know.

24 THE COURT: Okay.

25 MR. SPILLANE: I represented the commission, and the

1 commission wouldn't know. The geodetic maps were not
2 surveys. It's my understanding that geodetic hasn't gotten
3 around to that survey.

4 THE COURT: I understand that.

5 MR. SPILLANE: That's why Mr. Montgomery called them
6 maps.

7 THE COURT: Sure and, you know, what, what is your
8 client required to use? Surveys and plats or the material
9 provided by the state in the geodetic surveys?

10 MR. SPILLANE: The statute is clear on that and it was
11 ~~argued here, but the argument in the case was that they~~
12 have not established that line between Richland and
13 Lexington.

14 Secondly, their best evidence was a survey presented
15 to them and -- originally and their maps -- and that,
16 that's what was presented, and I can't answer it any better
17 than that. I would say that before the vote by the
18 commissioners, they did decide by motion not to express
19 their reasons and how they balloted the evidence.

20 THE COURT: You know, that's a sad thing because that
21 gives the court a real tough problem. If you use normal
22 appellate rules and the body that is the initial
23 decision-maker won't give their reasons, it presents a real
24 problem for appellate review. Of course, this thing is *de*
25 *novo* ---

1 MR. SPILLANE: Exactly.

2 THE COURT: Or can be *de novo*. So, I suppose I can
3 look at that and look at what you submit to me and try to
4 figure it out myself.

5 MR. SPILLANE: Yes.

6 THE COURT: It's much better if ---

7 MR. SPILLANE: Yes, Your Honor, and the commission in
8 their wisdom did not do that so that they would not
9 prejudice an appellate judge. So, they had the foresight
10 for that. They had the foresight to hear the petition, and
11 they had the foresight to hire a court reporter and create
12 a good record for you, and that's where we are. Thank you.

13 THE COURT: Now, there were a couple more things that
14 you very much wanted to weigh in on, and I want to be sure
15 -- what we're going to do when we finish this section,
16 we're going to go back and talk about the jurisdictional
17 issue. So, don't worry that you are not going to get a
18 full chance to explore those, Mr. Spillane, but another
19 question that I had was how do they conduct these elections
20 in terms of the boundaries for the senate district and the
21 house districts? Ms. Murphy claims the ability to vote in
22 the Richland precinct, right?

23 MR. SPILLANE: Yes.

24 THE COURT: And yet the records, the house district
25 records created by the state people.

1 MR. SPILLANE: State, yes.

2 THE COURT: They show her as in Senate District 18 and
3 House District 85.

4 MR. SPILLANE: Those, those are their records, their
5 maps.

6 THE COURT: Well, I mean, that's what you all use to
7 decide who votes where, isn't it? By statute you had to do
8 that, don't you?

9 MR. SPILLANE: I hadn't read that statute. Mr. Selph
10 is here with respect to your question if you want to hear
11 from him. I am -- I'm not going to put him on, but the
12 court could address him.

13 THE COURT: Well, let's operate for a moment at least
14 on the presumption that the state statutes which set up all
15 the business -- I mean, they actually adopt lines for house
16 districts and senate districts and reapportion them and so
17 forth and so on. Those lines were drawn with reference not
18 to tax maps but with reference to maps that are provided by
19 the state Bureau of Statistics people. Those maps are --
20 that they provide have as their subsets statistical
21 information from the census. Thank goodness it's automated
22 now. I was in the old days, one of the people that had to
23 do the drawing of these maps from nothing but the big
24 statistical books that gave you the geography. But that is
25 how these districts have always been drawn with reference

1 to the United States census and its statistical material
2 about where people live in these census subsets that are
3 used to create a house district or a senate district.

4 As I understand, the maps that have been adopted by
5 the House of Representatives and the Senate for these two
6 districts show Ms. Murphy's property as in Senate 18 and
7 House District 85. If that is so, what was used to create
8 the precinct she was supposed to vote in -- I mean, the
9 house district she's supposed to vote in? If she is -- if
10 the state maps show her as in these two Lexington house and
11 senate districts, what is used to determine where she
12 votes?

13 MR. SPILLANE: All I can say is she was a registered
14 voter in Richland years before ---

15 THE COURT: Well, of course we know that's not enough.
16 Some of these districts are split districts, split between
17 county lines and so forth, and that is why it is required
18 by law that the election commission use the state maps to
19 determine where -- what a voter votes for. Are you
20 familiar with that?

21 MR. SPILLANE: Somewhat, Your Honor. I just sat in on
22 that, on that ---

23 THE COURT: I would think Mr. Selph would be very
24 familiar with that because that's exactly what happens when
25 you have some of these challenged ballots and so forth.

1 MR. SPILLANE: He's, he's here, but he was -- he's in
2 the record also. I'll leave it at the court's discretion.

3 THE COURT: And let's see if there are any other
4 questions. All right, Mr. Spillane.

5 Mr. Montgomery, any reply on the -- what I call the
6 substantive issues of this case?

7 MR. MONTGOMERY: Your Honor, just, I'll try to be very
8 brief. First if all, I have to -- I think my good friend
9 and colleague may have misspoken with regard to what was
10 before the panel. I believe if the court would look at
11 page 5 of the record, paragraphs 22 through 24, Mr. White's
12 petition, which was identical to that of Mr. Gantt's
13 petition. 22 says:

14 Kim Murphy is not a resident of Richland County,
15 is therefore disqualified from registering to
16 vote in Richland County pursuant to South
17 Carolina Code Annotated, Section 7-5-120.

18 Paragraph 3 -- 23 says:

19 The county Board of Voter Registration Election
20 should issue its order consistent with the
21 determination of the Revenue and Fiscal Affairs
22 Office and prior court orders determining that
23 Kim Murphy, as a resident of Lexington County, is
24 not a qualified elector in Richland County and,
25 therefore, is not qualified to seek office

1 representing Richland County or vote in Richland
2 County.

3 And then paragraph 24 says:

4 The county Board of Voter Registration should
5 then take action to notify the county election
6 commission that Kim Murphy's name should be
7 removed from the ballot in the Richland County
8 election for the seat on the School Board of
9 Trustees for School District 5 of Richland and
10 Lexington Counties for election 2016.

11 So, clearly that was the petition before the board,
12 and that issue was certainly before the board.

13 With regard to the historical ---

14 THE COURT: How did the board rule on that?

15 MR. MONTGOMERY: The board, as I understand it, Your
16 Honor, and you can read the whole transcript -- the hearing
17 may be described as somewhat irregular, but if you hear the
18 -- read the whole transcript, the board took the position
19 that once they determined that she remained registered in
20 the Springhill precinct, that that's disposed of
21 everything.

22 And, Your Honor, with regard to the issue of the
23 historical county line and the fact that it hadn't been
24 changed, if the court would look at page 317 of the record,
25 there are Mr. Ballard, who is a surveyor with the South

1 Carolina Geodetic Survey, testified and Mr. Ballard, in
2 responding to my questions starting line 20:

3 And from 1912 to the present, can you locate the
4 footprint of the residence in which, in which Ms.
5 Murphy resides? Has the residence ever been
6 located within Richland County?

7 Answer starting at line 24:

8 Not based on the description in the code of laws
9 or the Historical Annexation Act.

10 THE COURT: Now stop right there. The description in
11 the code of laws, as you know, is a metes and bounds
12 description of the various political subdivisions and
13 divisions that are set forth, and it is a huge mass of
14 material in which the metes and bounds are used to
15 describe. It's not by tax map; it's not by people's
16 personal plats. It's a metes and bounds description of
17 various subdivisions. Is that what you're talking about?

18 MR. MONTGOMERY: That is what I'm referring to, and
19 that is how Mr. Ballard testified. He went on, Your Honor.
20 If you look, it says the county line remains in existence,
21 and then I ask him another question. He's, again, the
22 surveyor employed by the South Carolina Geodetic Survey,
23 and I ask him in line 9 on page 318 of the record:

24 And is there any question as a surveyor to a
25 reasonable degree of professional certainty where

1 Ms. Murphy's residence is located as we sit here
2 today?

3 And his answer:

4 Based on the code of laws, based on my surveying
5 background and fieldwork, we position her
6 residence to be in Lexington County.

7 So, the Geodetic Survey's testimony was that the line
8 hasn't moved; the line hasn't changed. There's not a
9 question of the definition of the line, and the line is --
10 places since the last annexation for Richland and Lexington
11 County in 1916, places Ms. Murphy's residence in Lexington
12 County.

13 And again my colleague referred to, quote, the best
14 evidence being and saying that the board replied as best
15 evidence on the 1997 plat that had an approximate county
16 line as opposed to the myriad number of maps that the state
17 provided during the hearing. If the court had been at the
18 hearing, not only were the exhibits placed in the record,
19 but Mr., Mr. Rainwater's office came and put maps -- every
20 historical map and all these maps were in the hall, in the
21 hearing room showing them. They testified to them. There
22 was no testimony but that each of these precinct maps was
23 the official state map, and in each instance her residence
24 was located in the, in the Lexington County precinct.

25 THE COURT: What is this plat of approximate county

1 line that was done in 1997? Who did that?

2 MR. MONTGOMERY: That was a survey that was done for
3 Ms. Murphy by a surveyor that she hired to get her, get her
4 property subdivided. She and Mr. Burriss -- her husband,
5 and -- Mr. Burriss, actually, Mr. -- her husband actually
6 is the owner of the property. Her husband -- Mr. Burriss,
7 bought a 68 tract and subdivided it, and that is the
8 subdivision plat that was filed with Lexington and Richland
9 County, and a review of that plat shows that it has an
10 approximate county line.

11 ~~And there was testimony in the record that reflected~~
12 that there was an obvious error in that plat because this
13 official description in the code references a point called
14 Rocky Ford and, and a -- in a bearing from Rocky Ford, and
15 the line that shows that the official county line on that
16 plat does intersect with Rocky Ford, which is shown on that
17 plat. So, I mean, the idea that the, that the plat that
18 Richland County had from a surveyor somehow is superior to
19 the records of the state and that's the best evidence I
20 think shows the fallacy of what was relied upon by the
21 board here. I mean, it's pretty evident that -- and, and,
22 you know, they chose to do it, but it's pretty evident what
23 the board did is said we're going to stick with Richland
24 County's tax maps.

25 And outside the record actually there's a petition or,

1 or an affidavit was filed for Mr. Roberts that reflects
2 that -- and it's, it's in the record of the case. It's not
3 in the record of the appeal, but it reflects that on August
4 29th, his office did another run. They identified over 700
5 people in Richland County that were in the wrong precinct
6 and that Mr. Roberts himself, who was in the courtroom, who
7 is still in the courtroom, went and met with the Richland
8 County elections staff. And Richland County elections
9 staff moved every person who was not a taxpayer out of the
10 county elections, but if they were on the tax rolls, they
11 kept them in even though the state's maps showed they
12 shouldn't be there. So, it's a policy that Richland
13 County's adopted, and it's a policy that is not appropriate
14 based on the law of the state.

15 It isn't where you pay taxes, and as the court will
16 acknowledge. You can -- you pay taxes wherever you own
17 property. You don't vote wherever you own property. You
18 have one residence within the state where you can vote.
19 And I think that's all I have on that substance, Your
20 Honor.

21 THE COURT: Very good. Now, Mr. Montgomery, I want
22 you to come back. Mr. Spillane has made some very
23 interesting arguments relative to justiciability of this
24 issue, standing of your clients to pursue this issue, and
25 the effect of the orders of Judge Benjamin, and of the

1 action of the school board previously in removing Ms.
2 Murphy from office. So, I'd like you to address those now.

3 MR. MONTGOMERY: Okay. Well, Your Honor, I think
4 first just from a standpoint of the effect of that order,
5 there was a big discussion with regard to *res judicata*.
6 Obviously there are a number of other affirmative ---

7 THE COURT: Well, there could be any ---

8 MR. MONTGOMERY: --- collateral estoppel, collateral
9 estoppel -- the issue here is when we talk about Ms. Murphy
10 on the ballot, not whether the board of elections was a
11 party or even whether my clients were a party to that prior
12 order, but the most important person that was a party to
13 that order was Ms. Murphy. And Ms. Murphy had counsel and
14 operated through that, and for whatever reason is bound by
15 that order because, number one, the initial decision from
16 the school board was not challenged and no stay was asked
17 for there.

18 And secondly, when Judge Benjamin issued her order in
19 2014, although a motion for reconsideration which was
20 ultimately denied took place, there was never a motion for
21 a stay. And so, you know, the, the argument that that's
22 not a final decision -- as the court knows, it's a final
23 decision unless it's overturned when there is no stay. It
24 is not, not -- it is not a pending decision until the court
25 affirms it, and there is a big distinction and big

1 difference there, and the position here is really clearly
2 that Ms. Murphy is bound by that order, whether they are or
3 not. And when they look at that order, they have an
4 obligation, I think, to determine that she is bound by the
5 order.

6 If she's not bound by -- I mean, did Judge Benjamin
7 just waste paper, waste time in court because, you know, if
8 I can say well, Judge, you know, you can order me to do
9 something -- you know, maybe she should be held in
10 contempt. But the simple fact is that order is binding.

11 ~~The matter was before the board and ----~~

12 THE COURT: So, your contention is the board has
13 before -- had before it an individual who violated the
14 court order saying that she could not offer as a candidate
15 in Richland County?

16 MR. MONTGOMERY: That's correct, Your Honor.

17 THE COURT: And the board chose to allow her to
18 continue to offer as a candidate, she is bound not to offer
19 as a candidate, correct?

20 MR. MONTGOMERY: They not only have that order, but
21 they had a myriad of other evidence which we've already
22 talked about.

23 THE COURT: And of course, you know, what you're
24 fussing with about is this. That if that's so, why didn't
25 you at some point in time join her as a party?

1 MR. MONTGOMERY: Why didn't I join Ms. Murphy as a
2 party?

3 THE COURT: Yeah.

4 MR. MONTGOMERY: Well, Your Honor, I think that -- you
5 mean to this action or to some other action?

6 THE COURT: This action.

7 MR. MONTGOMERY: Well, Your Honor, I've appealed
8 pursuant to the statute, referenced her, served her
9 counsel, and gave them an opportunity to intervene and
10 protect her interests. I don't believe it's my
11 responsibility and my clients' responsibility
12 to protect the other party's interest.

13 She's not a necessary party to this action. She has a
14 right to intervene or move to intervene if she chose to;
15 she had a right to do that. She did not. That was her
16 legal decision not to participate; it wasn't our legal
17 decision not to include her. We gave her every
18 opportunity, including, you know, serving her with our
19 notice of appeal and providing her all the correspondence,
20 providing her counsel copies of the notice of appeal,
21 everything.

22 THE COURT: Okay, I understand you say -- okay, Ms.
23 Murphy, you say, is bound by the order and, therefore, she
24 is not able to register or ---

25 MR. MONTGOMERY: Well ---

1 THE COURT: --- file for political office because ---

2 MR. MONTGOMERY: But, I mean, I think she ---

3 THE COURT: --- an order says she can't do that?

4 MR. MONTGOMERY: She probably did the right thing in
5 2014 when she went and filled out voter registration
6 applications in Lexington County but for some reason didn't
7 go through with it.

8 THE COURT: Well, here's the particular argument they
9 make. The previous Murphy litigation was between Ms.
10 Murphy, the petitioner or the plaintiff, and the school
11 ~~district, school board. Mr. Selph says he's not bound by~~
12 that because he wasn't a party to that proceeding.

13 MR. MONTGOMERY: And I, I haven't suggested that he is
14 bound by that other than to say I believe that's evidence
15 that should have been properly considered by the board and
16 that -- you know, our view in this case is very simple.
17 There -- the evidence is clear. That simply affirms the
18 other evidence, and it is evidence of the fact that no less
19 than two -- one retired circuit court judge sitting as a
20 special referee and one sitting circuit court judge -- have
21 reached the same conclusion from essentially what I would
22 call less evidence because more evidence has been developed
23 that she doesn't live -- because the issue of the precinct
24 map was never before the court before. And in my view, the
25 issue of the precinct maps, particularly when you look at

1 7-5-120, it's a double test. It's an and-test: you have to
2 live in the county and in the precinct.

3 THE COURT: All right. Well, I understand where
4 you're coming from there. So, then the final question is
5 you've got Gantt and White that bring this action against
6 the voter registration board saying we want you to strike
7 Ms. Murphy from the ballot. This ballot is an improper
8 ballot to be offered to the people of Richland County.

9 MR. MONTGOMERY: Correct.

10 THE COURT: They say you have no standing to do that,
11 your clients don't, and they at least -- I don't know
12 exactly what the justiciability argument is, but I know I'm
13 going to hear from my friend Bill Spillane exactly what it
14 is here momentarily. But what is your reaction to the
15 challenge to your current clients from having the ability
16 to raise the issue of the correctness of this ballot?

17 MR. MONTGOMERY: Well, Your Honor, I would suggest to
18 you, one, Mr. Gantt is who she's running against. So, if
19 he doesn't have standing to raise the question as to her
20 ability to run against him, not only as a member of the
21 public in general and a taxpayer but as the other
22 candidate, I don't know that anyone would have standing to
23 raise that issue.

24 THE COURT: Well, that has much to recommend it by way
25 of logic. What is the statute or other provision of law

1 that gives the candidate the right to challenge the
2 qualifications of the opposing candidate? I mean, it makes
3 perfect sense to me, but I'm trying to nail down what
4 you're relying on.

5 MR. MONTGOMERY: Well, Your Honor, I'd, I'd call your
6 attention back to Your Honor's own opinion.

7 THE COURT: That's the, that's the ---

8 MR. MONTGOMERY: In the *Judicial Merit Selection* case.

9 THE COURT: Merit selections.

10 MR. MONTGOMERY: Your Honor said -- and you gave a
11 foundation, which was a public and an individual named Mr.
12 Herring, who obviously was not running against, against a
13 judge, and, and the court said that this is the avenue that
14 they had to challenge her residence. In that case, there
15 was a political question of juris -- of justiciability, and
16 the political question was that the legislature sets
17 judicial requirements, the requirements for a judicial
18 candidate. And the court declined to hear the challenge
19 based on the fact that the Judicial Merit Selection
20 Commission found her qualified. But in that case, the
21 court said but there was a way you could have challenged
22 this and you didn't do it, and the way you could have
23 challenged it was under 7-5-230. You could have challenged
24 her residence status as an elector.

25 So, I would suggest to the court that -- you know, I

1 followed the court's road map and decided that that was the
2 way to proceed here because the court had said if you want
3 to challenge someone's ability to be elected, this is the
4 statute to do it. You challenge whether they are a
5 qualified elector in the area where they're supposed to be
6 running from.

7 THE COURT: And this is a challenge based on the
8 requirements of Act 326 of 2002, or whichever one it was,
9 that set the qualifications for running for the school
10 district, School District 5 from Richland County or
11 Lexington County, right?

12 MR. MONTGOMERY: Correct, Your Honor.

13 THE COURT: Your suit by your candidate, plaintiff,
14 petitioner, is bringing a suit based on the qualifications
15 for office the legislature established in that act?

16 MR. MONTGOMERY: Correct.

17 THE COURT: One moment.

18 (A PAUSE.)

19 THE COURT: And here's what the statute says:

20 Trustees in Richland-Lexington School District 5,
21 Section 9(a), notwithstanding another provision
22 of law, in Richland-Lexington School District 5,
23 three trustees must reside in Richland County and
24 four must reside in Lexington County, and the
25 results of the election for trustees must be

1 determined in accordance with nonpartisan
2 election.

3 Et cetera.

4 Beginning with election of 2002, the seats for
5 the trustees of Richland-Lexington School
6 District 5, the trustees must be numbered as: (1)
7 seats presently held by trustees residing in
8 Lexington whose terms are to expire in 2004 are
9 seat 1, 2, and 3; seats presently held by a
10 trustee residing in Lexington whose term expires
11 in 2002, seat 4; seat presently held by a trustee
12 residing in Richland County whose term expires in
13 2004, seat 5.

14 And so forth and so on. Then it says that:

15 The trustees must be filled in the election of
16 2002 and thereafter by a resident of Richland
17 County in the case of the seats.

18 So, this thing is not a statute that talks about
19 qualified elector. There, I agree, is another
20 constitutional provision that requires that candidates for
21 public office be registered -- be qualified electors, but
22 this -- and she's a qualified elector.

23 MR. MONTGOMERY: Somewhere.

24 THE COURT: So, she meets the -- I mean, let's assume
25 for the sake of this argument she's a qualified elector.

1 Hadn't been qualified as an elector yet, but this act says
2 she's got to reside in Lexington County -- I mean, in
3 Richland County for the seat she's running for. So, this
4 is a question of whether the ballot for Richland has
5 somebody on there who does not reside in Richland County.

6 MR. MONTGOMERY: That is correct, Your Honor.

7 THE COURT: Do you think the election commission
8 understood that's what the question was?

9 MR. MONTGOMERY: Well, Your Honor, all I can do is
10 crave the court's reference to the petition, and the
11 ~~petition clearly asserted that.~~

12 THE COURT: I mean, I'm not trying to be
13 hypertechnical, but I think we need to look at what the
14 statute is that the court's being asked to construe. And
15 with regards to residence, that's what it says.

16 MR. MONTGOMERY: Correct.

17 THE COURT: And, you know, residence is something we
18 got to decide, and we've got a lot of factual material
19 that's been put forward here. Some of the factual material
20 is the state Geodetic Survey people. They say she resides
21 in Lexington County. Their sub -- their political --
22 subdivision maps say that, too. The two counties involved
23 for tax purposes say she resides in Richland County. Isn't
24 that right?

25 MR. MONTGOMERY: I -- well, I don't know that

1 Lexington County's weighed in other than that they are they
2 taxing.

3 THE COURT: Well, they're not taxing.

4 MR. MONTGOMERY: They're not -- they're taxing parts
5 of her property. They're not taxing the whole, Your Honor.
6 Actually, however, if you review Lexington County's tax
7 maps, Lexington County's tax maps show her residence within
8 Lexington County.

9 THE COURT: Right, because they got by the geodetic
10 survey thing.

11 ~~MR. MONTGOMERY: Well, I don't -- I'm not sure. I'm~~
12 not going to purport how Lexington -- but I will tell you
13 that if Your Honor goes to Lexington County's geodetic
14 maps, Lexington County GIS, Lexington County's maps show
15 Ms. Murphy's residence as being within the boundary of
16 Lexington County.

17 THE COURT: But the GIS map for Richland County ---

18 MR. MONTGOMERY: Does not.

19 THE COURT: --- is based on her old subdivision
20 survey.

21 MR. MONTGOMERY: Correct.

22 THE COURT: And it shows it as being in Richland
23 County.

24 MR. MONTGOMERY: And that is the only place that
25 anyone's established in the record that she's shown as

1 being a resident of Richland County.

2 THE COURT: Anything else on this subject of standing
3 and justiciability?

4 MR. MONTGOMERY: Your Honor, I, I mean, I think there
5 are a number of issues here, and obviously the court knows
6 that the *mandamus* is out there. If you can argue, or you
7 want to argue that this appeal doesn't address the issue,
8 the *mandamus* petition clearly has standing to address the
9 issue. And from just looking at a pure standpoint of
10 judicial economy, it makes no sense to, to not deal with
11 this issue in the most expeditious case possible.

12 I call the attention of the court to another case you
13 and I both are probably unfortunately too familiar with.
14 That would be the case of *Davis vs. Richland County*
15 *Recreation Commission*. In that case the Supreme Court --
16 and I note Your Honor's dissent which I agreed with at the
17 time and still do -- but the court took an issue before it
18 where there had been an issue raised only on the question
19 of standing. Reversed the lower, the circuit court judge,
20 on the issue of standing, and went on and heard an issue,
21 the declaration on Declaratory Judgment Act under the
22 theory that it was a question that needed to be decided.
23 And I would suggest to the court that under that kind of
24 doctrine, regardless of what you want to argue with about
25 justiciability or standing, that this is appropriate to be

1 heard.

2 As the court has noted, it is an important question,
3 and it is an important question for a multitude of reasons,
4 and the most important one is we want to make sure that
5 voters have a proper ballot with qualified candidates on
6 it. And that's why these issues, as the noted at the very
7 beginning, tend to be compressed in time and intensive in
8 trying to prepare for.

9 There have been some other arguments made. I'll just
10 address them. There's been an argument made that this is
11 somehow a political question. I, I, you know, suggest to
12 the court that's simply not the case. In this case, the
13 legislature drew the lines. The legislature drew the
14 precinct. The legislature drew the districts in the
15 General Assembly, and in each case the court is not being
16 asked to redraw those districts or take the legislative
17 function. The court is only being asked to interpret where
18 on a map those lines are and to do it based upon the best
19 evidence.

20 There's also been an argument made that somehow -
21 there's, there's a, there's an estoppel and that there is
22 estoppel against the county by virtue of, of, of the fact
23 that Ms. Murphy's been allowed to pay taxes and she's been
24 allowed to previously vote, and that seemed to be another
25 thing that the county board focused on.

1 I call the court's attention again to actually another
2 court involving Richland County, which is *Quail Hill vs.*
3 *The County of Richland*, 387 SC 223 692 SE 2d 499. And,
4 Judge, that case held very clearly that it's very different
5 to have estoppel against the government, but like that case
6 here, Ms. Murphy had a way to know that she wasn't in
7 Lexington -- in Richland County, and she didn't avail
8 herself. She chose not to avail herself of it apparently.
9 And just like the Quail Hill folks, she can't estop the
10 state by choosing not to find the facts and know what the
11 facts are.

12 Additionally, there's been some argument that somehow
13 that this is -- and it goes back to the statute, statute
14 question. There's been argument that characterizes my
15 clients as, quote, non-statutory parties to say that
16 somehow under the statute -- and again we can talk about
17 the idea that the word applicant means to apply for
18 something. It doesn't necessarily mean that you're just
19 applying for registration to vote. And likewise again the,
20 the issue here with the direction from the court was to, to
21 address the candidate's qualification, not purely the
22 status of a voter who was disenfranchised by action of the
23 board.

24 And one thing I'd point out to the court is Article 1,
25 Section 9 of the constitution has almost identical language

1 to this statute in it. That article basically says:

2 Any person denied registration shall have the
3 right to appeal to the Court of Common Pleas and
4 any judge thereof, and thence to the Supreme
5 Court to determine his right to vote under
6 limitations imposed in or authorized by this
7 article, and on such appeal the hearing shall be
8 *de novo* and the General Assembly shall provide
9 for appeal.

10 So, my view on this, Your Honor, is from
11 ~~jurisdictional standpoint that the statutory authority~~
12 we're talking about -- 7-5-230, 240, 250 -- are essentially
13 the General Assembly trying to comply with this
14 constitutional mandate and develop a process to address
15 these kind of questions. And so I would suggest that
16 again, you know, statutory interpretation, you don't want
17 an absurd result.

18 In considering the court language and the way this
19 statute makes sense, I would probably agree if, if the only
20 issue before us was whether or not she was an elector who
21 could vote, that there would be a -- there would be some
22 challenge to providing standing to a third party to
23 continue to attack somebody's right to vote, but that's not
24 the issue we're dealing with. We're dealing with a
25 completely different issue, which is is she qualified to

1 serve, and if she's not qualified to serve, she shouldn't
2 be in the ballot. And with the court's -- this direction
3 that that's an appropriate procedure, and the fact that the
4 legislature -- and again, it's important, as the court has
5 noted. These statutes provide a special docket in the
6 Circuit Court so that it can be heard quickly, and they
7 mandate that the state Supreme Court schedule a special
8 term to hear an appeal if it's, it's not there. So, what
9 better set of statutes, what better jurisdiction do you
10 have to deal with this circumstance because it's designed
11 ~~so that decision is made before the election.~~

12 And so that's important in two circumstances. It's
13 important in one circumstance if someone is being denied
14 the right to vote. It's important in the second
15 circumstance if a candidate who shouldn't be on the ballot
16 is trying to stay on the ballot, and that is why I think
17 that controversy becomes justiciable under the statute.
18 And again there are some other statutes that you could
19 address, but each one of them, just like the *mandamus*, has
20 a timeframe that makes it very prohibitive to deal with it
21 before the election.

22 THE COURT: I'm very familiar with all of that and had
23 it come up in one of the most controversial decisions that
24 the state Supreme Court ever had, which was qualifications
25 for folks on the ballot -- I mean, for folks' ability to

1 vote in the last set of general elections and whether or
2 not the failure to comply to the letter of the ethics law
3 took you off the ballot. So, I'm very, very familiar with
4 all the urgency that those kinds of cases present.

5 MR. MONTGOMERY: And, and in that case the court
6 determined that the letter of the law was appropriate, and
7 if you didn't file, you were out.

8 THE COURT: Exactly, and of course that led to even
9 further litigation, but it all took place way after we sent
10 out absentee votes to members of the military and that kind
11 of thing, but we did what we had -- what the statute
12 required you to do. So, this concept of being rushed to
13 judgment or given the bums rush, really not in my hands or
14 your hands or Mr. Selph's. It's a product of what the
15 statute says we have to do.

16 MR. MONTGOMERY: Your Honor, just a couple other
17 things that have, have been raised that I, I think are
18 important.

19 I was, I was dealing with the idea that someone is not
20 a statutory party, and I think it's interesting in the case
21 that I saw cited in that regard, which was *St. Andrews*
22 *Public Service District vs. City Council of the City of*
23 *Charleston's* annexation case, and the question in that case
24 was if the annexation -- did a public service have an
25 ability to challenge annexation of its party. And the

1 actual question presented in court was:

2 Does a party who does not reside or own property
3 in the annexed area, and its proprietary or
4 statutory rights are not infringed upon by
5 annexation, have standing?

6 And I would suggest to the court that in this case
7 it's very distinguishable because obviously Mr. Gantt's
8 rights are clearly infringed upon. Your Honor has been a
9 candidate for office before. It's a lot different life if
10 you have candidate for office who's unchallenged versus one
11 ~~who's challenged the last day and has to run in office, and~~
12 of course the public's rights are challenged because the
13 public's rights again are to have qualified candidates on
14 the ballot.

15 THE COURT: Okay.

16 MR. MONTGOMERY: And I think finally just one other
17 thing. One of the cases that, that, that my good friend
18 Mr. Spillane cites in regard to his argument is the case of
19 *Blair vs. City of Manning*, and I would suggest to the court
20 that the *Blair* case again is distinguishable here. Number
21 one, this was a trial that took place after the municipal
22 election, and ironically the court, I think consistent with
23 the position I take in here, said yes, but you didn't file
24 a petition to disqualify this person as an elector before
25 the election took place, and that's why you don't have

1 standing. You know, they talk about 7-5-240 here, and then
2 they say:

3 Blair asserts the Circuit Court should have
4 conducted a *de novo* trial under Section 7-5-240.
5 We disagree. Section 7-5-240 is simply
6 inapplicable here. Blair was neither denied
7 registration of his name on the books, nor ---
8 --- and this is the important part of the case ---
9 --- nor did he challenge Gibson's qualifications
10 in writing to the Board of Registration as
11 required by Section 7-5-230. On the contrary,
12 Blair appealed the decision of the municipal
13 election commission.

14 So, I suggest to the court that again in 2001 -- this
15 was an opinion from Justice Waller, but I think it supports
16 the jurisdictional issue that, in fact, rather than being
17 against our position here, what it says is if you file that
18 challenge properly in writing as the statute requires, that
19 you do get an appeal under 240 and that the court has
20 jurisdiction to hear it. Thank you, Your Honor.

21 THE COURT: Thank you, Mr. Montgomery.

22 Mr. Spillane.

23 MR. SPILLANE: Yes, Your Honor. Thank you. He's
24 making my case with the *Blair* case because it's
25 post-election. Post-election you can't -- the court said

1 you're not under 230, 220, 240. You're under the challenge
2 of municipal elections ordinance. You still have a right
3 before the commission to, to, to appeal that issue.

4 The whole term -- the whole point he makes about the
5 immediacy and the speed and the special term and the, the
6 new docket for -- and a four-day notice of the hearing is
7 to protect someone who's been kicked out of the voting,
8 voting booth. Here Ms. Murphy was not kicked out of the
9 voting booth.

10 THE COURT: You don't think the immediacy provisions
11 ~~address the propriety of a ballot?~~

12 MR. SPILLANE: The propriety of the ballot was not
13 argued ---

14 THE COURT: Well, assume for me ---

15 MR. SPILLANE: --- Your Honor, in front of the
16 commission. Nor was a estoppel. I don't know where he's
17 coming up with estoppel and statutory ---

18 THE COURT: He read ---

19 MR. SPILLANE: --- status. I don't even know what
20 those terms are.

21 THE COURT: He read from his petition a paragraph that
22 talks about Ms. Murphy's qualifications to be on the
23 ballot, and he read from the relief requested, which was
24 to take her off the ballot. I don't understand what
25 you're ---

1 MR. SPILLANE: He, he never ---

2 THE COURT: --- arguing here.

3 MR. SPILLANE: --- made a post-hearing motion. He
4 never spoke up after the vote to look at issue 2, and issue
5 3 clearly -- clearly the commission would have not granted
6 that relief on the basis of item (a), prayer (a), which was
7 not -- was to disqualify her as an elector. The immediacy
8 is after the elections when 220, 230, 240 comes up under
9 the election rules because then both parties can appeal
10 under the election law.

11 ~~This is an appeal reserved exclusively --- this is my~~
12 motion for any person denied registration. Any person
13 denied registration may appeal. And then finally the ---

14 THE COURT: Do you think there is any procedure in law
15 for challenging the legality of a ballot before the
16 election? If an election commission recognizes ---

17 MR. SPILLANE: I, I, I ---

18 THE COURT: --- certain candidates as ---

19 MR. SPILLANE: --- don't know.

20 THE COURT: --- being on the ballot? Are you saying
21 there's no provision to challenge that?

22 MR. SPILLANE: I don't know, but this provision is not
23 applicable because it has to do with someone denied
24 registration. Had he gone in Circuit Court in some other
25 way perhaps and brought us in, the immediacy -- and he

1 talks about an absurd result. I'm reading the state
2 statute and three different places talks about the person
3 denied the right to vote has the appeal. The only
4 absurdity here is the length of time it has taken to get
5 all the parties in the same room, and they're still not in
6 the same room, from the school board meeting to being in
7 front of Judge Benjamin and so on and so forth, getting
8 everybody together. It's, it's a fake urgency, and he
9 hasn't even addressed the whole possibility of it being
10 moot, the whole issue being moot should she be -- remain on
11 ~~the ballot and, and lose the election.~~

12 But let me speak briefly. I'm not going to go any
13 further into my motion to dismiss. It's pretty clear with
14 my printed motion, but the special term is reserved for
15 the disqualified voter, not the person who challenged the
16 voter and lost. He's, he's arguing *mandamus* in his
17 *mandamus* petition, which shouldn't even be discussed here.
18 He pleads there's no other remedy, and yet he's here
19 seeking ---

20 THE COURT: Well, I ---

21 MR. SPILLANE: They're here seeking another remedy.

22 THE COURT: Wait. Wait a minute.

23 MR. SPILLANE: They're jumping the gate with both of
24 them.

25 THE COURT: Wait a minute, Mr. Spillane. What I had

1 understood we kind of came to is your main concern about
2 the *mandamus* was the other kind of ancillary financial
3 burdens that would be placed on your client if he had to be
4 forced to litigate a *mandamus* petition. And I said my
5 projection to you was let's just go to the heart of this
6 thing without hanging over ---

7 MR. SPILLANE: Yes.

8 THE COURT: --- his head a ---

9 MR. SPILLANE: And, and I ---

10 THE COURT: --- *mandamus* order because if, if we deal
11 with the merits of the matter and if the motion to dismiss
12 is granted, that ends it. You don't get to the merits. If
13 we deal with the merits, he'll, of course, be bound by it,
14 and he's not going to defy an order of the court.

15 MR. SPILLANE: Who's going to be bound by that?

16 THE COURT: Mr. Selph.

17 MR. SPILLANE: Mr. Selph?

18 THE COURT: Yes. Isn't that correct? Isn't that what
19 we came to?

20 MR. SPILLANE: We haven't discussed it.

21 THE COURT: Well, he's shaking his head yes.

22 MR. SPILLANE: Yes. Your Honor, yes, I, I had
23 different arguments earlier, but when I found out you were
24 going to hear the case -- I'm, I'm happy with that.

25 He didn't argue about removing her from the ballot in

1 the original case you have a record of. My commissioners
2 are not attorneys. They are political appointees approved
3 by the governor. You know that well.

4 The geodetic survey, those people -- it's called a
5 survey but is not based on any specific survey, and I think
6 you will find in the testimony by the geodetic people that
7 it was never finalized between Richland and Lexington
8 County. I heard about the, the, the stobs being underwater
9 with Lake Murphy and so on and so forth, but it wasn't
10 finalized, and I think your transcript will show that those
11 lines were not finalized for various reasons.

12 I think it's objectionable to bring up the fact that
13 they made other runs lately and they found a lot of other
14 houses that Richland County shouldn't be taxing.
15 Absolutely irrelevant and I know Your Honor realizes that.
16 Later meetings between the geodetic people and Richland
17 County are completely irrelevant, as is any contempt rule
18 -- ruling by any court with respect to Ms. Murphy. A
19 contempt hearing wasn't something we considered, but that's
20 out of bounds also.

21 He did -- Mr. Montgomery did argue *res judicata* to my
22 commission. Ms. Murphy's attorney argued the opposite, and
23 I believe ---

24 THE COURT: Well, I think he's retreated from that
25 position, right?

1 MR. SPILLANE: He's, he's retreated.

2 THE COURT: Yeah.

3 MR. SPILLANE: Ms. Murphy's attorney.

4 THE COURT: I don't hear him asserting to this court
5 that principles of *res judicata* or estoppel and so forth
6 are the way to solve this. He is arguing ---

7 MR. SPILLANE: He is who?

8 THE COURT: Mr. Montgomery.

9 MR. SPILLANE: No, I'm talking about Ms. Murphy's
10 attorney.

11 ~~THE COURT: Well, I mean, that doesn't have anything~~
12 ~~to do with here, does it?~~

13 MR. SPILLANE: Well, he did argue against *res cata* --
14 *res judicata* and said *res judicata* is irrelevant to this
15 case with respect to the Benjamin order. That's all.

16 THE COURT: Okay.

17 MR. SPILLANE: That's all I'm pointing out.

18 THE COURT: I follow where you are now.

19 MR. SPILLANE: Okay. The Gantt status keeps flipping
20 on me. He is an opponent in the upcoming election clearly.
21 So, it is political, but I don't like it being painted as
22 in the public interest and these people are here to do
23 right -- to, to do a right that was, that was wronged in
24 the past. I, I don't buy it. I, I would think it's
25 post-election maneuvers to appeal under, under the, under

1 the statute.

2 I don't think my commission understood in so much
3 difficulty all the legalese in the petitions. They wanted
4 to have a hearing. That's why they had a three-hour
5 hearing. I didn't argue estoppel or non-statutory parties.
6 It's not in the commission hearing. It's not in the
7 records, and I would say the *Blair* case speaks for itself,
8 and they basically said that to challenge, you need to
9 challenge under the state -- under the municipal election
10 code rather than under 230 -- 220, 230, 240, 250. But I
11 would urge Your Honor to look at those three statutes, that
12 they are very clear. The person who is disenfranchised or
13 denied registration is the one who has appeal rights of the
14 commission hearing.

15 Step one, someone in the commission, someone in the
16 office denies Billy's registration. Billy has a right to
17 appeal to the full commission, which has to have a hearing
18 ten days, so on and so forth. Then Billy can appeal to the
19 Circuit Court -- we're here now -- and then the Supreme
20 Court. It's very clear, and I'll, I'll leave it at that.

21 THE COURT: Let me ask you one more question. If I
22 view this controversy before me as one that begins with an
23 examination of the 2002 act that details the qualifications
24 for candidacy and service of a member of the Richland
25 County School District 5 School Board, and I look at that

1 language and it says residents. Doesn't talk in terms of
2 qualified elector. This statute says the trustees must
3 reside: Three trustees must reside in Richland County and
4 four must reside in Lexington County. That's what the
5 statute says, and if that's what I'm supposed to be looking
6 at to then decide whether Ms. Murphy is a proper candidate
7 based on where she resides, then really the approach that
8 your client took of relating all of that to qualified
9 elector just doesn't hit the bull's eye in terms of what,
10 in part, they were asked to do, which is decide whether she
11 ~~can go on this ballot. You see what I'm talking about?~~

12 I've got an act that was adopted by the General
13 Assembly, and it really controls this whole thing because
14 it sets up the qualifications for service on the -- as a
15 trustee of Richland-Lexington School District 5, and it
16 says the trustees must reside in Richland or Lexington
17 County. So, residence in a particular county is really the
18 decision to be made here, is it not?

19 MR. SPILLANE: I, I think so. I think you're right,
20 but the issue is where the boundary is, and both counties
21 agree she's in Richland.

22 THE COURT: Well, you say that.

23 MR. SPILLANE: Despite maps and overviews.

24 THE COURT: You say that. Both counties have varying
25 information. The one piece of information that would place

1 her residency in Richland County is the Richland GIS maps.
2 But all the other material by way of maps and so forth,
3 Lexington places her in Lexington County. Its GIS map puts
4 her in Lexington County. That's the mapping authority.
5 Then if you go further back and look at the state geodetic
6 surveys, they also place her residence in Lexington County,
7 as I understand.

8 MR. SPILLANE: I, I don't know, Your Honor. I don't
9 know.

10 THE COURT: Well, that physical information ---

11 ~~MR. SPILLANE: I, I would say my people looked at~~
12 other -- there was other testimony about driver's licenses,
13 the ---

14 THE COURT: Sure.

15 MR. SPILLANE: --- all the other -- the litmus tests.

16 THE COURT: Sure. My firm ---

17 MR. SPILLANE: He's saying there was a mistake years
18 ago.

19 THE COURT: My firm handled the *Ravenel* case. I guess
20 I have earned my stripes on what it means to be a resident,
21 and residency is a term of art, and it is going to take
22 looking at all this factual material that has been placed
23 before us. It would have been a little bit different if
24 the statute had been worded differently. It's the state
25 statute, the constitution, that make you a qualified

1 elector. But this statute that governs this controversy
2 talks about where you reside, and in the final analysis
3 that's what's going to have to be decided by somebody,
4 perhaps me.

5 MR. SPILLANE: Our best is the county line. The
6 petitioners are saying that there was a mistake made in a
7 survey.

8 THE COURT: The only place the county ---

9 MR. SPILLANE: The only survey we have ---

10 THE COURT: Yeah. Well, the only place the county
11 ~~line has been shown to be such that she lives in Richland~~
12 County is by reference to the Richland tax maps, the GIS
13 maps.

14 MR. SPILLANE: And that's ---

15 THE COURT: And those GIS maps were based on a 1999
16 subdivision plat that was made for Ms. Murphy.

17 MR. SPILLANE: I, I, I ---

18 THE COURT: All of that in perfect good faith for her.
19 She had a plat made on the basis -- she submitted that
20 plat. That plat showed she was in Richland. She submitted
21 it to the Richland tax mapping people, and they tax mapped
22 it based on that.

23 MR. SPILLANE: I think it might have been approved in
24 Lexington County also, Your Honor.

25 THE COURT: Well ---

1 MR. SPILLANE: I'm not sure ---

2 THE COURT: I'm going to scrutinize this carefully.

3 They are ---

4 MR. SPILLANE: I want to submit this, Your Honor, and
5 I can't read the small print, but I think it's stamped with
6 Lexington County approval. This is, this is a subdivision
7 divide. I've also seen somewhere in the record a specific
8 registered land survey for her specific house and specific
9 lot and if you can read that, fine. I think that's the,
10 the plat -- I'm sorry. I should have -- I think that's the
11 ~~plat he's is referencing, the subdivision survey.~~

12 THE COURT: Yes, 1997 plat recorded 285, plat 9.

13 MR. SPILLANE: And I believe that's been approved by
14 Lexington County also.

15 THE COURT: Okay. Well, I'll be glad to have it, glad
16 to take a look at it, but in the final analysis what's
17 going to have to happen is that we're going to have to look
18 at all these pieces of factual material that have been
19 submitted, these various maps, these references to a
20 person's driving license and other things, and decide
21 whether this individual who is offered for election in
22 Richland County meets the requirements of the act of 2002
23 with respect to residence.

24 MR. SPILLANE: We understand that, Your Honor, and I
25 don't believe we'll appeal. Pretty sure we won't appeal.

1 THE COURT: Well, I'm not binding you in that regard
2 at all. That's going to be up to what you all want to do.
3 I, I simply am saying that for the purpose of having the
4 horror that sometimes awaits having to litigate a *mandamus*.
5 I don't want to put y'all through that any more than you
6 want to go through it. And I think Mr. Montgomery is very
7 content to have this thing litigated on the basis of what
8 we've got here without taking that extra step of dealing
9 with *mandamus*. That's all I'm saying. Am I right about
10 that?

11 MR. MONTGOMERY: I, I presume so. I'll just have to
12 talk to my client, but yeah, I think so.

13 THE COURT: I mean, it doesn't make any sense to have
14 them jump through all those hoops if we want to decide this
15 thing one way or another, and I know Mr. Spillane says this
16 doesn't have a whole lot of immediacy to it, but it's here
17 now. I'm going to try, as I have with everything else
18 that's been submitted to me, to make a quick decision about
19 the matter.

20 What I would like for y'all to do is this, and this is
21 an imposition, but it would help me out a lot. We're at
22 1:30 or 1:20, 1:25 and our court reporter has been awfully
23 patient. I don't want to let you go until I at least take
24 a preliminary look at some of these materials and then get
25 back to you to at least be sure that I've got this issue

1 framed as you think it should be framed. And it is framed
2 first on Mr. Spillane's excellent material related to
3 whether the parties are probably before the court and the
4 controversy is properly before the court. And then if you
5 get into the merits, it's focused on this statute that sets
6 forth qualifications for offering for and holding elective
7 office in Richland School District 5. I want to take a
8 little bit of a look for that.

9 Are you all able to go to lunch for an hour and ---

10 MR. SPILLANE: I have no life. Yes.

11 THE COURT: --- come back?

12 MR. SPILLANE: Certainly.

13 THE COURT: Okay. Well, then here's what I'd like to
14 do. I would like to recess court until -- let's recess
15 court until quarter of 3. 1:30 now. We'll give you a little
16 more than an hour to take a breath, get a sandwich, and
17 then we will reconvene, and it might be a short
18 reconvening, depending on what it looks like to me as my
19 clerk and I take a look at this material. Will that be
20 satisfactory?

21 MR. SPILLANE: I'm fine.

22 THE COURT: Good.

23 MR. MONTGOMERY: Thank you, Your Honor.

24 MR. SPILLANE: Thank you, Your Honor.

25 THE COURT: And even though you're not a party, Mr.

1 Moore, is that going to give you any heartburn?

2 MR. MOORE: No.

3 THE COURT: Very good.

4 (OFF THE RECORD.)

5 THE COURT: All right, court will be in order.

6 Gentlemen, let me tell you what I'm struggling with
7 and then what I want you all to do. I am struggling with
8 the statutes under which this matter has been brought, and
9 Mr. Spillane may have some very good points in terms of
10 whether or not 7-5-230 is the appropriate vehicle for
11 ~~making a challenge of this sort.~~

12 When you start with 7-5-230 with its discussion of the
13 county boards shall be the judges of the legal
14 qualifications of all applicants for registration, the
15 board is required -- is empowered to require proof of these
16 qualifications. Once a person is registered, challenges to
17 the qualifications, except for poll challenges, must be in
18 writing. The board within ten days after a challenge has
19 to have a hearing when the challenge is made regarding the
20 residence or domicile of an elector. The board must
21 consider provisions of 7-1-25, and then it says any person
22 denied registration or restoration shall have the right of
23 appeal.

24 So far the first couple of sections seem to anticipate
25 that anyone can bring one of these challenges. When you

1 get down to subsection (c), it discusses what happens to a
2 person who is denied registration, but the first part of it
3 does talk about the board being the judge of the
4 qualifications of someone who is registered and that
5 challenges, once a person is registered, must be made in
6 writing. It doesn't say who can make that challenge; it
7 just says the word challenges. So far Mr. Montgomery is in
8 okay shape.

9 But when you get down to subsection c, talking about
10 the rights of a person denied the right to register, what I
11 think, Mr. Spillane, what I hear you arguing is that that
12 sets the stage for the interpretation that the only people
13 who can appeal are people who are denied the right to
14 register. Is that basically what you're saying?

15 MR. SPILLANE: Yes, Your Honor, that's what my motion
16 says. And practically, for judicial economy, this
17 commission would be tied up forever ---

18 THE COURT: I understand that phase of the argument.
19 Right now I'm just trying to figure out ---

20 MR. SPILLANE: That is, that's my argument on that
21 issue.

22 THE COURT: I think that the statute goes a couple of
23 ways, but I think Mr. Spillane may well have a point there.

24 The more traditional way that I have seen these kinds
25 of disputes postured is for a declaratory judgment action

1 to be brought that asks the court to declare the meaning of
2 a statute that requires certain qualifications for a person
3 to hold an office. And that was the vehicle that was used
4 in all the disputes we ran into a couple of years ago when
5 the ethics act was under such big discussion. At least
6 that's my memory about it. I haven't done the complete
7 research by any stretch.

8 If the matter were postured in that way, you wouldn't
9 involve the election commission in an initial hearing. You
10 would ask the Circuit Court under the DJ provision,

11 ~~declaratory judgment provisions, to declare the meaning of~~
12 Act 326, which is really what we're talking about here.
13 That is the act that sets forth the qualifications for
14 someone to run for and hold the office of a trustee of
15 Richland County School District 5, and it uses the term
16 residence.

17 We know from the election statutes that residence and
18 domicile are the same things, and there is a list of things
19 that have been developed over the years as ways to prove
20 residence. The fact of the matter is that's the heart and
21 soul of Judge Benjamin's order about the matter that was
22 before her when she finally got into the -- although y'all
23 had postured this thing as a dispute about who is a
24 qualified elector. The heart of her order really dealt
25 with whether someone, whether Ms. Murphy was qualified

1 under the statute, Act 326, to serve on the school board in
2 the position that she was holding. And it goes down those
3 very traditional -- when that part of the order is reached.

4 I'm not saying that order binds what is done in this
5 case, but I'm just saying when it gets to the point of
6 construing that statute, it goes down the typical
7 information that you have about residence. And when it
8 gets to the physical locale, it talks about what's in the
9 state statutes about the boundaries of the county and makes
10 some findings, which I don't know whether I'd make those
11 ~~same findings or not, but it uses those statutes to make~~
12 the basic determination that the evidence preponderates in
13 the direction of saying that she lives in Lexington County.
14 That's where her residence is. She can't serve as a
15 trustee from Richland County.

16 That's not exactly how this is postured, and I'll tell
17 you another thing that kind of gives me some cause for
18 pause in this. If it were a declaratory judgment action,
19 of course you'd certainly involve the election commission.
20 I don't know how -- they probably just wouldn't take sides
21 and let someone else decide as they've tried to do this
22 time. But you would definitely involve Murphy and make her
23 one of the defendants in the action so that she can then
24 present the material that -- whatever she wants to present
25 on this issue of residence. That's what's got me troubled

1 about the posture in which is this thing is framed now.

2 I can do this thing one of two ways. I can either
3 dismiss it with leave to refile and add parties; or I can
4 just dismiss it period and leave it up to your best
5 judgment, plaintiffs, to how you're going to proceed; or I
6 can ask each of you for some orders, proposed orders that
7 you would have to me by tomorrow that make you -- take your
8 best shot at how you think I ought to rule on this thing.
9 I am a little concerned about the procedural posture in
10 which the case lies.

11 ~~MR. SPILLANE: I won't, I won't have the time or~~
12 facility to do an order for tomorrow, but you stated it
13 quite eloquently. I understand that you want to match up
14 the qualifications for the school board residency. Does
15 that residency mean the same as ---

16 THE COURT: Exactly. I mean, I think that's ---

17 MR. SPILLANE: --- as in the election statute.

18 THE COURT: --- on the merits. That's what's got to
19 be decided and, quite honestly, I would think all of you
20 would want that decided. This thing, you're going to have
21 -- I have no doubt. There's one thing of which I'm not
22 uncertain. Challenge, challenges can be made to who's on
23 the ballot before we have an election. That I'm quite sure
24 of, and we went through a spate of them in connection with
25 the elections a couple of years ago. So, I feel sure that

1 there is an appropriate way in which to bring these matters
2 to a Circuit Court and then directly to the Supreme Court
3 if that becomes necessary. But I am really struggling with
4 whether it is postured correctly here.

5 What I could do -- Mr. Spillane, I'm not going to let
6 you off the hook that easily. You can't just come up here
7 and say, well, we really don't want to be involved, and I
8 haven't got the capacity to. You're up here as an officer
9 of the court, and I know you're going to do what I ask you
10 to do in that regard.

11 But, Mr. Montgomery, I want to hear from you for a
12 minute because one way to do it is to have you take your
13 best shot at whether you think you can develop an order
14 that answers my questions.

15 MR. MONTGOMERY: And I'll be happy to do that, Your
16 Honor. I mean, I think one, one issue I would have
17 immediately is I'm not sure that (a), (b), and (c) are not
18 something that can stand independently because obviously,
19 for example, (b) is the legislature giving specific
20 instruction in the type of a specific type of challenge,
21 and that's a domicile challenge. And obviously a domicile
22 challenge is a little different than a residency challenge
23 in that that would be something that looks at that test as
24 opposed to where the county line is, and this case only
25 looks at the county line.

1 I also, of course, call the court's attention to at
2 least the two cases we've discussed where the instruction
3 from the court has been the proper way to challenge is, is
4 to make the challenge under 230. So, I'll be happy to
5 make, make that.

6 I mean, the other potential thing that I see
7 immediately is if Mr. Moore wants to move to intervene and
8 the court wants to grant his motion to intervene in the
9 *mandamus*, Court could maintain jurisdiction over that. And
10 we could hear it under that, which I think is a comparable

11 ~~--- where the relief sought is comparable to the Declaratory~~
12 Judgment Act, and that's an action that's already extent.

13 MR. SPILLANE: We, we've already agreed the *mandamus*
14 is off the table.

15 THE COURT: Well, I don't ---

16 MR. SPILLANE: That did not take long.

17 THE COURT: You know, the *mandamus* carries with it its
18 own set of timetables and that is, frankly, why I tried to
19 get that to kind of go to the back of the class because he
20 would be entitled to a little bit more time if we're
21 talking about a *mandamus*, and I don't know. Like most
22 judges, I'm hesitant to use the *mandamus* as a vehicle for
23 anything. It's the highest writ known in the law. It
24 really is not a very convenient vehicle since it's so
25 punitive to the public official involved. You focus on the

1 conduct, how they conducted their hearing, when that's
2 really not the issue. The issue is what does this statute
3 mean. And I wish there was some fairly convenient way to
4 be persuasive to you folks to see if we couldn't reframe
5 this thing to ---

6 MR. SPILLANE: I, I would rather it be dismissed and
7 they, they refile to expedited hearings and all of that so
8 that we can, as the commission, sit in on the hearing and,
9 and let the real parties get to your ---

10 THE COURT: Well.

11 ~~MR. SPILLANE: --- get to your order because we feel~~
12 the commission did the right thing, and I'm here to defend
13 that.

14 THE COURT: Well, I don't know if they did or not.
15 That gets ---

16 MR. SPILLANE: Well, we, we did ---

17 THE COURT: --- a little bit into the merits, and I
18 don't want -- that's what I'm saying. I don't want to go
19 there right now. And, frankly, I have a little bit more
20 study to do about the material that's been submitted. I
21 feel sure this is going to be virtually the same material
22 that will be submitted again, very good material and needs
23 some study. The confluence of maps, plats, government
24 documents, and so forth are all things that need to be
25 studied with the gravity that this matter demands, and I am

1 certainly up to and willing to do that.

2 But I don't want to set you up for failure with
3 something that is going to be dismissed on some kind of
4 technicality if it gets to an appellate review when that
5 doesn't really do anything but string out the time for
6 resolving this. And one way or another, I think there
7 probably is a proper vehicle for asking the question is she
8 properly on the ballot. So -- and, Mr. Spillane, I don't
9 want to hear we don't want any part of this. I need
10 something better than that.

11 ~~Mr. Moore, you're not a party to these proceedings, so~~
12 if you speak, it's only because you are being kind to the
13 Court, but what would you suggest about this?

14 MR. MOORE: Your Honor.

15 THE COURT: You know your client is going to get sued
16 at some point in time about her qualifications.

17 MR. MOORE: I do.

18 Mikey, do you have, do you have that two little pieces
19 of paper I prepared?

20 And I appreciate the court giving me the courtesy, and
21 I certainly apologize to the court about the ---

22 THE COURT: Listen here. I'm a gal that doesn't ever
23 look in the rearview mirror; I'm about looking forward.

24 So ---

25 MR. MOORE: We ---

1 THE COURT: --- let's see if we can figure out a way
2 to ---

3 MR. MOORE: We've practiced law for a long time.

4 THE COURT: Yes.

5 MR. MOORE: Let me just have -- if the court would
6 indulge me just two moments, I think that I can be of
7 tremendous assistance.

8 THE COURT: All right.

9 MR. MOORE: First of all, Your Honor is absolutely
10 correct. There is only one question in this case, only
11 ~~one, and that is does Kim Murphy reside in Richland County.~~
12 That's the only question we have.

13 Now, that question was answered in the affirmative by
14 the election commission. The election commission is the
15 party charged by statute to answer the question. However,
16 we have these two other orders to which the commission is
17 not bound which say otherwise. So, now I have the court
18 saying one thing and the commission saying another.

19 Now, of course Ms. Murphy did not participate in
20 either of the two court hearings, but that was her own
21 election through pretty bad advice, I think, via other
22 counsel. But the commission answered the question yes.

23 THE COURT: Let me, let me stop you there for a
24 moment. Here is what troubles me about it. They didn't
25 really do that. They concentrated on her status as a

1 qualified elector. Now, kind of by indirection ---

2 MR. MOORE: Sure.

3 THE COURT: --- they did answer it because they are
4 relying on factual material that preponderates in your
5 favor, namely the GIS maps, the various plats, and things
6 of that nature. But the question hasn't quite focused on
7 the meaning of Act 326.

8 MR. MOORE: I do have a resolution, I think, that will
9 bring -- as, as the court has been able to see throughout
10 these proceedings, I've been about to explode sitting here
11 listening, and being quiet is not my strongest forte. As
12 the court well knows, I have, have a propensity to talk
13 from time to time.

14 But you have a situation where -- and I think the
15 court is right that the appeal should be dismissed, but
16 there has to be a vehicle put in place to replace the
17 appeal to give everybody an opportunity to be heard. I
18 think the court is absolutely right, exactly -- what
19 should, should be happening and what I've been saying from
20 day one. This appeal should not take place. There has to
21 be an expeditious vehicle put in place to substitute for
22 this to bring everybody to the party.

23 But, but -- so saying that, here is what I would
24 recommend to my client that we do. First of all--- but I
25 do want to just put in these two cents. The counties both

1 agree that the county line places her home in Richland
2 County.

3 THE COURT: Well, let's not go there.

4 MR. MOORE: All right. Well, the ---

5 THE COURT: There are some things that ---

6 MR. MOORE: All right.

7 THE COURT: --- would suggest that, and there are
8 some things that would suggest differently, all right? So,
9 so ---

10 MR. MOORE: All right, let ---

11 ~~THE COURT: I, I don't think we ought to ---~~

12 MR. MOORE: Let me put ---

13 THE COURT: --- get into the merits of it. That's a
14 merits argument.

15 MR. MOORE: Let me propose my vehicle to the court.

16 THE COURT: Good.

17 MR. MOORE: I think this action should be dismissed.
18 I think that Mr. Montgomery, should he choose to do so and
19 I'm assuming he will, will be -- would be asked to file a
20 declaratory judgment action. I think the court in its
21 discretion by dismissing this appeal can order that there
22 be five days, three days from service to file the
23 appropriate responsive pleading, and that the matter be
24 scheduled for declaratory judgment at a time when the court
25 can hear it before the election. I have no problem with

1 that.

2 I also would suggest -- and again I -- if, if, if
3 they're willing to do that, we should be a party, the board
4 should be a party, they should be a party, and probably the
5 school district should be a party, but that's going to be
6 up to Mr. Montgomery.

7 THE COURT: Well, you sure named all the people that
8 potentially have got a very deep interest in this thing.
9 So, I agree with that, and I would certainly be willing to
10 ask the chief justice to continue my assignment on this
11 ~~matter and schedule for you a very expeditious scheduling~~
12 order for a hearing on this thing.

13 In practical terms, next week may be a little tough.
14 Tanya Gee's funeral is on Wednesday, so that's kind of
15 where it is. I am going to be in Richland Monday and
16 Tuesday conducting hearings on other matters. At the end
17 of the week, I'm someplace else and the week following that
18 I'm in Charleston. That doesn't mean -- I mean, I'm not
19 the queen of this. I don't have to be the one, but I
20 wouldn't think you'd want to let this linger.

21 MR. MOORE: Oh, what I would -- if, if we could ask
22 the chief justice maybe to take that Charleston week and
23 give us a -- this should -- this thing actually should take
24 about a day and a half, maybe two, to legitimately try.
25 And if we are able to make -- and I would stipulate to this

1 on behalf of my client, but I can't speak for these
2 gentlemen. I would be willing to make as an exhibit the
3 actual transcript from the hearing before the board so that
4 all that testimony is already in the record.

5 THE COURT: The factual material, the maps, the
6 testimony, and all that kind of stuff would be there.
7 Y'all wouldn't have to repeat that.

8 MR. MOORE: Sure. So, you, you have a vehicle that
9 then brings all the parties. The school, hopefully the
10 school district, Ms. Murphy, the board, we come back. We
11 ~~have a day, day and a half worth of a hearing nonjury.~~ We
12 certainly are willing for the court to retain jurisdiction
13 of the matter. I guess we'd probably have to get an order
14 from the chief justice, but the chief justice can do that.

15 THE COURT: I don't think that ---

16 MR. MOORE: And we rock and roll and we start over
17 again.

18 THE COURT: I don't think there'd be any problem
19 there. The one thing I can offer to the thing that would
20 take some -- the Charleston week I hate to interfere with
21 because they have got a slew of things for me to hear down
22 there, and people have already written briefs and this kind
23 of thing. But if I change my schedule on some matters on
24 -- isn't the 6th a Thursday and the 7th a Friday, October
25 6th and 7th?

1 MR. MONTGOMERY: That is correct, Your Honor.

2 THE COURT: All right. I might could hear it those
3 two days if you all can get your act together and get
4 pleadings properly done so that we can hear it then. What
5 do y'all look like then?

6 (A PAUSE.)

7 MR. MONTGOMERY: Well, Your Honor, we originally were
8 scheduled to hear this the 7th. So, I know I'm available
9 the 7th.

10 THE COURT: Exactly.

11 ~~MR. MONTGOMERY: The 7th or the 6th.~~

12 THE COURT: Exactly.

13 MR. SPILLANE: I have no license.

14 MR. MOORE: I have -- the 6th is certainly clear. I
15 have a case involving a \$2 million personal injury client
16 on the 7th, but I can probably get Ward to basically cover
17 that mediation for me.

18 THE COURT: Well, why don't we try to do -- why don't
19 we try to shoot for the 6th and the 7th? I will try to
20 adjust my calendar accordingly.

21 We will simply file a Form 4 in this action dismissing
22 it.

23 (A PAUSE.)

24 THE COURT: Amelia reminds me this is an appeal, so
25 we're going to have to have a formal order. How about you

1 guys, get together and agree on a schedule for reframing
2 this thing as a suit that involves all the people that
3 should be involved.

4 MR. MOORE: That's a good idea.

5 THE COURT: Y'all can sit right here in this courtroom
6 and do that if you want to.

7 All right, how about, Mr. Spillane, you prepare for me
8 or Mr. Montgomery, whichever one of y'all can do it the
9 quickest, prepare for me an order, a short order that
10 dismisses this matter without prejudice, and that will take
11 care of this particular action, and then y'all reframe it.

12 What I want to do is I don't want to dismiss it in a
13 way that makes the order of the commission stand. I think
14 what I'm saying, if we're going to start over again, I
15 don't want to start in the posture where what the
16 commission did before is the law of the case.

17 MR. MOORE: It's not a *res judicata*, and I would
18 assume neither would the prior orders ---

19 THE COURT: It's simply a procedural dismissal of this
20 case because the statutes under which it was brought before
21 the board and here do not admit of this kind of action
22 here.

23 MR. MONTGOMERY: Your Honor, I, I might have a
24 suggestion there.

25 THE COURT: All right.

1 MR. MONTGOMERY: I actually have two. I think I can
2 resolve the court's question with regard to the appeal by
3 simply moving to withdraw my appeal without prejudice and
4 without ---

5 THE COURT: Well, you need to withdraw your appeal and
6 your petition before the commission.

7 MR. MONTGOMERY: Right.

8 THE COURT: And then you'd been able to start from
9 scratch, and if -- I like that.

10 If he withdraws his original petition before the
11 commission, the election commission, and his appeal up
12 here, then the matter is over, and I will do a Form 4 on
13 that basis. So, why don't you posture it that way? Y'all
14 get me -- you get me a withdrawal of the action before the
15 commission and the appeal up here. Mr. Spillane is going
16 to consent to that on behalf of the election commission,
17 and that will end that action when I sign a Form 4 order.

18 MR. MONTGOMERY: I'll make that motion, Your Honor.

19 THE COURT: Okay. Granted.

20 MR. SPILLANE: Let, let me ask. So, that made our
21 order ineffective, but our order just upheld the status
22 quo. I can't speak for Ms. Murphy.

23 THE COURT: She's, at this moment, she's still a
24 registered voter and she's still on the ballot. We get
25 that, Mr. Spillane. We just don't have the effect, the

1 legal effect of the opinions that have been expressed.

2 Now, y'all have got a complete record in that matter,
3 and when Mr. Moore's client gets involved in this thing,
4 y'all are going to stipulate that that record comes into
5 evidence.

6 MR. MOORE: I do.

7 MR. SPILLANE: And, and we don't want the expense of
8 another hearing with my -- with the commission hearing.

9 THE COURT: Listen. Mr. Selph is going to have to
10 stand up to the plate for legal expenses on behalf of the
11 election commission ---

12 MR. SPILLANE: I'm not talking about this hearing but
13 the -- their hearing they had to put on ---

14 THE COURT: You're going to be a party whether you ---

15 MR. SPILLANE: I'm not ---

16 THE COURT: --- choose to participate ---

17 MR. SPILLANE: We're a party here but not back at ---

18 THE COURT: Yes, sir. You're going to be ---

19 MR. SPILLANE: --- at 2020 Hampton.

20 THE COURT: You're going to be ---

21 MR. SPILLANE: We're going to have to have another
22 petition.

23 THE COURT: You don't have to have another hearing.

24 MR. SPILLANE: Before the commission.

25 THE COURT: No.

1 MR. SPILLANE: No. It's not?

2 THE COURT: It's going to be ---

3 MR. SPILLANE: Thank you.

4 THE COURT: --- a declaratory judgment action and you
5 can be -- you can sit as the potted plant if you would
6 like.

7 MR. SPILLANE: As the what now?

8 THE COURT: The potted plant. That's that person in a
9 deposition that's not taking the deposition but just
10 sitting there as the potted plant.

11 ~~MR. MOORE: I've been the potted plant all day.~~

12 THE COURT: Many times. Yeah, Mr. Moore can tell you
13 how much fun that is.

14 MR. MONTGOMERY: And, Your Honor, may it please the
15 court? I just -- I think to clear this up and maybe make
16 things a little quicker, at this time I would move to be
17 allowed to amend action captioned number 2016-40-CP-5431,
18 which is the *mandamus* action, to amend that to convert it
19 to a declaratory judgment action, and to add Ms. Murphy as
20 a party and ask that, therefore, that it be relayed back.
21 That Mr., Mr. Moore agreed to have acceptance -- accept
22 service on her behalf so that the clock is running, and
23 that we then be able to move forward on that on the 7th.

24 THE COURT: Well, you would also have to agree on an
25 expedited hearing for the matter even then. I don't care

1 what vehicle you use. I don't think Jake cares about that.
2 You would retain that same CA number, and that does help
3 things out a little bit in terms of moving it on down the
4 block. So, you guys get together and work that out.
5 That's completely fine with me. I think that's a good way
6 to resolve it, and then tee it up for a hearing next week.

7 I will send an email to each -- to everybody here,
8 including you, Mr. Moore, telling you that I've got the 5th
9 and the 6th worked out -- I mean, 6th and the 7th worked
10 out, and that there will be court reporters and other
11 ~~people available to hear us on these matters.~~

12 MR. MOORE: And, Your Honor, I want -- I'll put on the
13 record here. I consent to Mike's amendment of his
14 complaint, and I will be more than happy -- if he will just
15 get me a copy, I will accept service.

16 THE COURT: Excellent. Well, that's good, and that
17 puts it -- I really appreciate the professionalism you all
18 have shown and the agreement to do it this way. This gives
19 everybody a completely fair shot at bringing these issues
20 before the court in a proper way.

21 Mr. Montgomery and Mr. Moore are going to write an
22 order that does all of this, true?

23 MR. MONTGOMERY: Yes, ma'am.

24 THE COURT: True, and going to get it to me tomorrow
25 if you possibly can, true?

1 MR. MONTGOMERY: I will get it to you tomorrow, Your
2 Honor.

3 THE COURT: Excellent.

4 MR. MOORE: Yes, ma'am. I consent.

5 THE COURT: Well, thank you very much. It's what real
6 professional lawyering is all about, and I am very grateful
7 to you, and I feel confident the citizens of this county
8 and of Lexington will also be grateful to you for trying to
9 get this thing in a position where it can be resolved. And
10 I don't know what the resolution is right now, but at least
11 ~~we'll get it on track.~~

12 MR. MOORE: Thank you.

13 THE COURT: Thank you very much.

14 MR. MONTGOMERY: Thank you, Your Honor.

15 THE COURT: Court will be in recess.

16 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 29TH DAY OF SEPTEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/S/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

JANUARY 12TH, 2017

State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2016-CP-40-5431

Robert Gantt and)
Edward K. White,)
Petitioners,)

V.)

Samuel J. Selph as Director,)
and Marjorie Johnson, Adell)
Adams, E. Peter Kennedy, Sylvia)
Holley, and Jane Emerson as the)
Members of the Richland County)
Voter Registration and Election)
Commission, and the Richland)
County Voter Registration and)
Election Commission,)

Transcript of Record

Respondents.)

In re: Petition to disqualify)
Kim Murphy as an Elector in)
Springhill Precinct, Richland)
County.)

October 6, 2016
Camden, South Carolina

B E F O R E:

The Honorable Jean H. Toal, Judge

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Circuit Court Reporter

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1 IDENTIFICATION.)

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3 DEFENDANT'S EXHIBIT NUMBER 14 FOR IDENTIFICATION.)

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9 (TAX MAP - 2000 MARKED AS DEFENDANT'S EXHIBIT NUMBER
10 30 FOR IDENTIFICATION.)

11 THE COURT: This is the matter of Gantt and White
12 against Selph as director of the Board of Voter
13 Registration and Elections of Richland County and the
14 individual defendant Kim Murphy. This matter is being
15 conducted today pursuant to agreements reached between the
16 court and this counsel when this matter was heard before on
17 October the...

18 MR. MONTGOMERY: September 29th, Your Honor.

19 THE COURT: September 29th. At that time, agreement
20 was made to recast this matter as a declaratory judgment
21 action and to add Ms. Kim Murphy as a defendant in this
22 action; that's been done. I have unsealed an original
23 transcript of an administrative hearing heard before the
24 Voter Registration and Election Commission on August the
25 30th, 2016, and by agreement of the parties, this document

1 will be an exhibit in this matter. So, why don't we for
2 ease make it Court's Exhibit 1, and I'm going to hand that
3 now to the court reporter.

4 (HEARING TRANSCRIPT MARKED INTO EVIDENCE AS COURT'S
5 EXHIBIT NUMBER 1.)

6 Now, the pleadings that I'm looking at, and check me
7 on this, counsel, I am looking at an amended complaint,
8 verified action for declaratory judgment filed on October
9 the 3rd. Then I am looking at a document which is styled
10 third-party summons and answer to amended complaint, and
11 third-party complaint against Lexington County and Richland
12 County. That's filed by Mr. Moore on behalf of Ms. Murphy.
13 I then have a notice of motion and motion to strike
14 portions of Kim Murphy's answer, and that is filed by Mr.
15 Montgomery on behalf of the plaintiff. I then have an
16 answer to an amended complaint filed October the 4th, 2016
17 on behalf of Samuel J. Selph and the election and voter
18 registration defendants. And I finally have plaintiffs'
19 notice of motion and motion for summary judgment which was
20 filed by Mr. Montgomery with exhibits, I think A through C
21 perhaps, on behalf of the plaintiffs.

22 I think one thing that would be helpful to deal with
23 right up front, and I guess it's raised by the motion to --
24 notice of motion and motion to strike portion of Ms. Kim
25 Murphy's answer, is this issue of the third-party complaint

1 against Lexington County and Richland County.

2 It would take a motion and approval by me to add the
3 counties as parties. The parties agreed when we were
4 together as to who would be the parties in this proceeding
5 and how the proceeding would be conducted, and we did not
6 agree to add Lexington and Richland County as third-party
7 defendants. And I have emailed the parties to let you know
8 in advance so we wouldn't spend a whole lot of time on
9 that, that I will not allow the two counties to be made
10 third-party defendants in this action. As I see this
11 action, it is well framed as a declaratory judgment. The
12 proper parties are before the court with respect to the big
13 issue, the central issue, which is the residency of Ms.
14 Murphy and, therefore, her qualification under the law to
15 offer as a candidate for the Richland seat on
16 Richland-Lexington School Board Number Five. I see that as
17 the question, and I think everybody sees that as the
18 question, and I do not see that it is necessary to make the
19 counties party to this thing.

20 I don't see this proceeding as a proceeding to change
21 or adjust any lines between the counties. I see this as a
22 hearing in which we will explore and I will decide where
23 Ms. Murphy resides by way of county. And in that regard,
24 there will be -- we had a good many exhibits and testimony
25 received in the administrative hearing which is no longer

1 the viable vehicle for us to litigate this matter. What
2 you all want to do with that thing otherwise, we're not
3 getting into it this time, but we've all agreed to receive
4 all the exhibits and testimony that was put forth in that
5 hearing. And some of that testimony involved various
6 experts on the subjects of mapping based on their
7 jurisdictional responsibilities the statutes. I am sure
8 there are other exhibits that are now going to be offered,
9 physical exhibits that are evidence one way or another
10 about this issue of the residence of Ms. Murphy as it
11 relates to the county in which she resides.

12 This case is unlike some cases where you have a
13 residence and everybody agrees what jurisdiction the
14 residence is in, but the question is whether the individual
15 actually resides at that house. We fortunately don't have
16 that problem here. We know where Ms. Murphy lives, and
17 she's been living there for a good long time. Our issue is
18 the issue in what county that residence is located, and so
19 I see that as the issue to be framed. I don't see the
20 outcome of this case as an outcome in which I will move any
21 lines or do any of that kind of thing. There's another
22 vehicle for that, and it is a vehicle in the statute we
23 talked about some in the first hearing. And if parties
24 elect in some other proceeding because they think it is
25 appropriate to move any county lines, why that's something

1 other parties will get into. My, my job is not to do that.
2 There are various materials, some statutory, some
3 testimonial, some by way of public officials, some by way
4 of plats, and all those materials bear on this issue of
5 what county Ms. Murphy resides in. That is, to me, the
6 dance floor we're going to be dancing on today.

7 Now before we get started with these motions, the
8 moving party on this vehicle, I'll say for lack of a better
9 word that I'm using to kind of tell you how I see this
10 hearing going, is Mr. Montgomery. So, beyond what I have
11 said, is there anything you would like to say in support of
12 your motion to strike those portions of the defendant
13 Murphy's answer and counterclaim that seek to join
14 Lexington and Richland County?

15 MR. MONTGOMERY: Your Honor, I believe that in our
16 motion, it was sort of a motion/memorandum combined, and I
17 believe we cited the appropriate law and facts to justify
18 granting that motion.

19 THE COURT: All right, sir.

20 Mr. Moore.

21 MR. MOORE: Your Honor, I'd -- I want to make sure
22 everyone understands. I was not trying to be cute, nor was
23 I trying to be up obstreperous by what I thought was
24 following the rules and filing a third-party action. I
25 thought I had made it clear with Mr. Montgomery at the

1 other hearing that I, I think that if we're going to be
2 declaring the issue of county lines, it would have been a
3 good idea to add the counties as a party. I did what I
4 could, and I'm happy -- I, I think the court is absolutely
5 correct. There's one question and one question only, and
6 that is the purpose of this action, does she live in
7 Lexington County or Richland County, and I, I am certainly
8 happy to have the counties not be parties. I thought it
9 was a good idea to add the parties because Mr. Montgomery
10 is making some significant allegations changing what the
11 parties -- the two counties have agreed to for years.

12 But with that, I don't take exception to having them
13 not in. I really was trying to do what I thought was
14 appropriate. If, if, if the rights are going to be
15 established, it would seem to me that ---

16 THE COURT: Well, let we just ---

17 MR. MOORE: --- it's okay.

18 THE COURT: What you're saying is okay. There are no
19 rights that are going to be established here today except
20 the right of Ms. Murphy to run for a seat in the Richland
21 County part of the Richland-Lexington Number Five.
22 Whatever else may come will be done in another forum, in my
23 view.

24 MR. MOORE: It would -- just from a, from a
25 intellectual gymnastics standpoint, it would seem to me

1 this. The lady's voter registration was accepted in
2 Richland County, okay?

3 THE COURT: Well, now, you don't need to get into all
4 that. I'm sure that's going to be part of the argument you
5 make on the merits of this case, Mr. Moore.

6 MR. MOORE: But one of the issues is going to be she
7 has a right to run for school board somewhere.

8 THE COURT: All I'm trying to do today is decide
9 whether she's got the right to run for Richland-Lexington
10 School District Number Five, a Richland County seat. What
11 other right she may have, you know, I'm -- and I'm not --
12 this is not a suit about her voter registration or anything
13 else. This is a suit about where she lives because the act
14 we're construing is an act that talks about what the
15 qualifications for office are, and the qualifications for
16 office that we're zeroing in today are her residence.

17 MR. MOORE: I agree with that a hundred percent. I
18 thank you so much. I'll sit down and listen.

19 THE COURT: Very good. Thank you so much, Mr. Moore.
20 Mr. Montgomery, you may proceed.

21 MR. MONTGOMERY: Your Honor, I ---

22 THE COURT: Well, without objection, the motion is
23 granted, and Lexington and Richland will not be parties in
24 the proceeding, and you may proceed.

25 MR. MONTGOMERY: Well, there were a couple other items

1 that we moved to strike.

2 THE COURT: All right. Well, draw them to my
3 attention.

4 MR. MONTGOMERY: Your Honor, if you would look, there
5 were some allegations with regard to essentially what were,
6 what were characterized in the amended complaint as
7 estoppel, and we move that those be stricken on the basis
8 that the, the -- there is no estoppel against the
9 government. The complaint does not plead the necessary
10 elements of estoppel, and that the simple fact is, is that
11 the counties' internal business, which is the basis for the
12 estoppel argument, does not relate to where the county line
13 is. The counties don't get to determine that.

14 THE COURT: Well, we will preserve that in the sense
15 that we know what your -- the court understands your
16 position on the matter. In the course of this proceeding,
17 we will probably get into some issues about estoppel based
18 on -- because we're going to get to the issue of he
19 contends what the tax people say is -- and what he thinks
20 the parties, the counties reflect is controlling, and that,
21 that's, that's what this issue you just raised is all
22 about. We'll get into that in the substance of the case,
23 but we will reserve ruling, so to speak, on your -- on that
24 part of your motion to strike, and let's proceed with the
25 case. And in the end, this is a nonjury matter. I'll deal

1 with that in connection with the order, whether I end up
2 ruling for you or against you.

3 MR. MONTGOMERY: And I presume you'll deal with the
4 summary judgment under the same theory, Your Honor?

5 THE COURT: Exactly. Summary judgement is well set
6 out, and you set out authorities in that regard, but we're
7 going to try the case on its substance. So, you may
8 proceed.

9 MR. MONTGOMERY: Your Honor, I guess we'll dispense
10 with openings. I think the court is well aware of both our
11 position and the position of Ms. Murphy. So, at this time
12 I would call Mr. Frank Rainwater.

13 THE COURT: Very good. Mr. Rainwater, and Mr.
14 Rainwater, where is our Bible, and who is going to swear
15 you?

16 FRANK A. RAINWATER, BEING DULY
17 SWORN, TESTIFIES AS FOLLOWS:

18 THE COURT: State your full name for the court
19 reporter. You don't have a seat there. Pull it up where
20 you are right there to the microphone, and pull the
21 microphone down to you. And then, Mr. Rainwater, if you
22 would for the court reporter state your full name, spelling
23 your last name.

24 WITNESS: Frank Allen, A-l-l-e-n, Rainwater,
25 R-a-i-n-w-a-t-e-r.

1 DIRECT EXAMINATION BY MR. MONTGOMERY:

2 Q. Mr. Rainwater, what is your educational background?

3 A. I graduated from Clemson University. Then I also
4 attended the University of South Carolina, where I received
5 my master's in economics, as well as my J.D.

6 Q. Okay. What is your current position?

7 A. I am the executive director of the Revenue and Fiscal
8 Affairs Office.

9 Q. What does the Revenue and Fiscal Affairs Office do?

10 A. We do a, we do a variety of services, statistical and
11 other analytical services relating to fiscal impacts on tax
12 legislation for the General Assembly. We work with the
13 General Assembly on the budget. We coordinate the state's
14 911 program, E Wireless, and then specially in this matter
15 we do the political redistricting, the census -- excuse me,
16 the redistricting maps for the General Assembly, as well as
17 our geodetic survey, which is responsible for a lot of
18 boundary surveys and other similar work.

19 Q. And I understand that you have staff that performs a
20 number of these services, but if you would, just from an
21 overview explain to the court first how your office works
22 with the legislature to set the political boundaries as far
23 as the House, Senate districts and the other districts that
24 you set.

25 A. Yes, I'll be glad to, to answer that as best I can,

1 and I will say Mr. Roberts on our staff is the expert on
2 that. Our office is charged with maintaining the official
3 precincts and working with the General Assembly on drawing
4 those districts. We also do that in coordination with the
5 census department to establish those census -- those lines
6 for the census districts and census block. Those form the
7 foundation on which to deal the -- set the political
8 precincts for which the -- any type of election district is
9 assigned.

10 Q. Okay, and when you set the precincts, would it be fair
11 to say that some precincts are located in -- that every
12 precinct is set by statute? Is that correct?

13 A. Yes. That -- precincts are defined by statute.
14 That's correct.

15 Q. And the legislature defines those by passing laws that
16 go into the code, correct?

17 A. Yes. Yes, they do.

18 Q. And are there any precincts that you're -- and, and
19 there are no precincts that split county boundaries, are
20 there?

21 A. I'll have -- I'm, I'm not aware. I don't, I don't
22 have enough information to answer that. I'd have to refer
23 to Mr. Roberts.

24 Q. Okay, but you would agree with me, I trust, that the
25 Springhill precinct in Richland County is not supposed to

1 cross a county line, is it?

2 A. I'm familiar with that, yes.

3 Q. And does the Chapin precinct in Lexington County cross
4 a county line?

5 A. No, it does not.

6 Q. Okay, and explain to the court what your familiarity
7 is with the area of the Richland County line and the
8 Lexington County line that's located -- it's located around
9 an area mentioned in the statute or a point mentioned in
10 the statute as Rocky Ford.

11 A. Yes, sir. As you indicated earlier, the county lines
12 are defined by state law. In that, it references certain
13 metes and bounds, and one of the boundary descriptions is a
14 place called Rocky Ford.

15 Rocky Ford is a place that our staff went back in the
16 late '90s to examine. It has been recently surveyed again
17 or visited by our staff during these hearings to make sure
18 we have the right location, and we've identified that as
19 part of the testimony you've seen and the evidence. The
20 certain maps, historical maps and various maps reference
21 Rocky Ford as that metes and bounds description in the
22 statute.

23 Q. I believe previously your office in the hearing last
24 week -- I believe they're back here -- furnished and
25 submitted into evidence two official precinct maps. Is

1 that correct?

2 A. Yes, sir.

3 Q. And if you would, tell the court what the official
4 precinct map is.

5 MR. MONTGOMERY: If I could approach and ask the court
6 reporter ---

7 MR. MOORE: May it please Your Honor?

8 THE COURT: Yes, sir.

9 MR. MOORE: Again I, I would object to any testimony
10 as to precinct maps, and if I might just be heard on this
11 objection, we might be able to cut to the chase. My
12 understanding is that the question we have before the court
13 is not what precinct she is in, but the question is is her
14 house located in Richland County or Lexington County. The
15 issue is not precinct lines.

16 THE COURT: Well, Mr. Moore, let me help you there.
17 We're going to receive all the evidence from whatever
18 source about this boundary matter.

19 MR. MOORE: Yes, ma'am.

20 THE COURT: And one of those pieces of evidence is the
21 evidence from the state geodetic survey people and the
22 people that do the census mapping. Those are two different
23 kinds of mappings. The mapping that uses census blocks and
24 census districts are one kind of mapping, and another kind
25 of mapping is mapping that begins with the metes and bounds

1 description of the boundaries of two counties contained in
2 the code of laws of South Carolina.

3 He's beginning to describe how these precinct maps
4 work. I'm going to, over your objection, be glad to note
5 the objection. I'm going to allow the testimony and the
6 exhibits into evidence.

7 MR. MOORE: Thank you.

8 MR. MONTGOMERY: Thank you. Your Honor, I believe
9 they were in from the prior, but I'm just going to ask...

10 THE COURT: And this is, just so our record is
11 straight, what exhibit is this?

12 MR. MONTGOMERY: This is the one that was -- the ones
13 that were entered previously as Petitioner's 1 and
14 Petitioner's 2, Your Honor.

15 THE COURT: Petitioner's 1 and 2, maps.

16 MR. MONTGOMERY: Petitioner's 1, for the record, is
17 the Lexington County voting precincts map, which is ---

18 THE COURT: Lexington precincts.

19 MR. MONTGOMERY: --- identified by statute as map
20 number P-63-14.

21 THE COURT: All right, and number 2?

22 MR. MONTGOMERY: Is the Richland County voter
23 precincts map, which is identified for the record as
24 P-79-15.

25 THE COURT: P-79-15, and just for the record, those

1 two petitioner's exhibits are exhibits to the
2 administrative hearing held before the Richland Voter
3 Registration and Election Committee on August 30, 2016.

4 MR. MONTGOMERY: Your Honor, I have to correct you for
5 the record. These were actually entered without objection
6 before the court last Thursday.

7 THE COURT: Oh, those are exhibits in the original
8 hearing held before the court on September 29th?

9 MR. MONTGOMERY: Yes, ma'am, that's correct.

10 THE COURT: Very good.

11 MR. MOORE: Your Honor, if I might and, and the
12 objection to the precinct map remains, but there's one
13 other objection I would make.

14 THE COURT: All right, sir.

15 MR. MOORE: I was, as the court knows, I was more or
16 less a potted plant at the last hearing, and when Mr.
17 Montgomery made reference to these plats, he told you that
18 these are official maps. I think that I would have taken
19 exception to Mr. Montgomery describing these as official
20 maps because apparently he was leaving -- I don't think he
21 did it intentionally -- an impression that there was some
22 sort of official map that established the county line, and
23 there is no official map that establishes any county line.

24 THE COURT: You are going to be protected on this
25 entire assertion that you make. At the present time, over

1 your objection, we're going to admit exhibits 1 and 2 from
2 the previous hearing.

3 MR. MOORE: Thank you so much, Your Honor.

4 THE COURT: And your position is protected.

5 (MAP OF LEXINGTON COUNTY PRECINCTS MARKED INTO
6 EVIDENCE AS PETITIONER'S EXHIBIT NUMBER 1.)

7 (MAP OF RICHLAND COUNTY PRECINCTS MARKED INTO EVIDENCE
8 AS PETITIONER'S EXHIBIT NUMBER 2.)

9 MR. MONTGOMERY: Your Honor, if I may? I'm going to
10 show these to the witness. I believe he's familiar with
11 them.

12 BY MR. MONTGOMERY:

13 Q. But just for the record, I want to show these to you.
14 Now the first one here, which is the Lexington County
15 voting P-63-14, Mr. Rainwater, what is P-63-14 and how does
16 your office create this map?

17 A. Our office uses the precinct maps. We, we start with
18 the information. Excuse me. We use the census blocks to
19 help create precincts, or the General Assembly actually
20 creates the precincts and we maintain the maps. Precincts
21 are important in order to determine voting rights and the
22 statistical requirements for making sure the one person one
23 vote is adhered to.

24 Q. And each of these maps is specifically referred to in
25 the statute describing the precincts for Lexington and

1 Richland County. Is that correct?

2 A. Yes.

3 Q. And, in fact, when the legislature passed the act,
4 when the General Assembly passed the act, the precinct map,
5 the official precinct map for Lexington County is P-63-14
6 in the statute. Is that correct?

7 A. That's correct.

8 Q. And that would be the official map that's established
9 by the General Assembly?

10 A. Yes.

11 Q. Okay, and the official map for Richland County is
12 P-79-15. Is that correct?

13 A. Yes, sir.

14 Q. And as the director of this office, is it your
15 testimony today that these are copies of the official maps
16 maintained by your office, developed with the -- at the
17 direction of the legislature?

18 A. Yes, they are.

19 Q. Thank you. Now, are you familiar with South Carolina
20 Code Annotated Section 4-3-2, Mr. Rainwater?

21 A. Yes.

22 Q. Can you tell the court a little bit about what Section
23 4-3-2 does and what your office does with regard to that?

24 A. Well, I've -- I'm -- that's one of the cites that we
25 deal with. I'll need a little -- specifically, I don't

1 know...

2 Q. I believe that's the one that has you establish the,
3 the, the, what, the photo orthography of the state and the
4 database for that.

5 A. That is another part of our geodetic survey; it is
6 part of the mapping to help counties and assist with
7 mapping. We work with the assessors. We try to use the
8 assessors, but help create a unified mapping system and
9 standards for the state.

10 Q. From the standpoint of your office's role, do you --
11 does your office -- is your office charged with, what I
12 will say, with defining the location of the county lines
13 between the counties?

14 A. That, that is the intent that we worked in the General
15 Assembly in this latest act, yes sir.

16 Q. Okay, and historically has your office maintained the
17 maps and the records associated with the location of county
18 lines?

19 A. On work that we have done, we use those to help with
20 the census, defining those lines.

21 Q. Okay. Now, has your office made an examination of the
22 location of the residence at 154 Old Laurel Lane in Chapin,
23 South Carolina?

24 A. Yes, we have.

25 Q. And tell me what type of studies and reviews your

1 office has made regarding that.

2 A. As presented in the previous testimonies and exhibits,
3 we have -- our, our surveyor has gone out. We have looked
4 at historical documents; we have found multiple plats that
5 reference Rocky Ford. We have gone out. Mr. Ballard went
6 out as recently as this week again to find Rocky Ford to go
7 -- to assure that that was the same location that we've
8 identified in our maps, which it is. So, we've done
9 fieldwork, historical research, maps, deeds, or whatever we
10 need to try to determine where that point is that's
11 referenced in the statute.

12 Q. Okay. Is, is that a point that is in question from
13 the standpoint of your office, Rocky Ford?

14 A. What do you mean by in question?

15 Q. Is it a point that's been monumented and that you have
16 a GPS reference ---

17 A. We do have ---

18 Q. --- on a map?

19 A. --- a GPS reference, yes.

20 Q. And when you talk about monumenting a location or a,
21 or a place of a county line, tell, tell the court what that
22 is and what it means.

23 A. Well, and when we -- when -- in the, in the final end
24 when everything has been settled, we will go put a stob in
25 the ground with the, with the -- that corresponds to those

1 GIS coordinates when the, when the -- after the survey has
2 been completed. But we go out to find those referenced to
3 establish the GIS coordinates so they can be easily
4 accessed into the GIS system.

5 Q. Okay. You talk about completing a survey. Your
6 office is in the process of surveying essentially all the
7 county lines in South Carolina ultimately. Is that
8 correct?

9 A. Yes, sir. It's approximately 1200 miles.

10 Q. Okay, and has your office made a determination
11 whether, whether it's necessary to complete any further
12 surveyor work to locate the residence at 154 Old Laurel
13 Road?

14 A. No, sir. I'm sorry, what was your question?

15 Q. Has your office made any determination whether it
16 is necessary to validate your location of the property at
17 154 ---

18 A. Oh, I think we validated. There's no further work we
19 need to do. I'm sorry.

20 Q. And at this point, would, would it be fair -- well,
21 let me just ask you this. Is your office's view that the
22 location of Rocky Ford is well established?

23 A. Yes.

24 Q. Is there -- is the property line near the location at
25 154 Old Laurel Lane ill defined, the county line?

- 1 A. I'm, I'm sorry. Repeat that one more time.
- 2 Q. Yes, sir. The county line that your office has
- 3 identified.
- 4 A. Yes.
- 5 Q. Near the location of 154 Old Laurel Lane.
- 6 A. Uh-huh.
- 7 Q. Is that property line ill-defined?
- 8 A. We think it's clear because we know where the -- the
- 9 Rocky Ford is, is a reference in the statute that's a
- 10 control point that's clearly identified. --
- 11 Q. Okay. Is it unmarked?
- 12 A. When you say unmarked, it's a ford. A ford is a, is a
- 13 creation in the creek. I mean, it's marked because there's
- 14 a ford there.
- 15 Q. And it's marked because you've gone and established a
- 16 GPS coordinate for that ---
- 17 A. Yes.
- 18 Q. --- point?
- 19 A. We have a GPS coordinate.
- 20 Q. Okay. In your view and in the view of your office, is
- 21 there any dispute with regard to the location of the county
- 22 lines in that area other than the one between your office
- 23 and Ms. Murphy, I'll say?
- 24 A. No. We feel quite comfortable that that is the Rocky
- 25 Ford that's referenced in statute and where the county

1 line, based on the bearings, from that point are pretty
2 clear.

3 Q. And, Mr. Rainwater, if you were to look at the
4 application of the 2014 act affording your office the
5 ability to locate, go through a process to designate the
6 county line, if you were to complete that process, do you
7 have any doubt as to whether the location of the county
8 line and the location of Ms. Murphy's residence would
9 change?

10 A. Not -- no. I have no information to suggest
11 otherwise. I believe we've done all our work and research.

12 Q. And your office has concluded, as I understand it and
13 as you have written, that the residence at 154 Old Laurel
14 Lane is located in Lexington County?

15 A. Yes, sir, it is.

16 Q. Now, in maintaining the precinct maps, which is also a
17 function of your office, has your office made a
18 determination as to the proper precinct for the residence
19 at Old Laurel Lane?

20 A. Yes, we have.

21 Q. And what is that proper precinct?

22 A. That is the Lexington County precinct.

23 Q. Okay, and are there any other *indicia* that your office
24 has examined that, as the agency charged with maintaining
25 these records for the legislature, that provide you

1 guidance as to where the location of 154 Old Laurel Lane
2 is?

3 A. We do have some of the county maps. I believe the
4 Lexington County maps shows, shows that as part of
5 Lexington County. Obviously the Richland County tax maps
6 we talked about do not.

7 MR. MONTGOMERY: Thank you, Mr. Rainwater. I have no
8 further questions. If you would answer any questions that
9 Mr. Moore or Mr. Spillane might have.

10 MR. MOORE: Your Honor, with this post here, would it
11 be all right if I were to remain seated?

12 THE COURT: Certainly. Absolutely. The courthouse is
13 small -- I mean, the courtroom is small, and you need to
14 reference your papers, so absolutely.

15 CROSS-EXAMINATION BY MR. MOORE:

16 Q. Mr. Rainwater, as I understand it, is there any
17 official South Carolina map which basically establishes the
18 location of Rocky Ford?

19 A. Official South Carolina ---

20 Q. Right.

21 A. --- map?

22 Q. That sets the county line where it is. Is there any,
23 is there any official map that shows the location of Rocky
24 Ford?

25 A. I'm not sure.

1 Q. Do you know of any?

2 A. I mean, when you say official map, official map
3 created by my office?

4 Q. Right.

5 A. I am not sure of that. I'll need to defer to our GS
6 -- to our surveyor.

7 Q. As a matter of fact, when you establish the official
8 location of Rocky Ford, that is when the survey is supposed
9 to put a stob in the ground, right?

10 A. I think when the process is complete and we've had our
11 public hearings.

12 Q. I think that's my point. The process is not complete
13 to establish the county line, is it?

14 A. The county, we've not completed the county line, but I
15 think that's irrelevant to the location of this property.

16 Q. Well, sir, the question before the court, if you'll
17 let me decide or let, let Judge Toal decide what's
18 relevant. I just want to make positive that we understand
19 that the process to establish the county line and its
20 location is not complete, is it?

21 A. We have not submitted a final survey on that.

22 Q. As a matter of fact, you haven't done a final survey,
23 have you?

24 A. Only up to a Rocky -- we've only identified so far
25 where Rocky Ford is. We started the northern end.

1 Q. And, as a matter of fact, a ford is actually a place
2 where people ford a stream. Is that right?

3 A. That's correct.

4 Q. And people can ford a stream one place or another
5 place. A ford can, can, can vary in width and length and
6 so forth, correct?

7 A. It can, and that's why our staff went out and re,
8 rewalked that creek recently to make sure there were not
9 other fords.

10 Q. All right. So, what you've actually established is
11 the place where people forded the river?

12 A. We've established where Rocky Ford is.

13 Q. Well, okay. Well, that's -- I understand and I don't
14 want to play semantical games. You basically have
15 established what appears to be a place historically where
16 people would ford a river?

17 A. We have established where Rocky Ford is.

18 Q. What do you mean by that?

19 A. Rocky Ford is defined in the statute. The survey of
20 Ms. Murphy's plot has Rocky Ford marked on that.

21 Q. I understand.

22 A. It does not have the county line running through that
23 coordinate.

24 Q. Right.

25 A. The previous maps that have been identified in the

1 testimony identified Rocky Ford.

2 Q. And ---

3 A. Our staff, our staff has looked at all the evidence
4 available and determined we have the coordinate and
5 assigned a GIS coordinate to this particular Rocky Ford.

6 Q. A GIS coordinate. Now, as I understand a GIS
7 coordinate, what that basically is is a computerized
8 coordinate, correct?

9 A. Satellite-derived coordinate.

10 Q. Absolutely, and under the statute, when you start
11 using GIS coordinates, you're also required to put a
12 disclaimer that those are not necessarily accurate, right?

13 A. I disagree with you. We use GIS coordinates to verify
14 where the monuments will be so people and so anybody --
15 with the new surveying techniques, people can go out using
16 GIS coordinates to find the actual monument.

17 Q. But the monument ---

18 A. To find the location.

19 Q. Certainly not any monument there, correct?

20 A. Rocky Ford is a monument.

21 Q. Monument? Rocky Ford is a place where people forded
22 the river.

23 A. In our, in our work, Rocky Ford is a monument.

24 Q. All right. Well, let me ask you this question. To
25 this date, as I understand it, your office has not

1 completed the work to establish the official line between
2 Richland County and Lexington County, correct?

3 A. We have not gone beyond Rocky Ford at this point.

4 Q. And also, as I understand it, there is a procedure
5 before you can establish a formalized county line to where
6 if the counties disagree in regard to the line, there is a
7 procedure where your office is supposed to mediate the
8 location of the line?

9 A. There is a formal process in which we will present our
10 evidence. Informally we have shared our evidence with the
11 counties, and no one has, no one has shared with us an
12 alternative location of a Rocky Ford.

13 Q. Well, sir, I just want to make sure. You've been
14 asked about these various statutes. I have read the
15 statute and as I understand it, what it says is in doing
16 your work, when you have not completed the work, as you
17 have not completed the work, if there is a disagreement
18 between the counties, the first step is your office is to
19 mediate the disagreement, correct?

20 A. I don't know if there's a disagreement.

21 Q. Well, yes, sir, I understand. The code basically says
22 you get involved, as I understand it -- correct me if I'm
23 wrong -- but the code says if there is a disagreement
24 between the counties, the first step is that you come in,
25 survey, and mediate the disagreement, right?

1 A. That is one option. The other option is the General
2 Assembly has provided us an appropriation to go out and
3 hire contractors to do the whole state.

4 Q. And of course in regard to Ms. Murphy's line, you have
5 not done an official survey of the county line at Ms.
6 Murphy's house, have you?

7 A. I don't think a survey is necessary to establish her
8 location.

9 Q. All right. Well, then the answer is, then, that one
10 of the things the county has done is to allow you to do a
11 survey, and that hasn't been done, right?

12 A. We've established the coordinate necessary to
13 determine it for this hearing.

14 Q. You've, you've gone out. When did you establish the
15 coordinate which you claim to be the coordinate for Rocky
16 Creek?

17 A. I would, I would defer to Mr. Ballard on it. He knows
18 the exact dates he did that, but I know he went back this
19 week again to reconfirm those coordinates.

20 Q. As a matter of fact, as I understand the way this
21 whole thing is finalized, first of all there is supposed to
22 be -- your office is supposed to set what it believes to be
23 the line, right?

24 A. Correct.

25 Q. And then if the counties disagree, then your office

1 mediates the disagreement?

2 A. No, sir.

3 Q. And after your office sets the line, there is a
4 protest period where people can come in and object to where
5 you have set the line? -

6 A. They can come in and offer evidence if we have
7 overlooked something. Our job is to find the statutory
8 boundary for the county line.

9 Q. And as I understand it as we sit here today in regard
10 to where Ms. Murphy's house is, you have not officially
11 established the county line, correct?

12 A. We have determined the coordinate.

13 Q. I've been ---

14 A. I mean, I don't believe I need a survey to determine
15 that the State House is on the Richland County side of the
16 Congaree River. We have a coordinate that identifies where
17 that is, and it's simply an easy drawing from that point.

18 Q. Yes, sir. Well, when you talked about that, you
19 talked about that you haven't set your stakes because the
20 process is not finalized. Would you explain to Judge Toal
21 what you mean that the stakes have not been set because the
22 process hasn't been finalized? What process is there that
23 has not been finalized?

24 A. Well, as far as setting the stakes, I'm not going to
25 have my staff go out and set stakes on the ground that may

1 be changed later. That's what the, that's what the
2 administrative hearing is if there's better evidence.

3 We believe all the, all the evidence we have done, we
4 have satisfied where the -- where Rocky Ford is, where
5 those coordinates are. And that will be our presentation,
6 and that is the basis we will use when we complete the
7 final document.

8 Q. I see. So, what you're able to tell us is what you
9 believe to be the line, correct?

10 A. I can only testify to what I believe, yes, sir.

11 Q. But there is a process in place now going on to where
12 an official county line is attempted to be drawn.

13 A. We are trying to do the whole segment.

14 Q. But it hasn't been finalized yet, right?

15 A. We haven't, we haven't gone below the Rocky Ford area
16 yet.

17 Q. So then there is no finalized line from your office
18 establishing where the county line is on Ms. Murphy's
19 property. That's true, is it not?

20 A. It's irrelevant because we know for this hearing, we
21 know where Rocky Ford is.

22 Q. Sir ---

23 A. The line, the line below Richland -- the line at, the
24 line at Calhoun doesn't make a difference to this hearing.

25 Q. Sir, if you'll let the court be the judge of what's

1 relevant or irrelevant, I'd appreciate that. I simply want
2 to make sure I understand this. Your job under the new
3 statute is to go out and establish the line, right?

4 A. Yes, sir.

5 Q. That procedure has not been finalized as of this date,
6 correct?

7 A. And, and in respect, I'm trying to make sure my answer
8 is, is it's clear for what our office is doing. We have
9 not signed a completed plat yet for the whole line.

10 Q. And that means that the actual line has not been
11 finalized, right?

12 A. We have not completed the final survey yet.

13 Q. Well as I understand it, the way it gets finalized is,
14 first of all, you complete a final survey, right?

15 A. We prepare a plat.

16 Q. Right, and then once you prepare a plat, you submit it
17 to the counties and the public, right?

18 A. That's correct.

19 Q. If the counties disagree or the public disagrees, it's
20 mediated with your office, right?

21 A. No, sir.

22 Q. It goes then to a hearing?

23 A. They have to -- if they provide us evidence -- whether
24 or not they like it is immaterial. If they provide us
25 evidence, then it will go -- we'll either adjust it if we

1 believe the evidence, or it will go to the Administrative
2 Law Court.

3 Q. So in, in regard to Ms. Murphy's property, is there
4 any finalized official plat established by your office
5 setting where the actual county line is on her property?

6 A. We have not submitted that plat yet.

7 Q. The answer would be no, correct?

8 Q. We have not submitted the plat yet.

9 Q. So, actually what you've done is to give your opinion
10 as to where the line might be if you did what you're
11 supposed to do under the statute?

12 A. Our statute is define the monuments. Our role is to
13 define the monuments as identified in the law so we can
14 establish where the line goes.

15 Q. As of right now, has your office officially
16 established a line?

17 THE COURT: Mr. Moore, Mr. Moore, I think we've got
18 that.

19 MR. MOORE: Thank you, ma'am.

20 THE COURT: I think we got it.

21 BY MR. MOORE:

22 Q. Now, I want to get back to Rocky Ford. Rocky Ford is
23 -- you say it's a point. That's a place you can actually
24 drive in a steak?

25 A. Yes.

1 Q. All right.

2 A. I mean, it's a -- yes.

3 Q. Do you know that surveyors for a significant period of
4 time have disagreed as to the exact location of Rocky Ford?

5 A. I have seen no evidence on that.

6 Q. Did you know that in 1978, Richland and Lexington
7 County came together and agreed upon where the line was?

8 A. I'm not aware of that.

9 Q. Now, you testified about two things. You testified
10 about a county line that your office is supposed to
11 establish, right?

12 A. Yes, sir.

13 Q. And when you were asked at the last hearing about why,
14 you haven't done that, you indicated you didn't have enough
15 resources to get the job completed, correct?

16 A. We have the resources to do the -- we can't do the
17 whole state in one year. I mean, there's ---

18 Q. Sure.

19 A. --- a process.

20 Q. So, the reason why you haven't established the county
21 line officially in accord with the code is there hasn't
22 been enough money yet to do it?

23 A. Would depend on the priority we've established on
24 which county lines we're working on.

25 Q. Now, there is the difference between a precinct line

1 and a county line, correct?

2 A. Yes.

3 Q. Now, your job is to draw the state precinct lines,
4 right?

5 A. We work with the General Assembly to draw the precinct
6 lines, yes.

7 Q. Now, has anybody from your office -- do you have the
8 authority to move Kim Murphy out of her precinct into
9 another precinct?

10 A. Under the proviso, we are supposed to reconcile where
11 voter registrations are in regards to the precinct's
12 location.

13 Q. Do you have the authority, does your office have the
14 authority to move somebody from one precinct to another?

15 A. We are supposed to, we are supposed to identify and
16 notify.

17 Q. You're supposed to identify and notify whom?

18 A. State elections and the local election commission.

19 Q. In this case, did you notify the county -- the state
20 election commission and the ---

21 A. Yes.

22 Q. --- county election commission? All right, and as I
23 understand it, and we had a hearing and they didn't accept
24 your recommendation, right?

25 A. That is correct.

1 Q. So, your job in regard to establishing precinct lines
2 is to notify and recommend, correct?

3 A. We point those out.

4 Q. And it's up to them as to whether they accept or don't
5 accept your drawings, correct?

6 A. I don't know if I agree with that interpretation. We
7 cannot make them do it.

8 Q. All right. So, the person or the body that is
9 supposed to establish what precinct a person is is the
10 local election commission?

11 A. I think our maps clearly show what precinct it's in.

12 Q. I understand that, and you've told them that, right?

13 A. We've told them that.

14 Q. And when you give them the information, it is their
15 determination on whether a person resides somewhere or not,
16 right?

17 A. Person -- personally I think it's ministerial for them
18 to comply with it, but I have no authority to make them do
19 otherwise.

20 Q. Of course in this case, there was a hearing and they
21 came to the conclusion that she was in the right precinct,
22 right?

23 A. That was their decision.

24 Q. And you don't have the authority to move anybody,
25 correct?

1 A. That's not in our purview.

2 Q. As a matter of fact, in regard to people affected by
3 your precinct line, when did you come to the conclusion to
4 move the precinct line?

5 A. What do you mean to move a precinct line?

6 Q. Kim Murphy, as I understand it, has been voting in the
7 Springhill Richland County precinct since 1978. Does that
8 sound about right?

9 A. If you say so.

10 Q. Actually, the property's been there since '78. I
11 think she's voted in Richland County ever since she's lived
12 there. You understand that to be the case, right?

13 A. I understand that to be the case.

14 Q. Now, when is it that your office drew using these
15 satellite lines and changed the precinct lines showing that
16 she should be in Lexington rather than Richland?

17 A. I don't think we changed the precinct lines. The
18 precinct lines were established with the -- is in -- and
19 again I'll have to refer to Mr. Roberts on some of the
20 details in the history, but those were established with the
21 2010 census and the 2000 census. It kind of goes back to
22 your question. It's what the counties do, how they are
23 recognizing those lines.

24 Q. Right, and as I understand it, both Lexington and
25 Richland County recognize this lady being in the Springhill

1 ' precinct, correct?

2 A. I do not know.

3 Q. Well, you also know, do you not, that since the 2000
4 census, she has been recognized as being in the Springhill
5 precinct, correct?

6 A. Mr. Moore, if somebody makes a mistake, I don't know
7 what they're doing. I can only point out to what we have
8 on our official maps, and official maps show this
9 particular residence is in the Chapin precinct in Lexington
10 County.

11 Q. When you say your official maps, you're talking about
12 the precinct map, correct?

13 A. Correct.

14 Q. You give the information to the counties, and then
15 it's up to the counties what they do with that information?

16 A. It's in their hands.

17 Q. And when it got in their hands, they didn't recognize
18 your lines. They recognized different lines, didn't they?

19 A. Yeah. That's why we're here.

20 Q. Do you know that there are ninety-something people
21 that, according to your lines, live in Lexington County but
22 are registered in the Springhill precinct?

23 A. I know there are, there are multiple people. It's not
24 just one -- not just Ms. Murphy in particular. There are
25 multiple people throughout the county, the whole county

1 area that are -- that we believe are in the wrong
2 precincts.

3 Q. And of any of those multiple people, they had been
4 there since -- voting the way they're voting since 2010,
5 right?

6 A. I don't know how long they've been there.

7 Q. A long time, isn't it?

8 A. I don't -- I'm -- you know, I defer to Mr. Roberts.
9 He deals with those details.

10 Q. Based upon information you have provided, have any of
11 these people ever been moved out of Richland County into
12 Lexington County?

13 A. Again, I'll defer to Mr. Roberts. He's the one that
14 coordinates and meets with the counties to identify those
15 that should be moved.

16 Q. Well, y'all ---

17 A. They've, they've moved some. They've not moved all.

18 Q. How many people, how many people do you claim or do
19 you know who are in the Springhill precinct that you say,
20 according to your map, should be in the Lexington
21 precincts?

22 A. I don't have a firm number; I'd have to defer to Mr.
23 Roberts.

24 Q. And as a matter of fact, the -- both Richland
25 Lexington County have historically acknowledged this

1 property as being in the Springhill precinct, have they
2 not?

3 A. Historically they, they, they have -- some of -- they
4 have. I know Ms. Murphy and probably others in the -- I
5 don't know how many.

6 Q. So the counties, the counties have recognized her as
7 living in Richland County, correct?

8 A. The counties have assigned her to a Springhill
9 precinct.

10 Q. Which is a Richland County precinct, correct?

11 A. That is correct.

12 Q. So, both Richland and Lexington County have recognized
13 her as living in Richland County, correct?

14 A. I do not -- you say both Lexington -- I know there's
15 controversy in what they've done, and I don't know what
16 they -- I know where they have her registered. Well, I
17 don't know what Lexington County is doing, but Richland
18 County does have her registered in Springhill.

19 Q. And Richland County has recognized this woman's home
20 as being in Richland County for how long?

21 THE COURT: I think we've got ---

22 MR. MOORE: Thank you, Your Honor.

23 THE COURT: --- that piece. She's registered in
24 Richland County.

25 MR. MONTGOMERY: We'd stipulate to that, Your Honor.

1 BY MR. MOORE:

2 Q. Sir, who is it that went out and decided where Rocky
3 Ford is?

4 A. We had some earlier, earlier staff who've since
5 retired did that, and our current, current registered land
6 surveyor, Mr. David Ballard, has gone back out to reconfirm
7 that.

8 Q. When did Mr. David Ballard go out to reconfirm that?

9 A. He went out I know as late as yesterday -- or this
10 week, excuse me, earlier this week.

11 Q. And before this controversy arose, when is the last
12 time your office had established Rocky Ford?

13 A. I know we were out there in the '90s was the first
14 time, and I'm not sure what -- not sure how many more
15 instances they've been out there since then.

16 Q. Sir, if you went out to establish the location of
17 Rocky Ford in the 1990s, why did not someone place a pit in
18 the ground or a monument to establish the official state
19 allegation or contention as to where this particular point
20 is?

21 A. If putting a point in the ground made the counties
22 agree, we'd have points all over the line, but it's up to
23 the counties to decide if they're going to recognize it or
24 -- I mean decide. If they choose not to ignore it...

25 Q. I think you just gave me the answer I've been looking

1 for for thirty minutes. Hold on. You said ---

2 A. No, I said it's ---

3 Q. --- it's up to the counties.

4 A. No. No. It's ---

5 Q. Well, you said it's up to the counties. Tell me what
6 you mean by that.

7 A. It is not up ---

8 THE COURT: Wait a minute. Whoa. Whoa. Now just a
9 minute, Mr. Moore.

10 MR. MOORE: Yes, ma'am.

11 THE COURT: And just a minute, Mr. Rainwater. What
12 we're not going to do is talk over each other because our
13 court reporter can't get the information if you do that.
14 Now, ask the question, and Mr. Rainwater will do his best
15 to answer it.

16 MR. MOORE: Certainly.

17 THE COURT: And don't interrupt his answer with
18 another question.

19 MR. MOORE: Thank you. I do apologize.

20 WITNESS: I apologize as well.

21 BY MR. MOORE:

22 Q. Let me ask the question. You said a moment ago that
23 it's up to the counties. What does the it's ---

24 A. No.

25 Q. --- you were ---

1 A. No, sir.

2 Q. --- referring to? What's the it's you were referring
3 to?

4 A. To answer the question, I think, cleanly, the state
5 law determines where the county boundaries are. State laws
6 determine where the precincts are. It is up to the
7 counties to honor that.

8 Q. What was the it's you were referring to?

9 A. I'm not sure.

10 Q. When you said ---

11 A. I'm not, I'm not ---

12 Q. --- up to the counties, what did you mean by that?

13 A. It's up to the counties to honor, I think, what's in
14 state law.

15 Q. Right, and the state law, nowhere can I go in the
16 statute and look in the state law and find a point for
17 Rocky Ford, correct?

18 A. Yes. The point, the point's defined in stat -- in
19 state law. It's defined in the county boundary
20 description.

21 Q. It's in a description, but the actual location of it
22 on the ground is not in -- written in a, in a ---

23 A. Oh, it's, it's, it's a natural monument.

24 Q. Right.

25 A. Or, I guess, a manmade monument that's been there --

1 that's how it was referenced. Somebody had to create that
2 ford to draw the line and reference that in the law.

3 Q. I see. Do the counties have any say-so in regard to
4 where their lines are?

5 A. I think state law dictates where the lines are.

6 Q. Does your office have the authority to change county
7 lines?

8 A. Our authority is to find where the statutory
9 descriptions are. We don't change the lines; we clarify
10 the lines.

11 Q. When do you think that you will actually follow that
12 dictate of the code and establish the location of the
13 county line on Ms. Murphy's property? When do y'all plan
14 to do that?

15 A. I intend to tell Mr. Ballard to work on it in the next
16 couple of weeks, but I'd like to do the whole county line,
17 the whole segment so we don't have multiple county --
18 Lexington County coming out for public hearings every
19 segment.

20 Q. And as I understand it, if you send Mr. Bell out to do
21 that, then the process would be in the process of becoming
22 complete, right?

23 A. Yeah. We would -- the ultimate goal is to have a
24 certified plat for the whole segment.

25 Q. And to have an official delineation of a county line?

1 A. To have the, to have the whole line doc -- to have the
2 whole line in a document.

3 Q. And we don't have that right now, do we?

4 A. We do not.

5 Q. And, as a matter of fact, that if you even -- if you
6 did that, if you sent Mr. Ballard out next week and
7 established that line, what you believe it to be, you still
8 would have to go through the administrative challenge
9 process to see if anyone's got any better evidence?

10 A. Yes.

11 Q. So, the only way we could ever get an official plat to
12 show where the official line is set by your office and
13 required by the code is to survey the thing like you're
14 supposed to, have the protest period, have an
15 administrative hearing, and then have a finalized,
16 delineated version of where the line is?

17 A. Or the counties could just recognize the work we've
18 done so far.

19 Q. Or the counties could recognize another line and say
20 they don't agree with you, right?

21 A. That's what they're doing now.

22 Q. That's exactly what they're doing now, and by doing
23 that now, the counties basically have recognized Ms.
24 Murphy's home as being in Richland County.

25 MR. MONTGOMERY: I'm going to object.

1 THE COURT: You know, it's asked and answered ---

2 MR. MOORE: Thank you, Your Honor.

3 THE COURT: --- more than anything else.

4 THE COURT: We understand ---

5 MR. MOORE: That's fine.

6 THE COURT: We understand what you're attempting to
7 get at, and I understand that you think what the counties
8 have done is entitled to great weight. So, and Mr.
9 Rainwater has explained to you how they've gone about
10 looking at this issue. So, I think we've got it on the
11 record very sufficiently, Mr. Moore.

12 MR. MOORE: Thank you, ma'am.

13 BY MR. MOORE:

14 Q. Is there any survey anywhere from your office that
15 would show where you think the line actually is on Kim's
16 property?

17 A. Yes. We've collected other data, other historical
18 maps that Mr. Ballard identified as showing where the
19 county line is going through a Rocky -- going through the
20 Rocky Ford. We have identified it.

21 Q. But have you drawn a map showing where it is on Kim's
22 property?

23 A. We're not drawing a map for it. We're drawing a
24 county line.

25 THE COURT: I think that's asked and answered. He has

1 not done a survey, but he's looked at a lot of other
2 material as I understand the answer.

3 WITNESS: Yes. Yes, Your Honor.

4 MR. MOORE: Thank you, Your Honor.

5 THE COURT: Very good.

6 MR. MOORE: No further questions. Thank you.

7 THE COURT: Your witness -- excuse me, Mr. Spillane.

8 MR. SPILLANE: Thank you, Your Honor.

9 CROSS-EXAMINATION BY MR. SPILLANE:

10 Q. Clarification only, Mr. Rainwater. Mr. Moore asked
11 you that at the last hearing, you testified so on and so
12 forth. We had a hearing, I believe, in this case last
13 Thursday. You didn't testify last Thursday, did you?

14 A. No, sir.

15 Q. When he was mentioning the last hearing, is it correct
16 that he meant the hearing of August 30, 2016, before the
17 election commission in Richland County? Did you testify at
18 that time?

19 A. Oh, yes, sir, I test -- yes, sir, in Richland County.
20 I spoke, yes, testified or I'm not sure what the proceeding
21 was, but yes, sir.

22 Q. You were on the stand, I believe?

23 A. They asked for ---

24 THE COURT: Just a second. I'll clarify that. This
25 material is in evidence, Mr. Spillane ---

1 MR. SPILLANE: Yes, it is.

2 THE COURT: --- of what took place before the election
3 commission. It was a matter that proceeded in a different
4 way from a normal court proceeding. Various people were
5 asked to come forward and present to the voter
6 registration. It had been kind of -- got into a situation
7 where Mr. Moore persuaded the commission to depart from his
8 presentation standpoint and asked them to cross-examine
9 some witness, which he did. But we understand what the
10 proceeding is. Mr. Rainwater testified or presented,
11 however you'd like to say it, in that hearing.

12 MR. SPILLANE: It's just, just for clarification, it
13 wasn't last week at the last hearing.

14 THE COURT: Right.

15 MR. SPILLANE: Thank you.

16 THE COURT: I'm going to evaluate it, and I understand
17 it.

18 MR. SPILLANE: No, no questions.

19 THE COURT: All right, Mr. Montgomery.

20 MR. MONTGOMERY: Just a couple on redirect...

21 REDIRECT EXAMINATION BY MR. MONTGOMERY:

22 Q. Mr. Rainwater, who establishes the county line?

23 MR. MONTGOMERY: I'm sorry, Madame Court Reporter.

24 Q. Who establishes the county line?

25 A. It's established by the General Assembly and code.

1 Q. Your office doesn't establish the county line, did it?

2 A. No.

3 Q. In fact, what you do in what the entire process Mr.
4 Moore is referring to is that you have been charged in a
5 proviso with taking the statutory descriptions and
6 converting them to surveys of each county because we have
7 the technology to do that now. Is that correct?

8 A. Well, by law, not by proviso.

9 Q. Okay, and there's nothing that you're doing that
10 changes the county line, is there?

11 A. We're, we're to reestablish and clarify the line.

12 Q. And from the -- from your opinion and the opinion of
13 your office, is the line established and clarified as it
14 relates to Ms. Murphy's residence?

15 A. Because of Rocky Ford, yes, it is.

16 Q. The manner in which it's established and clarified
17 places her residence in Lexington County. Is that correct?

18 A. That is correct.

19 MR. MONTGOMERY: I have no further questions.

20 THE COURT: All right.

21 MR. MOORE: May -- just, just very briefly.

22 THE COURT: Mr. Moore, I'm not going take all day with
23 this witness now.

24 MR. MOORE: I have, I think, two questions.

25 THE COURT: All right.

1 RECROSS-EXAMINATION BY MR. MOORE:

2 Q. Sir, you haven't reestablished that line yet, have
3 you?

4 A. We have the points.

5 THE COURT: Mr. Moore, I'm going to stop you right
6 there.

7 MR. MOORE: All right.

8 THE COURT: We've plowed that ground.

9 MR. MOORE: Thank you, ma'am.

10 THE COURT: Thank you, sir.

11 Mr. Rainwater, you may step down.

12 WITNESS: Thank you, Your Honor.

13 (THE WITNESS EXITS THE STAND.)

14 THE COURT: Mr. Montgomery, call your next witness.

15 MR. MONTGOMERY: Your Honor, at this time we call Mr.
16 Will Roberts.

17 THE COURT: Mr. Roberts, come around.

18 WILLIAM F. ROBERTS, JR., BEING
19 DULY SWORN, TESTIFIES AS FOLLOWS:

20 THE COURT: You may be seated. Would you please state
21 your full name, spelling your last name for the court
22 reporter?

23 WITNESS: My name's William Francis Roberts, Jr. Last
24 name is Roberts, R-o-b-e-r-t-s.

25 DIRECT EXAMINATION BY MR. MONTGOMERY:

1 Q. What's your address, Mr. Roberts?

2 A. I live at 206 Cooper's Hawk Circle in Irmo, South
3 Carolina.

4 Q. Okay, and if you'd just tell the court a little bit
5 about your educational background?

6 A. I have a bachelor's degree in geography from the
7 University of South Carolina.

8 Q. And what is your employment history?

9 A. I've been working with the -- used to be the former
10 Office of Research and Statistics under the Budget and
11 Control Board. It's now the Revenue and Fiscal Affairs
12 Office and began working there in 2000 working with
13 redistricting and drawing voting precincts.

14 Q. Okay and, in fact, I believe you have been familiar
15 with this controversy for some time?

16 A. That is correct.

17 Q. If you would, just tell the court briefly how it first
18 came to light that the residence at 154 Old Laurel Lane was
19 located in Lexington County as opposed to Richland County.

20 A. The whole process started really back in 2003, 2004,
21 somewhere around there. We got word that a political
22 consultant was taking the voter registration list from the
23 state election commission and mapping each individual voter
24 and when they did this, they overlaid the map voters on top
25 of the official districts provided by our office

1 established by the legislature, and they were able to
2 determine the number of voters that were assigned to the
3 incorrect district. And what this consultant was going to
4 do was going to take this information and be able to
5 challenge any election that occurred that the -- since
6 someone lost by a margin in which the number of voters that
7 were found to be improperly assigned would be able to
8 overturn the election.

9 So fast forward to about 20, 2012, I believe it was,
10 and we ran the Richland County registration file. I don't
11 remember if it was before or after the election because
12 everybody knows, you know, how that election went for
13 Richland. So, it could have been before or after, but we
14 ran the file and Ms. Murphy's address was kicked out
15 because she was assigned the incorrect House and Senate
16 district for where her address falls on the official map
17 set by the legislature.

18 Q. And y'all make that determination, along with a
19 determination that there were other residences that were in
20 the wrong House and Senate districts?

21 A. That's correct.

22 Q. Okay, and what did the office do at that time?

23 A. At that time, I informed our director that we had some
24 people in the incorrect districts, and then a letter was
25 written to Jasper Salmon at the voter registration office,

1 and they were notified.

2 Q. And at, at that point in time, you had notified the
3 county. Have you had occasion within the last sixty days
4 to address this issue with Richland County again?

5 A. Yes, we have. I met with Richland County a few weeks
6 ago. We had run the file again and identified over 700
7 people in the incorrect precincts, and we met with the
8 Richland County voter registration staff and we went
9 through each one of the voters and made the determination
10 -- well, they made the determination of where -- what
11 precinct they would be in.

12 Q. Okay, and in this case, did they use any particular
13 methodology that you observed in making that determination?

14 A. Yes. The voter registration office made it -- we
15 looked at the official line set by our office, set by our
16 -- controlled by our office, set by the General Assembly
17 for the interior precincts of the district -- of the
18 county. Any person that was assigned that falls outside of
19 the official voting precincts but was paying taxes in
20 Richland County also, anybody that was -- that falls
21 outside of a Richland County voting precincts yet their
22 residence falls inside of a Richland County tax parcel,
23 they were allowed to remain in Richland County, voting in
24 Richland County even though they fell outside the official
25 map.

1 Now, we did find some residences that fell outside the
2 map, the official precinct boundaries, and they were not
3 inside of a Richland County tax map. So, they were sent a
4 letter notifying them that they need to pay tax, they need
5 to register to vote in the county in which their residence
6 falls in the tax map.

7 Q. Okay, and how many folks were left after you conducted
8 this review with Richland County who were shown in the
9 wrong place but Richland County retained?

10 A. Approximately 150 people that are still in the
11 incorrect House and Senate precincts.

12 Q. And would Ms. Murphy fall into that category?

13 A. Yes, she would.

14 Q. Okay. I'm going to show you a document, ask if you
15 can identify it for me.

16 MR. MONTGOMERY: Ask the court reporter to mark it
17 with the next number, if she would.

18 (GIS PRINTOUT MARKED AS PETITIONER'S EXHIBIT NUMBER 3
19 FOR IDENTIFICATION.)

20 BY MR. MONTGOMERY:

21 A. Yes, this is information off of the Richland County
22 GIS website.

23 Q. Okay. Tell me a little bit about that website and
24 what it does and what your office -- and how your office
25 interacts with it.

1 A. This website is maintained by the county. It shows
2 the information that the county has available for people to
3 use. It does come with a disclaimer that this data is not
4 official and that the county makes its judge -- use your
5 own judgment on it. The country tries to make the data as
6 accurate as possible. And the way we interact with the
7 county GIS department is we actually provide them with the
8 updated precinct boundaries wherever they're drawn, as well
9 as official House, Senate congressional districts.

10 Q. Okay. If you'd look in the political column, which is
11 the third column on the right on this document.

12 A. Yes.

13 Q. Anything there that indicates that Ms. Murphy does not
14 live in Richland County?

15 A. Yes. She is assigned to Senate District -- under this
16 information, she is assigned Senate District 18. That is
17 Ronnie Cromer's Senate District. Ronnie Cromer is not on
18 the Richland County delegation. Also on this district --
19 on this information, she is assigned to House District 85.
20 That's Representative Chip Higgins. He is not on the
21 Richland County delegation. Both of those gentlemen are on
22 the Lexington County delegation.

23 MR. MONTGOMERY: And, Your Honor, at this time move to
24 admit this as number 3, I believe.

25 MR. MOORE: I don't have any objection except as to

1 relevance.

2 THE COURT: Without objection.

3 (GIS PRINTOUT MARKED INTO EVIDENCE AS PETITIONER'S
4 EXHIBIT NUMBER 3.)

5 BY MR. MONTGOMERY:

6 Q. Now, you -- your job is primarily dealing with
7 precinct maps.

8 A. That's correct.

9 Q. Is that correct, and if you would, explain to us the
10 purpose of the precinct maps and how your office works with
11 the legislature to develop those.

12 A. The purpose of the precinct map is to keep a accurate
13 record and to make sure that when people go to the polls on
14 election day, that there's not too many people at the
15 polling place. And what we do is we look at population
16 numbers, we look at registered voter -- number of
17 registered voters in each precinct, and we're either
18 typically contacted by either the county or a legislative
19 delegation member asking for us to modify the precinct
20 boundaries in order to get the number of registered voters
21 down in a particular area.

22 Q. Do you have occasion to work in situations where the
23 county line is how you define the precinct maps or how you
24 define the precinct maps?

25 A. The precinct lines are -- the precinct lines and the

1 official district maps follow what the Census Bureau puts
2 as the official county -- what the Census Bureau puts as
3 the county boundary in the latest decennial census.

4 Q. And in this case, the census map and your map
5 correspond as to the location of Ms. Murphy's residence.

6 A. That's correct.

7 Q. Is that correct?

8 MR. MONTGOMERY: Now, if I may approach, Your Honor?

9 THE COURT: Yes, sir.

10 MR. MONTGOMERY: Because I'm going to just ask him
11 from the record so we don't have additional exhibits.

12 THE COURT: Very good.

13 BY MR. MONTGOMERY:

14 Q. Just going to ask you, if you would. I'm going to
15 call your attention to some maps that were presented below,
16 I believe, by you. The first is at page 4 -- 407 of the
17 record. Can you tell me what this map is, please, sir?

18 A. Yeah, this is a map of the Richland County GIS road
19 center line file overlaid on top of the orthophotography
20 provided by the South Carolina Geodetic Survey.

21 Q. If you would, orthophotography, that's an interesting
22 word. Can you tell us orthophotography is and how it's
23 relevant to what you do?

24 A. Orthophotography is an aerial photo that's been
25 modified to follow the contour the earth. The earth is not

1 perfectly round. So, the photography is scaled to actually
2 represent what, what the earth looks like.

3 Q. Okay, and in this case, when you're able to do that,
4 do your maps provide accurate representations of the
5 locations of lines and property and structures on those
6 lines?

7 A. They're pretty accurate.

8 Q. Okay.

9 A. Yes.

10 Q. And so 407 shows the center line. I'd going to ask
11 you -- next to 408 in the record, which is another map, and
12 ask you what that shows.

13 A. This maps shows the Lexington County road center line
14 file overlaid on top of the orthophotography, along as
15 showing Ms. Murphy's residence.

16 Q. One other question, Mr. Roberts. I noticed looking at
17 the document at 407, which you said is the Richland County
18 map, it shows Old Laurel Road.

19 A. That's correct.

20 Q. And the Lexington County map 408 shows Old Laurel
21 Lane.

22 A. That's correct, and that's the reason why the -- we
23 didn't flag Ms. Murphy until 2012 is we had Richland
24 County's GIS information, which was incorrect, as placing
25 Old Laurel Lane as Old Laurel Road. There is no Old Laurel

1 Lane in Richland County according to their road center line
2 file.

3 Lexington County had gone over and crossed into
4 Richland County and mapped some of the roads there. So,
5 when we ran it in 2012, we combined both the Richland
6 County and Lexington County center line file, and that's
7 when we got a hit on Ms. Murphy's address.

8 Q. Okay. Now, the next one I'm going to ask you to look
9 at, and you can tell us what it is, is the map that's shown
10 on page 409 of the record.

11 A. This is the official House and Senate lines overlaid
12 on top of the orthophotography showing Ms. Murphy's
13 residence, that she is residing in House District 85.

14 Q. And let me ask you that. Is this is the Richland
15 County side or the Lexington County side?

16 A. That is the Lexington County side.

17 Q. What does the Richland County show?

18 A. The Richland County side shows that she does not live
19 there, and it's House District 71.

20 Q. Okay. So the Richland County map, if you look at the
21 Richland County map, it actually shows her in House
22 District 85 as well. Is that correct?

23 A. Can you repeat that question one more time?

24 Q. Yes, sir. The Richland County map shows her in House
25 District 85 as well, does it not?

1 A. You talking about the GIS ---

2 Q. Yes, sir.

3 A. --- map of Richland County? Yes, that one shows her
4 as 85 as well.

5 Q. Okay. So, both the Richland and Lexington County GIS
6 maps agree and your map agrees that she's in House District
7 85?

8 A. That's correct.

9 Q. Okay, and if she votes in the Springhill precinct, she
10 doesn't vote in House District 85, does she?

11 A. That's correct.

12 Q. Okay. Now at 410, can you tell us what that is?

13 A. This is the Senate districts as passed by the General
14 Assembly and precleared by the Department of Justice. It
15 shows Ms. Murphy's residence in Senate District 18.

16 Q. And does that Senate District 18 show on both the
17 Richland County and Lexington County GIS?

18 A. Senate District 18 is in the Lexington County portion.

19 Q. But if we look at both Richland and Lexington GIS,
20 does it show her residence in Senate District 18?

21 A. Yes, it does.

22 Q. Okay, and if she's voting in the Springhill precinct
23 in Richland County, she's not voting for the senator in
24 District 18, is she?

25 A. That's correct. She's voting for the incorrect Senate

1 district.

2 Q. Okay, and I believe you testified earlier, but I want
3 to make sure. Part of the concern with this from your
4 office's standpoint is that if people are found to be
5 voting in wrong precincts and in the wrong races, that can
6 actually have an effect on the outcome of an election,
7 can't it?

8 A. That is correct.

9 Q. And it can cause an election to be successfully
10 challenged, couldn't it?

11 A. That's correct.

12 Q. Okay. Now I'm going to ask you if you would to look
13 at 411, which again is, I believe, is a county council
14 district map.

15 A. This is the county council information provided to our
16 office by both Lexington and Richland County. Shows Ms.
17 Murphy's residence in District 6 of Lexington County.

18 Q. Okay, and District 6 of Lexington County is obviously
19 not one that you vote for if you live in the Springhill
20 precinct of Richland County?

21 A. That's correct.

22 Q. Okay, and 412 was another map that you prepared, I
23 believe. Is that correct?

24 A. That's correct. This is the official precinct for
25 Richland and Lexington County in this area. It shows Ms.

1 Murphy's residence in the Chapin precinct. These come from
2 the official maps P63-14 and P79-15.

3 Q. When you refer to P63-14 and P79-15, those are those
4 big maps that are official maps. Is that correct?

5 A. That's correct.

6 Q. And those maps are the maps that your office maintains
7 that are promulgated by the legislature?

8 A. That is correct.

9 Q. And the counties don't draw those maps, do they?

10 A. No, they do not.

11 Q. Okay, and this orthophotography, obviously it shows
12 her house as pretty far from that line, doesn't it?

13 A. That's correct.

14 Q. And is there any doubt in your mind or in the mind of
15 you, the folks in your office, that this orthophotography
16 accurately reflects the location of her residence as it
17 relates to the precinct line?

18 A. It does accurately her residence.

19 Q. Okay. 413 is another map that you prepared, I
20 believe, Mr. Roberts?

21 A. Yes. These are the official U.S. Census Bureau census
22 blocks based off the P94-171 data base released for the
23 2010 census. Shows Ms. Murphy's residence as in Lexington
24 County, in a particular census block assigned to Lexington
25 County.

1 Q. Now, when we talk about these precinct maps and these
2 census blocks, do those have any impact on things like
3 apportionment of representatives and one man one vote
4 rules, things like that?

5 A. Yes, it does. These are the basic foundation and
6 building blocks of any redistricting plan that's based off
7 the Census Bureau's information.

8 Q. So, what happens as far as redistricting if someone is
9 shown, as they are in this case, in Lexington County but
10 they actually then register and vote and are treated by
11 Richland County as if they're in Richland County?

12 A. They would be incorrectly assigned to go to Richland
13 County since they are -- would be, would be apportioned in
14 -- showing residence in Lexington County census block.

15 Q. So, the people in Richland County's votes are diluted,
16 and the people in Lexington County's votes are enhanced?

17 A. That's correct.

18 Q. Okay. Now, the last one is 419, and I believe -- let
19 you tell me what that is.

20 A. All right, this is the tax parcel information that's
21 provided to our office from both the Lexington County GIS
22 department as well as the Richland County GIS department.
23 What this shows is that Ms. Murphy's residence actually
24 falls in both tax parcels for Lexington -- one for
25 Lexington, one for Richland.

1 Q. And, in fact, everyone agrees that at least part of
2 her property is in Richland County and part of her property
3 is in Lexington County. Is that correct?

4 A. I believe so, yes.

5 Q. And what this shows, though, is that the actual
6 location of her residence is shown in both counties. Is
7 that correct?

8 A. According to the tax maps that were sent to the state,
9 yes.

10 Q. Okay.

11 THE COURT: Mr. Montgomery, let me be sure that I'm
12 looking at the same thing you all are looking at. I see
13 413. Now then you say 419?

14 MR. MONTGOMERY: 419, Your Honor, if you look at the
15 bottom if it.

16 THE COURT: 419. Bring 419 over here and let me see
17 if it matches up with what I've got.

18 MR. MONTGOMERY: This one right here?

19 THE COURT: This says 414.

20 (A PAUSE.)

21 MR. MONTGOMERY: I'm sorry. I'm reading it wrong.
22 It's 414 on, on mine, too.

23 THE COURT: 414.

24 MR. MONTGOMERY: I just can't read my own handwriting
25 apparently.

1 THE COURT: Now I'm with you.

2 MR. MONTGOMERY: Yes, Your Honor, it's 414. I
3 apologize.

4 BY MR. MONTGOMERY:

5 Q. So, that shows that the house is in both places?

6 A. That's correct.

7 Q. Now, from a standpoint of when these issues occur, is
8 there a particular location or test that y'all use to
9 determine where someone is where there are these line
10 issues?

11 A. We just provide the official maps to the voter
12 registration office, and then they make the determination.

13 Q. But is, is the location of the bedroom where people
14 stay the final test?

15 A. Typically, historically what we've used is the bedroom
16 if the residence is split by the boundary.

17 Q. But the residence in this case isn't split by the
18 boundary, is it?

19 A. No, it's not.

20 Q. Okay. Now, Mr. Roberts, are there any, any maps that
21 your office has that are the official maps that relate to
22 precincts or voting or House and Senate districts that show
23 the residence at 154 Old Laurel Lane as being in Richland
24 County?

25 A. No. Every official map we have shows her as being in

1 Lexington County.

2 MR. MONTGOMERY: Thank you, sir. I have no further
3 questions.

4 THE COURT: Mr. Moore.

5 CROSS-EXAMINATION BY MR. MOORE:

6 Q. Sir, one of the official maps you have is the tax maps
7 which basically show her being in Richland and Lexington
8 County, correct?

9 A. We're not responsible for maintaining the tax maps;
10 that's up to the counties.

11 Q. I didn't ask you that, though, did I?

12 A. Could you repeat your question?

13 Q. Sure. One of the maps that you've drawn that shows
14 the tax maps show her as being in Richland and Lexington
15 County, right, her house?

16 A. The information was provided by the county, yes, but
17 that's not an official map dictated by state statute.

18 Q. Well, it's an official county map that dictates where
19 you pay your taxes, isn't it?

20 A. I'm not sure. That's a tax assessor question.

21 Q. Right. Well, you testified -- does your wife work in
22 Lexington-Richland Five?

23 A. Yes.

24 Q. And I believe you testified before the Richland County
25 commission, commission, the Lexington commission, right?

1 A. That's correct.

2 Q. And everything you testified there was the truth?

3 A. I believe so, yes.

4 Q. Now as I understand it, you say that you're supposed
5 to prepare these precinct maps, right?

6 A. That's correct.

7 Q. And you use these precinct maps using lines you
8 receive from the census department?

9 A. That's correct.

10 Q. Do you know where the census department gets its
11 lines?

12 A. I'm not sure.

13 Q. Do you know who established the census department
14 lines?

15 A. I cannot answer that.

16 Q. Do you know if the census department lines were drawn
17 by way of a survey?

18 A. Cannot answer that information.

19 Q. So, your precinct lines are established using a line
20 that you assume to be accurate because it's given to you
21 from the census department?

22 A. That's correct.

23 Q. Now, why don't you use the official line established
24 by the geodetic survey?

25 A. If we were to use that line, then we would have a

1 precinct boundary that does not coincide with what the
2 official House and Senate district lines are.

3 Q. I'm not sure I know or understand what you mean by
4 that. So, the, the, the, the geodetic survey line would
5 disagree with the precinct lines?

6 A. That's correct.

7 Q. How is that possible?

8 A. The precinct information is based off what's given to
9 us from the U.S. Census Bureau.

10 Q. All right. So, we know, then, that what's given to
11 you from the U.S. Census Bureau disagrees with what's given
12 to you by the geodetic survey folks?

13 A. That's correct.

14 Q. Well, when you're trying to determine if the census
15 line is accurate or the geodetic survey line is accurate,
16 what steps do you use to determine which of those two lines
17 is the right line or if there's a third line?

18 A. I would defer to the South Carolina Geodetic Survey
19 since they are the experts on it.

20 Q. And yet even though you would defer to the geodetic
21 survey, you use the census line and not the geodetic survey
22 line?

23 A. That's correct.

24 Q. So, why do you use the one that you would think is
25 less accurate instead of the one you think is more

1 accurate?

2 A. It's what we've been provided to go by.

3 Q. But we do know that the census line and the geodetic
4 survey lines don't match?

5 A. That's correct.

6 Q. And, as a matter of fact, if we look at this last map
7 -- I don't know the exact number in the black notebook --
8 but you've shown me a map with the tax maps that show the
9 -- Ms. Murphy's home located in Richland County and
10 Lexington County, correct?

11 A. That's correct.

12 Q. And, as a matter of fact, until very recently, the
13 Lexington County maps that you've been referring to showed
14 her house in Richland County, did they not?

15 A. I'd have to take your word for it.

16 Q. Now as I understand it, all these maps that you're
17 talking about, we've been over showing the line being
18 Richland County, Lexington County, wherever, all these come
19 off of either the census lines or the GIS lines, correct?

20 A. That's correct.

21 Q. But the GIS lines are required by statute to contain a
22 disclaimer that they may not be accurate, right?

23 A. I believe so, yes.

24 Q. So, all these maps that you told Judge Toal about, we
25 know that there's a statutorily required disclaimer saying

1 these lines may not be accurate?

2 A. That's correct.

3 Q. So we know, then, when you're using this GIS lines to
4 set your precincts, you're actually using maps that the
5 statute says may not be accurate, correct?

6 A. As far as the precincts, we can only go by what the
7 U.S. Census Bureau gives us.

8 Q. Well, you also go by the GIS lines, too, don't you?

9 A. No, not for precinct drawing.

10 Q. All right, and we don't -- we, we know this. That the
11 census lines, the GIS line, the geodetic survey lines, and
12 the tax map lines, none of them match up, right?

13 A. That's correct.

14 Q. Well, sir, well, we wind up with 700 people and we've
15 got four or five different nonmatching lines. How do you
16 go about deciding whether to move somebody or not move
17 somebody?

18 A. For election purposes, the precincts and the official
19 district maps will prevail.

20 Q. The election maps and the official precinct district
21 maps prevail?

22 A. That's correct.

23 Q. That's for purposes far as telling someone where to
24 vote, what precinct to vote in, correct?

25 A. In which district, yes.

1 Q. But the precinct maps do not establish official county
2 lines, do they?

3 A. Not that I'm aware of.

4 Q. So, all of this testimony that you've given us
5 basically is using the best information you can where you
6 think the precincts ought to be?

7 A. It's where, it's where the General Assembly
8 established the boundary according to code.

9 Q. Well, actually what the General Assembly said is that
10 you're supposed to do -- you're supposed to set precinct
11 lines, right?

12 A. That's correct.

13 Q. General Assembly didn't say you're supposed to use the
14 census line to do that, did it?

15 A. No.

16 Q. General Assembly didn't say you're supposed to use GIS
17 line to do it, did they?

18 A. No, it didn't.

19 Q. General Assembly didn't say use the tax map line to do
20 it?

21 A. No, it didn't.

22 Q. General Assembly just said set the lines?

23 A. Draw precincts, correct.

24 Q. And for, for, for precinct purposes, where you
25 actually go to vote, that's the line that you set?

1 A. That's correct.

2 Q. But those lines don't tell us exactly what county
3 somebody lives in, right?

4 A. It would dictate which precincts you would vote in.

5 Q. Right, and what you do if you think that someone is in
6 the wrong precinct, you take it to the county election
7 commission, right?

8 A. That's correct. I do not have authority to move any
9 voters.

10 Q. Right, and you don't have the authority to set
11 precinct lines either.

12 A. I disagree with you on that.

13 Q. But you don't have any right to move any voters.

14 A. I cannot move voters.

15 Q. All right. So the, the question of if a particular
16 voter is in the appropriate precinct, that's a question
17 that has been dedicated to the local voter registration
18 people to decide?

19 A. Based off the official maps, they have to decide which
20 precinct she's in.

21 Q. And in this case, they did that, didn't they?

22 A. At the election hearing, yes, they did.

23 Q. And Richland County at the hearing decided that she
24 was appropriately in the Richland County precinct, didn't
25 they?

1 A. That's correct.

2 Q. And as a matter of fact, I think I heard you tell me
3 that the question of Kim Murphy and the -- is it seventy
4 other people?

5 A. It's 150, approximately 150.

6 Q. There are 150 people that in about 2012, you went to
7 Richland County and said we think these people are in the
8 wrong precinct.

9 A. I'm sorry, let me, let me go back. In 2012, I don't
10 remember what the number was that we notified Richland
11 County as being incorrect. What we recently notified
12 Richland County in being incorrect was 700, approximately
13 753 with approximately 154 being impacted by a discrepancy
14 between county boundaries.

15 Q. All right. So ---

16 A. And the way that Richland County decided to allow
17 voters to be in the county which fell outside the Richland
18 County voting precincts.

19 Q. So, you gave them the information they had, correct?

20 A. That's correct.

21 Q. It was up to them to make the decision as to whether
22 or not to move people?

23 A. That's correct.

24 Q. How many people did they decide to move?

25 A. I don't remember.

1 Q. How many people did they decide not to move?

2 A. I believe it was approximately 154 they decided not to
3 move.

4 Q. And one of those 154 was Kim Murphy?

5 A. That's correct.

6 Q. So, the Richland County election officials charged
7 with deciding who votes in what precinct has been decided
8 for at least four years, correct?

9 A. Say that -- can you ask the question one more time?

10 Q. It's been at least four years that you've told
11 Richland County what you believe to be the appropriate
12 precinct for Kim Murphy?

13 A. That's correct.

14 Q. And yet Richland County has not accepted your findings
15 and has accepted their findings that she is in Richland
16 County and appropriately voting there?

17 A. That's correct.

18 Q. Now, sir, if you've got 750 people that you believe
19 are voting in the wrong county and the wrong precinct, why
20 didn't you bring a legal action or do something to
21 challenge it?

22 A. I don't have authority to do that.

23 Q. That's because you don't have the authority to move
24 people, correct?

25 A. That's correct.

1 Q. The people with the authority to establish who is
2 properly in a county and properly voting in a proper
3 precinct is the county election officials, correct?

4 A. I wouldn't say they have the authority to dictate
5 who's in the county, but they have the authority to dictate
6 who's in the voting precinct in the election district.

7 Q. And they have not accepted your findings. They've
8 accepted their findings, correct?

9 A. That, that's correct.

10 Q. And it's been that way for four years?

11 A. That's correct.

12 Q. So, we know that the people from your office have
13 allowed these elections to go on for at least four years
14 without doing anything to force the issue, correct?

15 A. Which did we our part by notifying the county Ms.
16 Murphy was voting in the incorrect pre -- the incorrect
17 House and Senate district.

18 Q. And they looked at the matter and decided that you
19 were wrong about she and about 170 other people?

20 MR. MONTGOMERY: I'm going to object to the question
21 as Mr. Moore is characterizing the thought process of
22 someone who's not testified and hasn't been here.

23 MR. MOORE: I'll reframe the question.

24 THE COURT: Reframe it.

25 BY MR. MOORE:

1 Q. So, we know about these 170 people. They've known
2 about them for four years, correct?

3 A. That's incorrect. They were just recently notified of
4 all 154, approximately 154. They did know about Ms.
5 Murphy's as well as some apartment complexes on Fernandina
6 Road.

7 Q. For how long?

8 A. Four years.

9 Q. Now, you testified at your office you met with
10 Richland County four years ago and told them about this
11 problem. Who at Richland County did you meet with?

12 A. We, we sent a -- we notified them. We sent a letter.
13 It was done by Bobby Bowers, my director at the time.

14 Q. Who was that letter sent to?

15 A. It was sent to a Jasper Salmond.

16 Q. On all of these different lines, okay, we've talked
17 about the GIS line. We've talked about the census line,
18 talked about the tax map lines. We've talked about the
19 geodetic survey lines. We talked about all kinds of
20 different lines. Do any of the lines agree?

21 A. The House, Senate, and precinct lines agree.

22 Q. Well, that's because they were written by using a
23 baseline of the census line, right?

24 A. That's correct.

25 Q. I'm talking about the census line -- the base lines

1 that we, that we've got to go by, all these maps, they look
2 like spaghetti to me. You got the GIS line, the census
3 line, the tax maps lines, survey lines. Do any of the
4 lines agree in regard to where the county line is?

5 A. Not that I have seen.

6 MR. MOORE: Thank you, sir, for answering my
7 questions. I don't have any questions. I appreciate it.

8 MR. SPILLANE: No questions, Your Honor.

9 THE COURT: All right.

10 MR. MONTGOMERY: Your Honor, I have a couple of
11 redirect questions.

12 THE COURT: Yes. You may.

13 REDIRECT EXAMINATION BY MR. MONTGOMERY:

14 Q. Mr. Roberts, when Richland County allows someone to
15 vote in a precinct where they don't live or they don't
16 assign, are they correct in doing so?

17 A. No. They are incorrect.

18 Q. Are they violating the law in letting that occur?

19 A. They're violating the statute that the General
20 Assembly drew the precinct lines establishing the boundary.

21 Q. Okay. Now, Mr. Moore asked you an interesting
22 question. He asked you about the agreement of the lines.
23 Would it be fair to say that all of those lines do agree on
24 one thing save the Richland County GIS map and that -- or
25 Richland County tax map, excuse me, and is that Ms.

1 Murphy's residence is located in Lexington County?

2 A. The geodetic survey map does. The census maps agree
3 that she is in Lexington County, and the Lexington County
4 GIS maps show that she's in Lexington County.

5 Q. So, basically everything but the Richland County tax
6 map agrees that Ms. Murphy's in Lexington County?

7 A. That's correct.

8 MR. MONTGOMERY: I have no further questions.

9 THE COURT: I have a question.

10 MR. MONTGOMERY: Yes, ma'am.

11 EXAMINATION BY THE COURT:

12 Q. Mr. Roberts, as I understand the decision that the
13 Richland County Voter Registration group made when they
14 were notified that certain individuals who they had placed
15 in Richland precincts and registered to vote in Richland
16 County actually lived in Lexington County, as I understand,
17 when the first group of 700 was given to them, they made
18 the decision to move most of them to agree with you all's
19 notification. But they make the decision not to do that
20 with regard to 154. Am I right about that so far?

21 A. That is correct, Your Honor.

22 Q. And I understand the basis for the 154 was not the
23 official precinct lines or even the Richland tax maps
24 versus Lexington tax maps. It was their determination that
25 these people had been paying taxes in Richland County. Is

1 that right?

2 A. That's correct.

3 Q. And as long as they had been paying taxes in Richland
4 County, even though that may disagree with the official
5 maps on precinct lines, the election commission, rather
6 than follow the official maps of precinct lines adopted by
7 the General Assembly, the election county of Richland
8 County decided that it would go by where they pay taxes.
9 Am I right?

10 A. That's correct, Your Honor.

11 THE COURT: All right.

12 Mr. Moore.

13 MR. MOORE: Just a couple of questions to follow that.

14 RECROSS-EXAMINATION BY MR. MOORE:

15 Q. Until recently, in Lexington, GIS lines also showed
16 Kim's home in Richland County, did they not?

17 A. I have not seen a tax map from Lexington County.

18 Well, the GI -- I have not seen the GIS lines from
19 Lexington County showing her in Richland County.

20 Q. The tax maps, and this is where I'll -- you may not
21 know this.

22 THE COURT: Well, that's not ---

23 Q. Do you, do you know, do you have any idea what
24 deference counties place on the tax maps?

25 A. I have no idea.

1 Q. Do you have any idea -- and you don't know this. I, I
2 withdraw the question.

3 MR. MOORE: Thank you.

4 THE COURT: Very good. No further questions, Mr.
5 Roberts. You may step down.

6 WITNESS: Thank you.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: Mr. Montgomery.

9 MR. MONTGOMERY: Your Honor, at this time I would
10 call ---

11 THE COURT: Just one moment. Just one moment.. We're
12 going to take a little break.

13 MR. MOORE: God bless you.

14 THE COURT: Why don't we break for fifteen minutes?

15 (OFF THE RECORD.)

16 THE COURT: Please be seated.

17 Mr. Montgomery.

18 MR. MONTGOMERY: Your Honor, at this time we call Mr.
19 David Ballard.

20 THE COURT: Mr. Ballard, come around, please, sir.

21 DAVID K. BALLARD, BEING DULY
22 SWORN, TESTIFIES AS FOLLOWS:

23 THE COURT: Thank you, sir, you may be seated. Please
24 recite your full name, spelling your last name.

25 WITNESS: David Keith Ballard, B-a-l-l-a-r-d.

1 DIRECT EXAMINATION BY MR. MONTGOMERY:

2 Q. Mr. Ballard, what is your residence address?

3 A. 1333 Bear Creek Road.

4 Q. And, Mr. Ballard, what is your current occupation?

5 A. Professional land surveyor. I run the boundary
6 program for the geodetic survey, State of South Carolina.

7 Q. What is your educational background and training in
8 the area of surveying?

9 A. I have close to twenty years' experience in land
10 surveying. I've got an associate's degree in civil
11 engineer with land surveying. Credited hours every, every
12 year. We're required to have fifteen continuing education
13 hours and I surpass that every year.

14 Q. Have you had the opportunity to review the records in
15 your office as it relates to the line that we're talking
16 about today around Rocky Ford bordering Richland and
17 Lexington Counties?

18 A. Yes, sir.

19 Q. And can you tell the court what you've done as far as
20 steps in your review?

21 A. The coordinates for Rocky Ford were given to me by my
22 predecessors Alan John Zuppon [phonetic] and Sid Miller,
23 and I have verified those coordinates by doing field work,
24 additional historical research. I've corroborated that the
25 Rocky Ford that they located in '97, '98 is the same Rocky

1 Ford in the code of law.

2 Q. Okay, and if you would, just describe to the court
3 sort of the, the means that you as a surveyor but more
4 importantly as the person in charge of the boundary program
5 at the state Geodetic Survey would use to ascertain where
6 the county line is in this area.

7 A. Rocky Ford is a monument on the boundary between
8 Richland and Lexington County, and for us to corroborate
9 that, we would have to look at the historical documents and
10 resurvey those lines to proof out that that is the Rocky
11 Ford in the code of law. We have been on the ground doing
12 field surveys with regards to the 1910 annexation survey,
13 1912 annexation survey, 1921 annexation survey, which are
14 official maps that relate to the boundaries in the code of
15 law.

16 Q. And those surveys were -- happened when the
17 legislature actually did move the county line on those
18 occasions. Is that correct?

19 A. Yes, sir.

20 Q. And those surveys are actually referenced in the code
21 of laws in the statutes describing both Richland and
22 Lexington County, are they not?

23 A. Yes, sir.

24 Q. Okay. Now, so you've been out and you've examined and
25 verified the locations on those surveys?

1 A. I have.

2 Q. Okay, and in doing so, were you able to verify the
3 monumented location of Rocky Ford?

4 A. I have. I was.

5 Q. And if you'd tell the court a little bit, and I -- not
6 as technically perhaps as you would, but sort of the
7 general steps you do and what you do to confirm the
8 locations of those lines.

9 A. Well, on those maps' metes and bounds; there's
10 bearings and distances. To get them to today's geodetic
11 grid, we would have to adjust those bearings to magnetic --
12 from magnetic north to true north and then to South
13 Carolina state plain north. Then we create an azimuth from
14 those bearings, and that's just a corrected bearing basis.
15 It gets us to what we are using currently.

16 As far as the 1910 survey, there was some stakes
17 placed, but there was a definite segment of line that was
18 along Old Hilton Road from the bridge over Wateree Creek.
19 We were able to reestablish where the historic bridge
20 location was, and it had changed by about 60 or 70 feet,
21 and then trace out the historic road location based on old
22 highway plans. From that we projected bearings on the 1910
23 survey to Irmo. That correlates with the 1912 survey. The
24 1912 survey tied into the 1910 survey, and then it ran the
25 course of metes and bounds to Rocky Ford. Picking up where

1 the 1910 left off, we projected those bearings and we fell
2 within about 80, 80 feet of Rocky Ford, very close.

3 The 1921 annexation, there were two of them. There
4 was one that was not accepted; there was one that was
5 accepted. The earlier one that was not accepted tied to a
6 bridge over Dan Comalander Road. That bridge had also been
7 moved in subsequent years. We were able to vet that out by
8 looking at the highway plans, and then we surveyed Risters
9 Creek, which is also known as Wateree Creek in that
10 location depending on which survey you're looking at. It
11 seems that these surveys, you know, some of them say Slice
12 Creek and it's Wateree Creek on the next one, but they're
13 -- you know, this is Risters Creek and it was also known as
14 Wateree Creek.

15 We surveyed out Wateree Creek the distance that is
16 called for on the first 1921, and we protected a bearing
17 from that distance from the creek, and we came within 13
18 feet on the bearing of Rocky Ford. We then surveyed out
19 the other 1921 to the distance in the creek, and we came
20 within about 100 feet of Rocky Ford.

21 And when you look at it from a surveying aspect, back
22 in the early 1900s they were using a compass and chain.
23 These are, these are very, very accurate surveys. To come
24 within 80, 100 feet, it seems like a lot but you realize
25 that these guys were using a 66 foot chain to chain through

1 woods and, you know, adverse terrain. So, these are very,
2 very accurate, and all that just points to Rocky Ford being
3 that Rocky Ford in the code of law; everything points to
4 that.

5 Q. So, just want to go back over them. When you talk
6 about these variances, these are variances that are a small
7 percentage variance when you consider the length of the
8 line that you're looking at?

9 A. Yes, sir.

10 Q. And from your standpoint as a registered professional
11 surveyor, to a reasonable degree of professional certainty,
12 is it your opinion that those accurately establish the
13 monument, monumented location of Rocky Ford?

14 A. Yes, sir.

15 Q. Okay, and from Rocky Ford, it's not very far to Ms.
16 Murphy's house, is it?

17 A. It's about 1000 feet, I think, right around 1000 feet.

18 Q. Okay, and you've had a chance over that distance to
19 plot that azimuth, have you not?

20 A. I have.

21 Q. And when you did that, what side of the county line
22 did Ms. Murphy's residence fall on?

23 A. Based on the code of law, she is in Lexington County.

24 Q. Now I'm going to ask you ---

25 MR. MONTGOMERY: And, Your Honor, if I may approach?

1 THE COURT: Very good.

2 BY MR. MONTGOMERY:

3 Q. I'm going to ask you again to talk about some maps
4 that you have prepared that are already in the record.

5 A. Yes, sir.

6 Q. And I'm going to ask you ---

7 MR. MONTGOMERY: And, Your Honor, I'm going to start
8 the witness at the map that is referenced on page 418 in
9 the record on appeal.

10 THE COURT: 418?

11 MR. MONTGOMERY: Yes, Your Honor.

12 BY MR. MONTGOMERY:

13 A. Okay, this is the 1910 annexation survey that I had
14 referred to just a little bit there.

15 Q. That would be one that you had gone back and verified
16 the lines in?

17 A. I have not verified the entire line, no, sir. I have
18 used the bearing basis to corroborate Rocky Ford.

19 Q. Okay, and then the next one at 419, if you would
20 describe what that is?

21 A. This is the 1912 annexation map.

22 Q. And in each of these cases, these are maps that are
23 maintained by your office?

24 A. We have copies of those maps. They are actually in
25 the South Carolina Department of Archives and History.

1 Q. And they're there because they are the official maps.

2 Is that ---

3 A. They are ---

4 Q. --- correct?

5 A. --- the official maps for these annexations, yes, sir.

6 Q. Okay, and so with regard to the proposed annexation
7 map that's shown in the record at 419, you said this is the
8 1912 map?

9 A. Yes, sir.

10 Q. And does it also show Rocky Ford?

11 A. It does show Rocky Ford.

12 THE COURT: Where is it?

13 MR. MONTGOMERY: Her Honor is asking if you'd point to
14 where Rocky Ford is.

15 WITNESS: It's at point number C. There's a letter
16 designation there. It's in the northwest region of this
17 map..

18 THE COURT: Right.

19 BY MR. MONTGOMERY:

20 Q. Okay, and have you had the opportunity to use that map
21 and verify it as to the location of Rocky Ford?

22 A. I have done the same thing: projected the bearings and
23 have corroborated that Rocky Ford.

24 Q. Okay. How much field work have you done as far as
25 actually being out and looking at these maps and the

1 surveys they represent?

2 A. I have surveyed out Risters Creek and I have surveyed
3 out the old road at Hilton, and I have been to Rocky Ford
4 although I have not done the survey work at Rocky Ford.
5 Like I said, the GPS coordinates were given me -- to me by
6 my predecessors.

7 Q. The GPS? You're a little quiet. The court reporter
8 is giving me ---

9 A. Oh, I'm sorry. The GPS coordinates were given to me
10 by my predecessors, and I believe they agreed. When I
11 visited Rocky Ford on Tuesday, I punched in those same
12 coordinates into a handheld GPS, which is about a 20 foot
13 accuracy, and the minute I stepped on Rocky Ford it beeped
14 and told me I was at that location.

15 Q. So, you verified that by both the annexation surveys
16 and your personal inspection with the previously determined
17 coordinates?

18 A. Yes, sir.

19 Q. Okay. Now we look at 420 and ask you -- and I see
20 that may be -- is that just an enlargement showing where
21 Rocky Ford is?

22 A. It is. It's an enlargement of the 1912 annexation.

23 Q. And that shows the point C that you referred Her Honor
24 to?

25 A. Yes, sir.

1 Q. Okay. Record page 421 shows a Richland County map?

2 A. Yes, sir. This is the Richland County map of Richland
3 County from 1915, I believe, and it's a school district
4 map. And why this is relevant is that the surveyor who --
5 one of the surveyors that did the 1915 map also did the
6 survey of the 1912 map. He was involved with surveys, and
7 if you look at the Springhill district, I believe,
8 Springhill school district on this map, on the northern
9 boundary there is a bearing and distances on that boundary.
10 And we were able to verify that those bearings and
11 distances tie into the bridge over -- I believe it's Boyd
12 Creek on Broad River Road. I think that's the right road,
13 and we plotted those bearings and distances. We scaled
14 where the school district line was in relationship to Rocky
15 Ford. Our scaling was, I think, around 200 feet and I
16 think the bearings and distances intersected Wateree Creek
17 at about 208 feet.

18 THE COURT: And this is the Hamby, Haynesworth, Mobley
19 survey?

20 WITNESS: Yes, ma'am, I believe so.

21 THE COURT: So, the 1912 was the Hamby, Haynesworth,
22 Mobley map for the proposed annexation and the 1915 school
23 district map is a take off by Hamby, Haynesworth, and
24 Mobley?

25 WITNESS: Yes, ma'am.

1 THE COURT: Of the 1912 map?

2 WITNESS: I believe so.

3 BY MR. MONTGOMERY:

4 Q. Okay, 422 is one that was -- you'd captioned as 13A,
5 and it shows the Springhill area, too?

6 A. That, that is a blowup of the 1915 school district map
7 showing that line that I just referred to with bearings and
8 distances north of Rocky Ford intersecting Wateree Creek.

9 Q. I'm sorry, I'm going to get you to speak up.

10 A. Oh. I'm sorry. That is a blowup of the 1915 map
11 showing the bearings and distances from the bridge we just
12 referred to and the intersection of the line with Wateree
13 Creek just above Rocky Ford.

14 Q. 423 is somewhat indecipherable, but perhaps you can
15 explain to us?

16 A. This is, this is a USDA soils map, and this was done
17 around the same time as the 1915 map, and this was put in
18 there because when you look at the blowup on the next page,
19 it shows Rocky Ford and I believe it has the county line
20 going to Rocky Ford.

21 Q. So we'll look at 424, which is that next page you're
22 showing.

23 THE COURT: All right, now where is Rocky Ford there?

24 WITNESS: It's not labeled, but there is a road
25 crossing Wateree Creek, and it stops where the county line

1 is shown there at Wateree Creek.

2 MR. MONTGOMERY: You might just want to describe that.
3 I think for the record what the witness is identifying,
4 Your Honor, is if you look, there's a light void area.

5 BY MR. MONTGOMERY:

6 Q. That would be the county line?

7 A. That would be Lexington County, yes, sir.

8 Q. Okay.

9 A. And, and going to that county line or going to Wateree
10 Creek is a dash line. That would indicate a road.

11 Q. And that dash line is about one-third from the top of
12 the left side. Is that correct?

13 A. It is about one-third from the top of the left side or
14 halfway down, yes, sir.

15 Q. That again gives you evidence that you used to confirm
16 the location of the Rocky Ford defined in the statute?

17 A. It corroborates that is where they historically
18 thought Rocky Ford was.

19 Q. Okay. Now, the next map at 425 in the record.

20 A. This is the first 1921 annexation survey. This one
21 was not used in the 1921 annexation, but what we're able to
22 glean from it is where they had proposed the county line
23 and there is a tie. I guess it would be in the bottom left
24 quadrant where you can see the word Risters and Andrew
25 Shealy. That road is Dan Comalander and there is a

1 distance along Risters Creek from the bridge to where they
2 proposed the county line at B. And once surveying out that
3 creek and then projecting the bearing corrected for
4 declination and convergence, we were within about 18 feet
5 of Rocky Ford.

6 THE COURT: Which is noted on that, and Rocky Ford is
7 noted on that?

8 WITNESS: It's noted on there, yes, ma'am.

9 BY MR. MONTGOMERY:

10 Q. Okay, and I believe 426 is just an enlargement showing
11 that. Is that correct?

12 A. It is.

13 Q. Okay. Now you have 427, which is a survey that's
14 signed by Mr. Wessinger, among others?

15 A. Yes, sir. This is the 1921 annexation map that was
16 accepted by the General Assembly, voted in and codified.

17 THE COURT: And this is the one that's referred to in
18 a statute that has the metes and bounds description of
19 Richland and Lexington County. It references A.D.

20 Wessinger on a plat. This is the plat?

21 WITNESS: This is it.

22 BY MR. MONTGOMERY:

23 Q. And this is the plat, for the relevant section of the
24 line we're dealing with here, has the metes and the bounds
25 that are in the statute?

1 A. Correct.

2 Q. Okay.

3 A. And we also continued our survey at Risters Creek and
4 plotted the distance that is shown on this plat, projected
5 the bearing, and we ended up being within about 100 feet of
6 Rocky Ford.

7 Q. We have at 428, is that an enlargement of the relevant
8 section?

9 A. It, it is.

10 Q. And if you would, just sort of point those points out,
11 and give you a pen to mark them if I can in that
12 enlargement.

13 A. Okay. Once again our survey started at the bridge on
14 Wateree Creek over Dan Comalander Road or over Wateree
15 Creek on Dan Comalander. We went the 94 chains and then
16 projected that bearing and distance, and we ended up being
17 about 100 feet from Rocky Ford.

18 Also on this map, Slice Creek which is actually
19 Wateree Creek, and Wateree Creek on this map is actually
20 Risters Creek, but Slice Creek, we went to the intersection
21 of Slice Creek and Wateree Creek as they're shown on this
22 map. And as an exercise, I took a digital elevation model
23 from DNR which shows contour lines. It's a very accurate
24 contour map, and I traced out Slice Creek and -- with the
25 chains on there, and I ended up very, very close to Rocky

1 Ford. I can't remember the exact distance. I think it's
2 in the transcript for the election commission.

3 Q. Okay, and then record 429?

4 A. Record 429 is from Richland County's GIS. This is an
5 overlay of the 1939 USD aerials that they put on their GIS
6 system. The white line is a highlighted line that shows
7 the Lexington-Richland County boundary, and it, it, it ends
8 up turning very close to Rocky Ford there. So,
9 historically again they're showing that Rocky Ford was
10 recognized as the county boundary -- point on the county
11 boundary.

12 Q. What does the darker protected area in that line
13 represent?

14 A. I believe that is where they blacked out Lexington
15 County.

16 Q. Okay.

17 A. According to their GIS line.

18 Q. So, would it be fair to say that this map shows, if
19 you look at the 1939 USDA map, that Lexington County
20 included this area that Richland County is showing now as
21 part of its GIS?

22 A. They did not have GIS in 1939, but Lexington County
23 would have been included in that area to the left of that
24 line, yes, sir.

25 Q. Which part of it -- which is now shown on the Richland

1 County GIS?

2 A. It is.

3 Q. The next document, if you will, is at record on appeal
4 430. I believe this is the subdivision plat that
5 established Ms. Murphy's property?

6 A. It is.

7 Q. Okay, and can you tell us about this particular plat?

8 A. This particular plat actually has two locations of the
9 county line on it. One of them is shown on the boldface of
10 the plat; the other is shown in the location map in the
11 upper left-hand corner. There is nothing in the standards
12 of surveying...

13 (A PAUSE.)

14 A. There is nothing in the standards of survey and
15 practice regs that say that a surveyor is supposed to
16 locate the county line when they're surveying a property.
17 It is standard practice and acceptable practice that a
18 surveyor will scale the county line when they're doing the
19 survey and show it on their, on their survey. Mr. Cobb
20 just located this, scaled it, I would assume, and showed it
21 as an approximate location to put the owners on notice that
22 this may not be correct.

23 MR. MOORE: I would have to object to the assumption,
24 please, Your Honor.

25 THE COURT: What's that?

1 MR. MOORE: The gentleman testified based upon an
2 assumption. He assumed what Mr. Cobb had done, he said. I
3 would object to this assumption. His testimony based upon
4 assumption, I think, would be inappropriate.

5 THE COURT: I'm going to construe this as his, meaning
6 the witness's assumption, not Mr. Cobb's assumption. You
7 just don't want this to be attributed to Mr. Cobb. I
8 understand you completely. This is his interpretation of
9 the map, and with that qualification I'll allow him to go
10 forward. But I understand exactly what you're saying. You
11 are completely correct, Mr. Moore. He can't say what Mr.
12 Cobb thought. He can say what he thinks this map
13 represents.

14 MR. MOORE: Thank you.

15 BY MR. MONTGOMERY:

16 Q. And, Mr. Ballard, if you were identifying the exact
17 location of something, it would be fair to say you would
18 not write approximate by it. Is that correct?

19 A. That is correct.

20 Q. Okay. So, and I'll let you proceed as you are
21 describing this plat.

22 A. So like I said, there are two county lines pretty much
23 shown on here. The one in the location map coincides very
24 well with Rocky Ford and the Rocky Ford that is shown on
25 this plat that was surveyed by Mr. Cobb, I believe.

1 Q. Does the approximate line coincide with Rocky Ford?

2 A. It does not.

3 Q. Okay. Now I'd ask you, I'm going to ask you -- show
4 you something and ask if you can identify this for me.
5 Tell me what this document is.

6 A. This is an overlay of the actual plat of survey on the
7 location map. The location map is blown up to scale, and
8 this just shows the differences in the two county lines.

9 Q. Okay, and if you could just point those out for us,
10 please, sir?

11 A. This is the approximate county line, and this is the
12 county line on the map, on the location map, and it goes
13 through Rocky Ford.

14 Q. So what your testimony is, as I understand, is that if
15 you look at the location map, it is inconsistent with the
16 approximate county line shown on the plat?

17 A. Correct, sir.

18 Q. And which one, in your view, provides a more accurate
19 assessment of the location of the county line?

20 A. I believe that the one in the location map is more
21 accurate because it goes through the monument known as
22 Rocky Ford that's in the code of laws.

23 THE COURT: Mark the monument known as Rocky Ford on
24 that map, as well as on the previous map, the plat.

25 (A PAUSE.)

1 WITNESS: And I believe there might be a blowup of
2 that also.

3 MR. MONTGOMERY: Okay, and so we'd move to admit this
4 as Number 4.

5 THE COURT: Take moment. Has that been marked?

6 MR. MONTGOMERY: It has not been marked.

7 THE COURT: Let's let the court reporter mark it.
8 Let's hold for a minute.

9 (PLAT MARKED AS PETITIONER'S EXHIBIT NUMBER 4 FOR
10 IDENTIFICATION.)

11 BY MR. MONTGOMERY:

12 Q. Mr. Ballard, if you would just for the record describe
13 how you prepared this document?

14 A. We printed, we printed Mr. Cobb's plat to scale on
15 Mylar, and the Mylar is so that you could see through it,
16 and then we scaled the location map. The location map is
17 to scale, so we just scaled it up to match the scale of the
18 subdivision plat and then printed it on paper so that you
19 could overlay the subdivision plat onto the location map.

20 Q. And the green area itself or the green cross hatched
21 area in your overlay, what does that indicate?

22 A. That indicates the parcel that was being surveyed by
23 Mr. Cobb.

24 Q. Okay.

25 MR. MONTGOMERY: At this time, I'd move to have this

1 admitted as Number 4.

2 MR. MOORE: No objection.

3 THE COURT: All right, the plaintiff's admitted 4.

4 Mr. Moore?

5 MR. MOORE: No objection.

6 THE COURT: No objection.

7 (PLAT MARKED INTO EVIDENCE AS PETITIONER'S EXHIBIT
8 NUMBER 4.)

9 BY MR. MONTGOMERY:

10 Q. Now, Mr. Ballard, in all of the surveys that you've
11 analyzed and looked at, have you been able to identify any
12 survey that you have seen of the line between Richland and
13 Lexington Counties where if you placed Ms. Murphy's
14 residence on that map, it would be located within Richland
15 County?

16 A. The only maps would be Richland County GIS and Mr.
17 Cobb's with the approximate location, which does not follow
18 the code of law.

19 Q. Have you had a chance to compare Mr. Cobb's
20 approximate location with the Richland County GIS maps?

21 A. I have only cursorily, cursorily.

22 MR. MONTGOMERY: Mr. Ballard, I thank you. I don't
23 think I have any further questions for you.

24 WITNESS: Okay.

25 THE COURT: All right, Mr. Moore.

1 CROSS-EXAMINATION BY MR. MOORE:

2 Q. Mr. Ballard, when you say that Mr. Cobb doesn't follow
3 the code of laws, there's nothing contrary to the code of
4 laws which precludes a surveyor from either locating an
5 approximate county line or a county line on a survey, is
6 it?

7 A. What I mean to say is that his approximate county line
8 does not follow the code of law.

9 Q. You would not take a position that Mr. Cobb has
10 violated any code of law, would you?

11 A. No, sir.

12 Q. You know Mr. Ronnie Tyler?

13 A. I do.

14 Q. Do you recognize him as having expertise in the field
15 of surveying?

16 A. I would.

17 Q. And you've seen Mr. Tyler's report, correct?

18 A. I have seen his report.

19 Q. And it would be fair to say that he, as an expert
20 surveyor, disagrees with your opinion, would it not?

21 A. He is not here, and he has not reviewed the work that
22 we have done since he issued that report. So, I cannot
23 speak for Mr. Tyler.

24 Q. Well, we've got him in Charleston tied up with the
25 hurricane; hopefully we'll get him here. He's got a

1 subpoena, so we shall see, but I just want to make sure we
2 understand. From what you have seen, his work disagrees
3 with your work, correct?

4 A. I believe that he stated at the election commission
5 that he has not reviewed our work to present.

6 Q. But his opinion differs from yours, correct?

7 A. I think his -- I cannot speak for Mr. Tyler, but I
8 don't know what his opinion would be currently.

9 Q. Were you present at the election commission when he
10 testified?

11 A. I was.

12 Q. And you were present and testified at the election
13 commission, correct?

14 A. Yes, sir.

15 Q. So, when the election commission ---

16 MR. MONTGOMERY: Your Honor, I'm going to object to
17 this. He's trying to suggest to the court that the
18 election commission's decision is somehow dispositive of
19 the issue.

20 THE COURT: Well, I think we've all agreed that's not
21 the case we would proceed on. We understand it's part of
22 the evidence in the case. On that basis, he can proceed,
23 Mr. Montgomery. Overruled.

24 MR. MOORE: Thank you, Your Honor.

25 BY MR. MOORE:

1 Q. The election commission heard both y'all's testimony,
2 right?

3 A. Yes, sir.

4 Q. Your opinion and his?

5 A. Yes, sir.

6 THE COURT: Now I know I'm not going to let you do
7 that, Mr. Moore.

8 MR. MOORE: Oh, I ---

9 THE COURT: You can't be pitting him against the
10 election commission.

11 MR. MOORE: I'm, I'm not.

12 THE COURT: Good.

13 BY MR. MOORE:

14 Q. You would agree with me, sir, that reasonable
15 surveyors can disagree?

16 A. Reasonable surveyors can disagree.

17 Q. Now, have you done a, a survey of the line on Kim's
18 property?

19 A. I don't know that I need to survey Kim's property
20 lines.

21 Q. Is the answer yes or is it no?

22 A. No, sir.

23 Q. So as of this time, you have not actually gone out and
24 done an actual metes and bounds or, I guess, the surveying
25 equipment to actually look at her property?

1 A. I have not surveyed her property, no, sir.

2 Q. And there's a lot more to establishing a county line
3 than simply finding the coordinates for Rocky Ford, isn't
4 it?

5 A. There is.

6 Q. Is any of her property in Richland County?

7 A. I think a portion of her property is in Richland
8 County.

9 Q. Now, if we were going to determine which portion of
10 her property is actually located in Richland County and
11 which portion of her property is in Lexington County, how
12 would we do it?

13 A. We would do a survey of her property, and then we
14 would compare it to the county line.

15 Q. So, in order for us to determine what part of her
16 property is in Richland and what part of her property is in
17 Lexington, we would have to do a survey, correct?

18 A. Yes, sir.

19 Q. And of course as you testified, we haven't done that.

20 A. I have not done a survey of her property, no, sir.
21 No.

22 Q. And both counties acknowledge -- correct me if I'm
23 wrong, but both, both counties acknowledge that a portion
24 of her property is in Richland and a portion is in
25 Lexington, right?

1 A. I think that is correct.

2 Q. Now Exhibit Number 430, the -- that actually does show
3 her home located in Richland County, correct?

4 A. Could you tell me which one is 430, please? I'm
5 sorry. I don't ---

6 Q. It's the sub ---

7 A. --- have that in front of me.

8 Q. It is the subdivision plat.

9 A. No, sir, it does not show her home at all.

10 Q. It shows where her home is in Richland County, her
11 home site in Richland County, doesn't it?

12 A. It does not show her home site at all.

13 Q. Do you know where her home site is?

14 A. I do based on aerial photography.

15 Q. Based upon where her home site is, based upon aerial
16 photography, would that home site have been located on this
17 plat in Richland County or Lexington County?

18 A. I believe, based on that approximate location of
19 county line, it would be in Richland County.

20 Q. Now, you've told me what you assume about how Mr. Cobb
21 put that line on that plat. Do you have any first-hand
22 knowledge as to how Mr. Cobb put that line on that plat?

23 A. I do not.

24 Q. Is it possible that your assumption as to how he put
25 that line on that plat is in error?

1 A. It is. I believe -- may I expound on that?

2 Q. Sure.

3 A. I, I believe that that is what is acceptable practice.
4 It is what most surveyors do.

5 Q. And actually the subdivision plat was approved by
6 Lexington County Planning Commission and by Richland County
7 Planning Commission, correct?

8 A. I'm sure not.

9 Q. Well, aren't they staffed with the approvals of the
10 planning commissions?

11 A. If you say so. I'm -- I don't have that document in
12 front of me, but I would assume that it would've had to
13 gone through both planning commissions, yes.

14 Q. They actually have to be approved by the planning
15 commissions to be recorded, don't they?

16 A. Yes, they do, subdivisions.

17 Q. All right. So, we know, then, that the subdivision
18 plat showing her home site in Richland County should have
19 been approved by Lexington County Planning Commission and
20 Richland County Planning Commission?

21 A. I believe so.

22 Q. Do you know why Lexington and Richland would have
23 approved that approximate line if it wasn't the approximate
24 line?

25 A. No, sir, I don't, but I don't think that they have the

1 authority to set or approve county lines.

2 Q. And you don't either, do you?

3 A. No, sir.

4 Q. And, as a matter of fact, I would assume in your
5 research -- because you testified that you have seen the
6 official maps of Richland County.

7 A. The official maps?

8 Q. Right, the GIS ---

9 A. The assessor maps?

10 Q. Yes.

11 A. Yes, sir, I've reviewed those.

12 Q. The official, officially maintained maps for Richland
13 County show the home site of Ms. Murphy located in what
14 county?

15 A. In Richland County.

16 Q. Now, do you know why your opinion differs from the
17 official mapping position of the County of Richland, South
18 Carolina?

19 A. No, sir.

20 Q. Do you have the authority to override Richland County?

21 A. I do not.

22 Q. Now, I want to make sure I understand what a GIS map
23 is. You've seen the tax maps of Richland County, correct?

24 A. I have.

25 Q. Tax maps show Ms. Murphy's home located in Richland

1 County, correct?

2 A. Richland County maps do.

3 Q. And the GIS maps from Richland County show her home
4 located in Richland County, correct?

5 A. The GIS maps from Richland County do.

6 Q. Now, GIS stands for what?

7 A. Geographic Information Systems.

8 Q. And the GIS maps are not necessarily correct, are
9 they?

10 A. They are not. They have a disclaimer that says so.

11 Q. As a matter of fact, they are required to have a
12 disclaimer to say so, correct?

13 A. Yes, sir.

14 Q. But both from your experience, the counties use either
15 the tax maps or the GIS maps until something different
16 comes along, don't they?

17 A. I believe that may be correct.

18 Q. And the GIS map, even though it does have a disclaimer
19 that it may not be accurate, what it is is a computer
20 overlay of information, correct?

21 A. Correct.

22 Q. What the computer does is to overlay all of the
23 different maps, all of the different coordinates, all of
24 the different lines, and comes up with a computerized
25 opinion as to where the lines are, correct?

1 A. I don't know if that's correct, sir.

2 Q. All right. Do you have any idea how a GIS line is
3 established?

4 A. How a GI -- there is a GIS operator that puts it into
5 place.

6 Q. Do you have any idea how the computer program which
7 provides the line is, is operated?

8 A. It's based, based on -- coordinate based. I'm not
9 sure how this is -- has anything to do with the county
10 boundary, but...

11 Q. Well, your, your opinion has been coordinate based,
12 correct?

13 A. I believe so.

14 Q. So, your opinion is based on coordinates, and you
15 believe the GIS opinion is based upon coordinates?

16 A. My opinion is based on the monument known as Rocky
17 Ford in the code of law, and we have assigned a coordinate
18 to that point using GPS.

19 Q. You say we have assigned a coordinate -- wait a
20 minute. You say we have assigned a coordinate to that
21 point using GPS. Who is we?

22 A. The South Carolina Geodetic Survey.

23 Q. Do you -- are you employed by the Geodetic Survey?

24 A. I am.

25 Q. Actually, you're hired as a contractor for them,

1 correct?

2 THE COURT: I understand ---

3 A. No, sir.

4 THE COURT: --- what his position is, Mr. Moore.

5 MR. MOORE: Okay.

6 A. No, sir.

7 THE COURT: I'm not going to stretch this out to the
8 nth degree when we can establish it in a clear way without
9 going over it a lot of times.

10 BY MR. MOORE:

11 Q. So, so, the, the work you've done is part of the
12 preliminary work and actually coming up with the finalized
13 line, is it not?

14 A. It is.

15 MR. MOORE: Thank you, sir. I have no further
16 questions. Thank you.

17 MR. SPILLANE: No questions, Your Honor.

18 THE COURT: All right, I have a couple of questions,
19 Mr. Ballard.

20 WITNESS: Yes, ma'am.

21 EXAMINATION BY THE COURT:

22 Q. Mr. Ballard, as I understand, the only maps that are
23 of the county lines which are -- have been adopted by the
24 General Assembly are the maps that are described in the
25 statute that sets up the county lines and have been

1 described by you in the plats of Wessinger. Is that
2 correct?

3 A. Yes, ma'am. Those -- the 1921 annexation and the 1912
4 annexation, the 1910 annexation, they're in the acts and
5 code of law, yes, ma'am.

6 Q. The precinct lines are compiled maps that are based on
7 census data, correct?

8 A. I believe that's correct.

9 Q. Supplied by the United States Census Department?

10 A. I believe that is correct.

11 Q. They break down geographic areas into very small
12 blocks, building blocks of locations, correct?

13 A. I'm not sure. That's out of what I do. That's...

14 Q. But the census -- the precinct lines are census, U.S.
15 Census based ---

16 A. Based.

17 Q. --- maps?

18 A. Yes.

19 Q. The GIS maps, as I understand it, are a composite of
20 plats recorded in the various counties involved in setting
21 up their tax mapping ---

22 A. G ---

23 Q. --- as well as other information from such things as
24 the code of law description and any other plats available,
25 correct?

1 A. GIS can be used for that, yes.

2 Q. Now in the Lexington GIS of this particular area, the
3 most recent Lexington GIS maps, where do they place Ms.
4 Murphy's house?

5 A. Lexington GIS map shows Ms. Murphy's residence in
6 Lexington County.

7 Q. And when was that map made?

8 A. I'm not sure.

9 Q. The Richland map shows Ms. Wessinger's -- I mean, Ms.
10 Murphy's house in Richland County?

11 A. Correct.

12 Q. And in the part of it that is concerned with the
13 monuments and the boundaries, it basically adopts the
14 subdivision plat, approximate county line, of Mr. Cobb.
15 Is that right?

16 A. I believe that's right. I'm not sure which came
17 first. I'm not sure if the tax map showed that, and Mr.
18 Cobb is here. I'm sure he can speak to that.

19 Q. All right, sir.

20 A. I, I will say that where the proximate county line is
21 at the cul-de-sac, there is no creek. There is no ford.

22 Q. And on the map you been testifying to is on page 430,
23 I'm going to ask you to mark on here where you say Ms.
24 Murphy's house is.

25 A. I believe it's right around here.

1 Q. You circled that in yellow. You got a pen or
2 something?

3 MR. MONTGOMERY: I have a pen, Your Honor.

4 Q. I just want to be sure. I'm going to circle your --
5 so, you say it's somewhere in there. It is on the Richland
6 side of the approximate county line that Mr. Cobb shows?

7 A. Yes, ma'am.

8 Q. All right.

9 THE COURT: That's all I have.

10 MR. MONTGOMERY: Your Honor, if I may ask two
11 questions on redirect?

12 THE COURT: All right, sir.

13 REDIRECT EXAMINATION BY MR. MONTGOMERY:

14 Q. Mr. Ballard, Mr. Moore asked you about performing a
15 survey on Ms. Murphy's property to locate the exact county
16 line using the bearings from Rocky Ford. Is it necessary
17 from the work you've done to do a survey of Ms. Murphy's
18 property to determine the county in which her residence is
19 located?

20 A. No, sir.

21 Q. And why is that?

22 A. Because based on the azimuths leaving Rocky Ford, the
23 north azimuth would be over 1000 feet from her house, and
24 the southwest azimuth would be close to 600 feet from her
25 house.

1 Q. So in either case, there's a substantial distance
2 between the county line and where her house is located?

3 A. Yes, sir.

4 MR. MONTGOMERY: I have no further questions.

5 THE COURT: Thank you, Mr. Montgomery.

6 You may step down.

7 MR. MOORE: Could I, could I ask one more?

8 THE COURT: All right, sir.

9 RECROSS-EXAMINATION BY MR. MOORE:

10 Q. You were asked about Lexington County GIS maps.

11 A. Yes, sir.

12 Q. Have you seen the Lexington County tax maps?

13 A. I have not reviewed their assessor's paper maps. Is
14 that what you're asking me? I'm sorry.

15 Q. The official maps for Lexington. Paper or computer,
16 you've seen the tax maps in Lexington, haven't you?

17 A. I have seen the GIS map.

18 THE COURT: And that's what you were referring to as
19 the tax maps?

20 WITNESS: Yes, ma'am.

21 THE COURT: Yeah.

22 WITNESS: That's what they are currently, yes.

23 BY MR. MOORE:

24 Q. The tax maps show this -- show her home in Lexington --
25 -- in Richland County, don't they?

1 A. I will take your word for that, sir.

2 Q. All right. There's a difference between a tax map and
3 a GIS map, right?

4 A. I believe that the tax maps are going to GIS. I
5 believe the new GIS maps are the tax maps.

6 Q. Have you actually seen a tax map of Lexington?

7 A. I have not. You, you're talking about the paper maps,
8 the old paper maps.

9 Q. Well, even the most recent maps. I've got copies of
10 them here. Hopefully we'll be able to get these in
11 evidence. That, that's okay. If you haven't seen them,
12 that's all right.

13 THE COURT: All right, Mr. Ballard, you may step down.

14 WITNESS: Thank you.

15 (THE WITNESS EXITS THE STAND.)

16 THE COURT: Mr. Montgomery.

17 MR. MONTGOMERY: Your Honor, at this time the
18 plaintiff rests.

19 THE COURT: All right, let's get some sense of where
20 we're going. I heard with some trepidation the notion that
21 you were trying to get somebody up here from Charleston. I
22 don't intend to have this thing go more than a day, Mr.
23 Moore.

24 MR. MOORE: Here's the problem we have, Your Honor.
25 We had subpoenas which have been issued for a number of

1 people. We had subpoenaed those people to the Richland
2 County courthouse, and we were asked by Mr. Montgomery's
3 office about opening it up here and ---

4 THE COURT: I did that. Don't think anybody but me
5 did that.

6 MR. MOORE: It's -- the, the, the correspondence I had
7 was from Mike and it's okay. My understanding is we would
8 be working around hurricane problems. I've got a witness
9 or two who are -- one of -- they're subpoenaed. I mean, I
10 guess I could ask the court to send the sheriff after them,
11 but I don't want to. I've got -- everybody's got
12 subpoenas, and I'd ask the court to send the sheriff if I
13 had to but I don't want to. Surely we can work around the
14 issue, but ---

15 THE COURT: I don't want to hold a long discourse on
16 everything. I want to find out how many witnesses you've
17 got and what we're looking at timewise because I don't want
18 to have to take this thing over to tomorrow.

19 MR. MOORE: The -- you know, I've -- how many
20 witnesses? I've got eight witnesses. I've got four of the
21 eight here. I've got one of them on standby who can -- I
22 can call and tell him to come. I've got one gentleman in
23 Charleston.

24 THE COURT: I don't think we're going to see the
25 gentleman in Charleston, and I'm not going to hold up the

1 proceedings for that.

2 MR. MOORE: He's a, he's a critical witness I can
3 tell, tell the -- do we have an affidavit from him? I've
4 got an affidavit from him I can use.

5 MR. MONTGOMERY: Your Honor, and what I would suggest,
6 if they want to have a brief conference in chambers, we may
7 be able to stipulate to some of this testimony and expedite
8 the process.

9 THE COURT: Yeah. That's what I would suggest you do.

10 MR. MOORE: We very well may.

11 THE COURT: That's what I would suggest you do.

12 All right, let me suggest this. We're at 12:10. Mr.
13 Moore, if you want to begin your case with a witness and
14 then adjourn at 1 and then we keep on going, that's one
15 thing. If it would expedite this thing, we might adjourn
16 for lunch now. We won't take a long one. Let you and Mr.
17 Montgomery get together and see if y'all can agree on some
18 of the affidavits and stipulations. I'd be happy to accept
19 the information. I realize there's going to be a clash of
20 experts here and that's fine, and I will regard the --
21 whatever surveyor you have. You obviously have Mr. Cobb
22 here. He's going to be a very key witness to talk about
23 his survey, and we certainly want to hear from him, but if
24 you have some others that we can deal with by way of
25 affidavits, I'll give them the same credibility and weight

1 I would if they were in this courtroom.

2 MR. MOORE: I have -- I clearly -- one of them clearly
3 have got the affidavit, but I do have a, do have a couple
4 of motions and ---

5 THE COURT: Have you got motions about this case?

6 MR. MOORE: Yes.

7 THE COURT: They will be the usual motions. If you
8 want to recite them, you may. They're going to be denied,
9 and we're going to go forward with your case.

10 MR. MOORE: Twofold. A, I don't think there's been
11 any proof as to standing. No one has testified, no one has
12 testified, and I, I know that I might be technical on some
13 of this.

14 THE COURT: Well, I think we agreed to stay away from
15 all that, Mr. Moore, when we decided to hear this thing
16 with the parties we have before us. So, I will deny that
17 motion.

18 MR. MOORE: The second issue, and if the court, at
19 the, at the risk possibly of drawing someone's ire, but I
20 think I have to make this motion. What I had agreed to do
21 -- as, as I understood it, when we left the court last week
22 Mr. Montgomery had told the court that I had been served
23 with a summons in the case as a courtesy. I had been given
24 a summons as a courtesy, that I was not a party to the
25 action. At that point in time, I was not a party to the

1 action.

2 THE COURT: But we resolved that before the hearing
3 concluded. We decided you would become a party and that we
4 would proceed in that vein.

5 MR. MOORE: And that I would accept service.

6 THE COURT: Yes.

7 MR. MOORE: And what got served on me was a complaint.

8 THE COURT: That's what I anticipated would be done, a
9 complaint which recast it as declaratory judgment and added
10 Ms. Murphy as a defendant. That is precisely what we all
11 agreed to do.

12 MR. MOORE: What was not served upon me was a summons.

13 THE COURT: I'm going to regard that as way too
14 technical. This -- and I'll tell you why. We did not talk
15 about starting this over again. We decided to amend the
16 complaint that had already been filed and styled as a
17 *mandamus* to recast it as a declaratory judgment. So, no
18 summons was necessary, and I'll make that ruling.

19 MR. MOORE: And I understand. I simply wanted to make
20 sure that I placed the appropriate motion on the record.

21 THE COURT: I have no problem with your preserving
22 your position, Mr. Moore.

23 MR. MOORE: I would also move to -- and I know the
24 court's going to move forward, but I would also like to
25 take the position that we would like to move to dismiss the

1 case based upon a failure of proof.

2 THE COURT: Understood. Denied.

3 MR. MOORE: Thank you, ma'am, and that would be it.

4 THE COURT: You've got your position completely
5 protected, and I'm not critical at all of you making those
6 motions. You're a good lawyer, and that's precisely what
7 you should be doing.

8 I think we could profitably adjourn right now or
9 recess for lunch. Try to be back here at 1:15 and let you
10 gentlemen perhaps put you head together for a moment about
11 possible stipulations. So, court will be in recess until
12 1:15.

13 (OFF THE RECORD.)

14 THE COURT: All right, the plaintiff has rested. All
15 the appropriate motions have been made by defendant, and
16 now defendant case will go forward. I certainly hope you
17 gentlemen have been able to successfully compose certain
18 matters related to witnesses.

19 MR. MOORE: I think we've certainly made the
20 accommodations we can.

21 THE COURT: Good. Excellent.

22 MR. MOORE: Your Honor, first of all ---

23 MR. MONTGOMERY: Do you want to enter that stimulation
24 first?

25 MR. MOORE: Yeah, I'm, I'm going -- that's what I'm

1 about to put in.

2 Your Honor, Mr. Montgomery and I have been over some
3 documents. We have exhibits number -- if I might ask the
4 court reporter? How many do we have premarked?

5 COURT REPORTER: 1 through 30 for ID.

6 MR. MOORE: If I might introduce exhibits 1 through 30
7 into the record? Some of these are going to be duplicates
8 of what's already in the record, but we wanted to make
9 sure.

10 THE COURT: That's fine. That's fine. Without
11 objection, Mr. ---

12 MR. MONTGOMERY: Without objection.

13 THE COURT: Very well.

14 (FOUNDATION PLAT MARKED AS DEFENDANT'S EXHIBIT NUMBER
15 1 FOR IDENTIFICATION.)

16 (LEXINGTON COUNTY TAX RESEARCH MARKED INTO EVIDENCE AS
17 DEFENDANT'S EXHIBIT NUMBER 2.)

18 (LETTER MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
19 NUMBER 3.)

20 (TAX MAP MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
21 NUMBER 4.)

22 (EMAILS MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
23 NUMBER 5.)

24 (AFFIDAVIT MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
25 NUMBER 6.)

1 (LETTER MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
2 NUMBER 7.)

3 (LETTER MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
4 NUMBER 8.)

5 (LETTER MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
6 NUMBER 9.)

7 (LETTER MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
8 NUMBER 10.)

9 (EMAILS MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
10 NUMBER 11.)

11 (INCOME TAX RETURNS MARKED INTO EVIDENCE AS
12 DEFENDANT'S EXHIBIT NUMBER 12.)

13 (EMAIL MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
14 NUMBER 13.)

15 (FOIA REQUEST FROM RICHLAND COUNTY MARKED INTO
16 EVIDENCE AS DEFENDANT'S EXHIBIT NUMBER 14.)

17 (EMAILS MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
18 NUMBER 15.)

19 (LETTERS MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
20 NUMBER 16.)

21 (SUPPLEMENTAL REPORT MARKED INTO EVIDENCE AS
22 DEFENDANT'S EXHIBIT NUMBER 17.)

23 (MAP MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
24 NUMBER 18.)

25 (MAPS MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT

1 NUMBER 19.)

2 (LETTERS MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
3 NUMBER 20.)

4 (VOTER HISTORY MARKED INTO EVIDENCE AS DEFENDANT'S
5 EXHIBIT NUMBER 21.)

6 (VEHICLE TAXES AND REGISTRATION MARKED INTO EVIDENCE
7 AS DEFENDANT'S EXHIBIT NUMBER 22.)

8 (PROPERTY TAX BILLS - LEXINGTON COUNTY - MARKED INTO
9 EVIDENCE AS DEFENDANT'S EXHIBIT NUMBER 23.)

10 (PROPERTY TAX RECEIPTS - RICHLAND COUNTY - MARKED INTO
11 EVIDENCE AS DEFENDANT'S EXHIBIT NUMBER 24.)

12 (ORDER MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
13 NUMBER 25.)

14 (ORDER MARKED INTO EVIDENCE AS DEFENDANT'S EXHIBIT
15 NUMBER 26.)

16 (TAX MAP - 1997 MARKED INTO EVIDENCE AS DEFENDANT'S
17 EXHIBIT NUMBER 27.)

18 (TAX MAP - 1973 MARKED INTO EVIDENCE AS DEFENDANT'S
19 EXHIBIT NUMBER 28.)

20 (TAX MAP - 1983 MARKED INTO EVIDENCE AS DEFENDANT'S
21 EXHIBIT NUMBER 29.)

22 (TAX MAP - 2000 MARKED INTO EVIDENCE AS DEFENDANT'S
23 EXHIBIT NUMBER 30.)

24 MR. MOORE: And, Your Honor, the -- one of the, one of
25 the main witnesses we had is a Mr. Ronnie Tyler, which is

1 -- we have a report from him, which is Exhibit Number 6, as
2 well as an affidavit from him. If I might ask the court to
3 just take half a moment. Actually his affidavit is already
4 in as Number 6. The report is Number 17. His affidavit is
5 here.

6 THE COURT: Would you like me to take a moment to read
7 it and kind of ---

8 MR. MOORE: If the court would take a moment. These,
9 these are -- these would have been -- he would have been my
10 very first witness.

11 THE COURT: Excellent.

12 MR. MOORE: If the court could take a moment and
13 review these?

14 THE COURT: Thank you, sir. Now, these are the
15 originals. Do you have any copies?

16 MR. MOORE: Yes, ma'am. Everybody's been given
17 copies, but I -- and I've got a copy. We, we have agreed
18 to this. Mr. Montgomery is not stipulating as to the
19 factual accuracy of these; he is simply stipulating that if
20 Mr. Tyler had been called, this is what he would have
21 testified to.

22 THE COURT: Excellent.

23 MR. MONTGOMERY: As of the date of the report.

24 THE COURT: Of course.

25 MR. MOORE: Absolutely.

1 THE COURT: Very good. All right, let me take a
2 second here.

3 (A PAUSE.)

4 MR. MONTGOMERY: And, Your Honor, we'll -- one thing I
5 do want to say is that with regard to these exhibits that
6 are being admitted, there's a number of them that are
7 hearsay and other things, and I'm presuming that a
8 foundation is going to be laid and they're going to be
9 admitted as part of that stipulation to admit them.

10 THE COURT: I understand that, but I will say this.
11 We're nonjury here. I can certainly separate the wheat
12 from the chaff, I hope, but I understand.

13 (A PAUSE.)

14 THE COURT: All right. All right.

15 MR. MOORE: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MR. MOORE: Your Honor, we'd call Mr. Lee Harrell.

18 THE COURT: Very good. Mr. Harrell, come around,
19 please.

20 LEROY J. HARRELL, BEING DULY
21 SWORN, TESTIFIES AS FOLLOWS:

22 THE COURT: If you will take a seat in the witness
23 stand. Please recite your name for the court reporter,
24 spelling your last name.

25 WITNESS: Excuse me, right here?

1 THE COURT: Yes, sir.

2 WITNESS: Okay. It's Leroy J. Harrell, H-a-r-r-e-l-l,
3 nickname Lee.

4 THE COURT: Very good. You may have a seat, Mr.
5 Harrell.

6 DIRECT EXAMINATION BY MR. MOORE:

7 Q. Now, Lee, you are very soft-spoken, so I'm going to
8 ask you to pull up closer to that microphone so we can all
9 ---

10 A. Okay.

11 Q. --- hear what you've got to say.

12 A. All right.

13 Q. You're Lee Harrell?

14 A. That's correct.

15 Q. Where are you employed, Lee?

16 A. Richland County Assessor's Office as the mapping
17 manager.

18 Q. So, you are the mapping manager for the Richland
19 County Assessor's Office?

20 A. That is correct.

21 Q. As the mapping manager for the Richland County
22 Assessor's Office, what is your job?

23 A. We maintain the parcel level mapping for the county:
24 roads, right-of-ways, parcels, just about all the --
25 anything that has to do with parcels. We maintain 170,000,

1 I believe, parcels presently.

2 Q. And I believe that you also are responsible for
3 determining county lines where those are applicable as
4 well?

5 A. We take the best information we have and do the best
6 we can.

7 Q. All right. Now as I understand it, at some point in
8 time you learned that there were some questions dealing
9 with Kim Murphy's house or the, or the precincts. Is that
10 right?

11 A. No. We've always known that area's been a problem
12 area and the line is, is our best estimate of where it is,
13 but recognize that there's probably some corrections that
14 need to be made to that line.

15 Q. Does anybody really know where the county line is out
16 there?

17 MR. MONTGOMERY: Object to the form. He can't speak
18 for the whole world; he can speak for himself.

19 THE COURT: Noted. Overruled.

20 You may proceed.

21 BY MR. MOORE:

22 Q. Does anybody really know where the county line is?

23 A. The county line is there. We know that, but exactly
24 where it is I think every -- we're still trying to
25 determine that. Nobody's trying to move it this way or

1 that way. We just want to find what's agreeable and
2 determine it and have it entered into the statute.

3 Q. How long has the exact location of this line been the
4 subject of question?

5 A. When we first got questioned on this, I thought it was
6 back in 1990-something that we were first out there looking
7 for it. I, myself, and one of my employees, three members
8 of the Geodetic Survey that have since retired were there
9 with us, and we were attempting to find Muddy Ford. I went
10 back and looked at the date that that employee left, and it
11 was 1989. So, it was longer than I thought. Sometime
12 between 1989 and the present, we actually went to the field
13 and tried to find where Muddy Ford was.

14 Q. I think it's Rocky Ford I think is what ---

15 A. Rocky Ford, yeah.

16 Q. --- they call it. So, you went to try to find Rocky
17 Ford, and who else went trying to find Rocky Ford? Do you
18 remember?

19 A. Employee Donna Jennack [phonetic] went. I'm not sure
20 if Mark Perry was there. Sid Miller may have been there,
21 and one other person. I can't remember whose name it was
22 at the time.

23 Q. When you went out there trying to find Rocky Ford,
24 were you, were you or anybody from the Geodetic Survey ever
25 able to find a monument known as Rocky Ford?

1 A. No.

2 Q. When you went out there, were you able to find any
3 type of stakes, stobs, or anything telling you the exact
4 location of Rocky Ford?

5 A. No.

6 Q. If you find the exact location of Rocky Ford, will
7 that tell you what portion -- or where the county line is?

8 A. That will tell us a point on the county line, but
9 there's other points that make up the county line and they
10 are described in the original description for Richland
11 County, but those are very vague variances and distances.
12 This was back when they measured things by chains rather
13 than feet, so.

14 Q. Are any of those other points -- were you able to
15 determine any of those other points that would be necessary
16 to establish the county line?

17 A. We did not find any because another one we looked for
18 was a point on Wateree Creek which could have been
19 anywhere. It depends on which traverse that line took from
20 Rocky Ford up to Wateree Creek and we, we didn't find any
21 of them.

22 Q. All right. When you, when you and the folks from the
23 Geodetic Survey were out there in 1989 or 1990, what, if
24 any, conclusions did you reach in regard to the ability to
25 establish the county line at that point?

1 A. It was going to be a bigger job than we thought it
2 was. We thought we were going to get out there and find a
3 little monument in the ground, and it was just -- the
4 description on the original county description reads
5 something to the effect so many feet to a pine tree, which
6 come and go, so many feet to that cedar tree. They --
7 you've read all that on the original description. It's
8 just very general descriptions, and any of these guys that
9 know about surveying over time, bearings change with
10 declination. So, it's, it's a lot more than we thought
11 there was going to be to it, but Geodetic Survey has been
12 with us all the way. They've helped us develop
13 orthophotography for the county, helped us get it
14 monumented, helped us work the contract, and have been with
15 us through the last thirty-seven years that I've been here.

16 Q. Based upon what you saw and your experience in
17 mapping, was there any way to get an actual defined point
18 known as Rocky Ford?

19 A. I'm, I'm not qualified to answer that.

20 Q. Was Geo -- was the Geodetic Survey able to find and
21 define the point known as Rocky Ford?

22 A. I think they can find what the general description of
23 Rocky Ford is but they've got to look at everything,
24 including what David mentioned to you earlier, the terrain.
25 Terrain would have caused the creek line. There's a number

1 of things. There's no clear-cut definition. If there
2 would, we wouldn't be here. I mean, it's something we want
3 to get cleared up, something that Lexington County wants to
4 get cleared up. Kershaw County, we have the same issue
5 with them and Fairfield County. So, it's not unique to
6 this one property.

7 Q. All right. Now, what I would like for you to do is,
8 based upon your job, are you familiar with the procedure
9 which is supposed to be followed when the county lines are
10 uncertain?

11 A. We have the statute that we are kind of going by.
12 It's Title 27, Chapter 2, 105. That's pretty well defined
13 there that the geodetic survey when -- I can read it to you
14 or I can submit it.

15 Q. If you would just explain to me how the procedure is
16 supposed to work when you have a mess with a line like
17 y'all got.

18 A. Well, when the boundaries are ill defined, the
19 Geodetic Survey is to take a role in trying to establish
20 where it is. In fact, there's a whole procedure about
21 where there's a dispute, how to deal with that, how the
22 counties deal together, how the information is supposed to
23 be put out there for public to view and comment on, and at
24 some point in time it's supposed to be certified. Once
25 it's certified, my understanding is it goes to be written

1 in the state law, which is where the counties of Fairfield,
2 Richland, and Lexington have pretty well decided to wait
3 and not be moving county lines every time a new plat comes
4 through. It's disruptive to people's lives, and it's just
5 not, not the best way to do things. So, once that's
6 written into the code, once it's law, then we will go ahead
7 and do that.

8 Q. All right. As we sit here today, is there any
9 certified county line in the area of Kim Murphy's property?

10 A. There are some points, but I don't think there's a
11 comprehensive line or section of line that would take
12 property all the way up to the Newberry County line.

13 Q. Now, historically has Richland -- let me ask the
14 question so I'm not leading you. Historically how has
15 Richland County treated that portion of Kim's property
16 where her home is located?

17 A. We use any combination of information that we can.
18 We're not surveyors; we can't go out and survey. When we
19 have a plat done by a surveyor or an engineering company,
20 they always put that as approximate and we know that. And
21 if it gets close to what we think it is, we will use that
22 since there is no survey of the line, or has been that we
23 know of.

24 Q. Historically has this home been treated as being in
25 the limits of the county of Richland?

1 A. That's correct.

2 Q. Now, I asked you to research how far back Richland
3 County has claimed this property as being in Richland
4 County. Can you tell me how far back you went?

5 A. Can I get my folder?

6 Q. Sure you can.

7 A. I can tell you exactly. I thought we were just
8 dealing with ten years, but I grabbed some other
9 information.

10 Q. That's okay.

11 (A PAUSE.)

12 A. From the Richland County Tax Assessor's records, we've
13 had Ms. Murphy's property was first taxed in the year 2001,
14 and it was a lot back in 1998. So, probably 1997 there was
15 a deed issued about then, and it came on the tax rolls in
16 1998 for Richland County.

17 Q. And that would be roughly twenty years this property
18 has been taxed by Richland County?

19 A. Yes, sir.

20 Q. Why has Richland County taxed her house like this?

21 A. Because we felt like it was in Richland County.

22 Q. Is it still officially claimed by Richland County ---

23 A. Yes, it is.

24 Q. --- as being ---

25 A. Yes.

1 Q. Now, we've talked about the fact that there is no
2 certified map showing the exact location of the county
3 line. As best the county can determine, is this home, her
4 home where she lives, is it in Richland County?

5 MR. MONTGOMERY: I'm going to object. I don't think
6 Mr. Harrell has the authority ---

7 A. No.

8 MR. MONTGOMERY: --- to speak for the county.

9 THE COURT: Speak for your particular area of
10 expertise and authority.

11 BY MR. MOORE:

12 A. Well, we're, we're in charge of the property lines and
13 that cuts through the property line. So, no, we're not --
14 we will make adjustments to our, our layer when that
15 information becomes available, but no.

16 Q. When you say but no, as of right now, does Richland
17 County claim her home to be in Richland County?

18 A. Her home and part of her acreage, correct.

19 Q. All right, right now I'm interested in her home, okay?

20 A. Yes.

21 Q. I'm going to ask you about her property. I'm going to
22 be asking about her house where she lives, okay?

23 A. Okay.

24 Q. Now, when the counties recognized that the county
25 lines are mushy, or as -- a legal term would be not a

1 certified line, have they reached an accord as to how they
2 will treat the lines until a certified line can be done?

3 A. Loosely we have talked about all doing the same thing
4 as -- that is, not changing anything till we have something
5 definitive.

6 Q. All right. Now, what I want you to do is to tell the
7 judge how the county -- what, what you mean by what you
8 just said.

9 A. We had a situation in Fairfield -- excuse me, Kershaw
10 County where assessors decided they were going to use the
11 survey. Supposed to be the new geodetic survey, and went
12 ahead and changed the property lines. About 2 miles'
13 worth, I think. I forget exactly.

14 WITNESS: And, David, how was long was that line?

15 MR. BALLARD: It was 2 miles.

16 BY MR. MOORE:

17 A. 2 miles, and that threw some people from Kershaw
18 County into Richland County, and consequently we had people
19 come in wanting to know what was going on. We had no idea
20 they were doing that. So, the assessor for Kershaw County
21 and the assessor for Richland County agreed that we would
22 put everything back the way it was until we could have a
23 definitive line certified by Geodetic Survey and have it
24 signed into law.

25 The folks at Lexington County were of that same

1 understanding: that rather than change things and make
2 multiple mistakes over and over again, wait until the
3 correct information comes down, the certified map is
4 available and is part of the state statute, then we will
5 actually go in and change the line.

6 Q. So, so until the procedure is followed and there is a
7 certified map, what is the understanding between Richland
8 County and Lexington County in regard to the maps?

9 A. The last time I spoke with them is they weren't
10 changing anything until this line was established.

11 Q. And as of right now, what is -- does Lexington County
12 tax Kim's house?

13 A. I'm not certain. I have enough to keep up with on my
14 side.

15 Q. All right.

16 A. I don't think they do.

17 Q. As of right now, then, the, the maps from Richland
18 County show her home being in Richland County?

19 A. That is correct.

20 Q. And the agreement between Richland and Lexington is
21 we're going to leave everything alone until the Geodetic
22 Survey completes its work and has a certified survey as
23 they are required to do by the statute?

24 A. That was, that was the discussion we had, and everyone
25 spoke -- agreed with it. Leath Harris, the assessor,

1 decided that that was the best course of action to take
2 rather than disrupt people's lives. If you change
3 someone's jurisdiction, you change their schools, their
4 voting precincts, their fire service. You change quite a
5 lot, so it's not something we do lightly. And we have
6 always been able to work with people, until GIS came along,
7 and work along those lines parcel by parcel and get an
8 agreement with these folks, which counties they were going
9 to lie in, and we've had no problems. Just with the advent
10 of GIS, everything gets thrown in a computer and it's, it's
11 just like a train wreck. All these lines come together and
12 it wreaks havoc on parcel mapping. So, we're -- we've been
13 working hard to put out fires, but we really haven't
14 changed anything.

15 Q. Well, let's talk about the GIS map for a minute. What
16 does GIS stand for?

17 A. Geographic Information System.

18 Q. And is a GIS line, is that an official line?

19 A. It's based on -- the parcel lines are based on our
20 parcel maps. That's what they are. They're just on the
21 computer.

22 Q. All right.

23 A. If that's official, I don't know. It's not an
24 official survey.

25 Q. All right. How do you go about getting a GIS line?

1 A. Surveys, deeds, plats, legal documents are used to
2 construct them and then fit them together.

3 Q. Now, according to the GIS line in Richland County, I
4 believe Kim's house is located in Richland County. Is that
5 correct?

6 A. That is correct.

7 Q. And according to the tax maps it's in Richland County?

8 A. They're one and the same. The GIS parcel level and
9 the tax maps are the same.

10 Q. All right. Is there any map maintained by Richland
11 County that shows her home anywhere but Richland County?

12 A. Not that I know of, but there are other election maps
13 that we've had been privy to. I found out apparently there
14 are, but as far as at the parcel level mapping for Richland
15 County, no.

16 Q. All right. So, we know we have this agreement with
17 Lexington County to maintain the status quo. In regard to
18 Kim's house, what is the status quo?

19 A. That her property, her home, is taxed in Richland
20 County and has been back to the date that I gave you a
21 minute ago.

22 Q. And it's taxed in Richland County because it is
23 located where?

24 A. We feel like it's in Richland County, but that's
25 subject to change if the Geodetic Survey finds something

1 different. We just want it certified correct and agreed
2 upon by both counties.

3 Q. Are you willing to change until you actually get the
4 certified line in comport with the statute?

5 A. The prior assessor, John Cloyd, stated that no, we're
6 not making changes; the GIS director, Dr. Patrick
7 Bresnahan, said we're not making changes. So, for those
8 two and from Liz McDonald, current assessor, we are not
9 changing until we have something definite, something
10 that's, that's actually written, approved of, everybody
11 agrees on, and is part of the state statute, and certified
12 and made part of the statute.

13 Q. Do you have any idea whether the Geodetic Survey
14 intends to comport with the statute and to provide you with
15 a certified county line?

16 A. Well, I believe they just got done dealing with North
17 Carolina, South Carolina and are dealing with forty-six
18 other counties in the state. It's hard to tell when they
19 -- I think they're working on it. They're understaffed and
20 overworked, quite frankly. They've always helped us any
21 time we needed help, but they can only do so much with what
22 they have.

23 Q. And what would it actually take them to get you what
24 you need to know exactly where the line is?

25 A. I would think it would be better funding from a

1 personal -- from this -- talking with these guys there.

2 I've work with these guys back to -- when they did GPS, you
3 go out at 4:00 in the morning. It's called differential

4 ---

5 WITNESS: What is it, David? I forget that.

6 Q. That's okay. That's okay.

7 A. It's the only time you could get a satellite and read
8 GPS. You didn't have that all the time. The Defense
9 Department handled those things. They made it available
10 for a certain number of hours and minutes a day, and
11 they've been out there. They've worked with us hand in
12 hand, guided us since I've been there, and we've looked to
13 them for their leadership and fully trust them.

14 Q. And with all that work that they had done and all the
15 assistance they've given you, has the Geodetic Survey ever
16 been able to give you the actual certified line that you
17 need?

18 A. I don't think it's in the form yet that we are going
19 to have to need. The one that's written in the, in the
20 statute is going to have to be pretty well all the T's
21 crossed and I's dotted and part of the state statute before
22 the county is going to move on that. Either, either
23 county. I believe it needs to be comprehensive and legal.
24 We're not going to do this but one time if we can help it.
25 I think that's Lexington County, Kershaw County, Fairfield

1 County's stance, too, on that. It's just ---

2 Q. Y'all are just going to maintain the status quo until
3 somebody can tell you that you're wrong?

4 A. Well, we're not wrong. The line may be miss ---

5 Q. Okay.

6 A. --- misrepresented on the maps, but the line has been
7 where it has been since day one. We just don't know where
8 it is. Maybe it is Lexington and Geodetic Survey is trying
9 to determine that. They are the experts in this field; we
10 yield to their knowledge and experience. We do research on
11 parcels. They do real heavy research. It goes back
12 decades and even into centuries-old research. So, they are
13 the, they are the ones that need to tell us what to do on
14 this.

15 Q. And as of this point, they haven't been able to do
16 that?

17 A. Not that -- no, not, not certified and signed off on.

18 Q. Which is what you need in order to change any records
19 you might have?

20 A. I believe that's the understanding that the counties
21 have, and I believe that's kind of what we're shooting for,
22 yeah.

23 MR. MOORE: Okay. Thank you so very much. I
24 appreciate it. Would you answer any questions these
25 lawyers may have for you?

1 THE COURT: Mr. Montgomery?

2 MR. MONTGOMERY: Your Honor, may it please the court?

3 CROSS-EXAMINATION BY MR. MONTGOMERY:

4 Q. Mr. Harrell.

5 A. Yes.

6 Q. You talk about these agreements between Lexington and
7 Richland County. Are you aware, have any of those
8 agreements ever been approved as memorandums of
9 understanding or other documents ---

10 A. Not to my knowledge.

11 Q. --- provided to respective county councils?

12 A. Not to my knowledge, no.

13 Q. So, those are essentially, for lack of a better word,
14 those are deals that the assessors have made with regard to
15 how they are going to tax the property, aren't they?

16 A. Those are agreements to work together with each county
17 to work together with the property owners.

18 Q. But they aren't ---

19 A. To make the right decisions.

20 Q. But they aren't anything that's been adopted by county
21 council, right?

22 A. No, they are not.

23 Q. Okay, and they're not anything that's been adopted by
24 the legislative delegation ---

25 A. Not to my knowledge.

1 Q. --- are they, and they're not anything that's been
2 adopted or approved by the legislature?

3 A. It's over my head.

4 Q. Okay. Now, I know that you work in the assessor's
5 office.

6 A. That's correct.

7 Q. Do you have any training as a surveyor?

8 A. I've worked with surveyors the last forty-two years.
9 I worked with an engineering company four years before I
10 came to work with Richland County.

11 Q. Are you a registered ---

12 A. No, I'm not.

13 Q. --- surveyor? Okay. Now, from the standpoint of
14 improvements, I know as an assessor one of the things you
15 do is when someone constructs improvements on a property,
16 you add them to the tax maps or add to the tax rolls,
17 correct?

18 A. No, we don't. The, the staff does. The appraisal
19 staff does that.

20 Q. Okay, and they do that when they get a building permit
21 request, don't they?

22 A. That's correct.

23 Q. So, it'd be fair to say, wouldn't it, that if Ms.
24 Murphy had gone to Lexington County and filed her building
25 permit request instead of Richland County, her property

1 would have -- her improvements would probably be taxed in
2 Lexington County today, wouldn't they?

3 A. I don't know what the criteria is for Richland County
4 or Lexington County with the building permits. That's not
5 in my area totally.

6 Q. But you'd agree with me the building permit officials
7 don't go out to the site and try to determine where the
8 county line is, do they?

9 A. Again, I don't work in that department; I don't know
10 what their criteria is.

11 Q. Okay, and the agreement that you're talking about you
12 described to Mr. Moore that we don't want to change these
13 lines until we have something, that's really a political
14 decision that the assessors made because you, you don't
15 want to disrupt people's lives you said?

16 A. That is a judgment call trying to keep from
17 compounding the problem.

18 Q. Well, if you'd -- you'd agree with me that surveying
19 and mapping techniques continue to improve ---

20 A. Absolutely.

21 Q. --- don't they?

22 A. Yes.

23 Q. So, it's likely that a survey done today is probably
24 more accurate than one done twenty years ago, isn't it?

25 A. It depends on who's doing the survey.

1 Q. But they have better tools, don't they?

2 A. Tools don't always make the surveyor qualified.

3 Q. I understand, but they have better tools, don't they?

4 A. Yes, they do.

5 Q. And even though that's likely, you're saying that
6 essentially what you've decided to do in Richland County is
7 you're freezing those lines to where they were, and even if
8 you get better data, you're not incorporating it into your
9 maps. You're waiting and deferring until the Geodetic
10 Survey remaps the entire county line before you make those
11 adjustments?

12 A. What type of materials would you suggest would come
13 into our area that would be qualified? An approximate
14 county line from a surveyor? That's not ---

15 Q. Well, that's where this line ---

16 MR. MOORE: Hold on. He didn't finish.

17 Q. --- came from, isn't it?

18 THE COURT: Now wait a minute. Wait a minute.

19 MR. MOORE: He cut him off.

20 THE COURT: No. No, no, no, no, no. We're not going
21 to talk over each other. We are not going to talk over
22 each other.

23 Now, Mr. Harrell, you don't answer a question with a
24 question.

25 WITNESS: Okay.

1 THE COURT: You answer the questions that are
2 propounded to you.

3 WITNESS: I'm trying to understand his question.

4 THE COURT: Well, I understand. If you need
5 clarification, you ask him for it, but don't answer a
6 question with a question.

7 Mr. Moore, do you have an objection to the question
8 being asked?

9 MR. MOORE: My only objection was that Mr. Montgomery
10 cut the witness off.

11 THE COURT: Okay and, Mr. Montgomery, don't cut the
12 witness off.

13 MR. MONTGOMERY: I will do my best, Your Honor.

14 THE COURT: How about ask that question again.

15 BY MR. MONTGOMERY:

16 Q. Mr. Harrell, my question is isn't it true that under
17 the status quo plan that you are adopting, that even if
18 better information is becoming available, your policy is
19 that you're not making changes?

20 A. We haven't seen any better information.

21 Q. Okay.

22 A. We are waiting for better information.

23 Q. Okay, and as I understand it, the only thing under
24 your theory as you're testifying today that you would deem
25 better information is a complete certified map of the

1 county prepared by the Geodetic Survey?

2 A. The state statute. We're just following the state
3 statute. That's all there is to it.

4 Q. Okay, and, and, that that's what -- how you want to
5 interpret the state statute today because the judge is
6 who's going to decide ---

7 A. Well, I agree.

8 Q. --- what the statute said.

9 A. Yeah.

10 MR. MOORE: Your Honor, I would ask that he not
11 lecture the witness. If he has a question, I'd ask that he
12 ask it now.

13 THE COURT: Ask your question, Mr. Montgomery, please.

14 BY MR. MONTGOMERY:

15 Q. Now, have you been to or tried to locate Rocky Ford
16 since the 1980s when you described that you went out there?

17 A. No.

18 Q. So ---

19 THE COURT: Speak up, Mr. Harrell. She's got to have
20 an answer.

21 A. No, I have not.

22 Q. So, you're not aware and you have no knowledge of the
23 research Mr. Ballard has done as to locating that?

24 A. We've been given information, but we've not seen
25 anything comprehensive enough to put into play, if that's

1 what you're asking, yes.

2 Q. Okay, and again I want to make sure I understand.

3 You're saying that you have made a decision or your
4 employer has made a decision as to what information you'll
5 accept to change your tax maps, correct?

6 A. I don't think we've seen another subdivision in that
7 area ---

8 Q. Okay.

9 A. --- where Ms. Murphy's property is. There's only one
10 there in the line still where it was on the plat that we
11 have.

12 Q. And the line on the plat that you have and that one
13 you adopted is the one that is marked as approximate county
14 line?

15 A. That is correct.

16 Q. And you did not look at the location map and try to
17 compare the county line there with the approximate county
18 line on some other subdivision plat, did you?

19 A. In forty-two years of doing this, a location map is
20 not primary information. This is just a general location.
21 The approximate line on the survey is still only an
22 approximate line, but it is deemed more accurate than the
23 location field. That's secondary information.

24 Q. Do you have any reason to disagree with Mr. Ballard's
25 conclusion that Ms. Murphy's home is located in Lexington

1 County?

2 A. I haven't seen enough of that information to know.

3 Q. Okay, but you don't have any reason to disagree with
4 him?

5 A. No. Absolutely.

6 Q. And ---

7 A. We look to their leadership here.

8 Q. Now, I show you a document that's been marked as
9 Exhibit 3, ask you if you can tell me what that document
10 is.

11 A. That is something from our GIS. I'm not sure which
12 layers it is. It's got Ms. Murphy's parcel on it, but
13 that's about it.

14 Q. And it shows some political information in the third
15 column on the right, doesn't it?

16 A. Okay.

17 Q. Does it?

18 A. Yes.

19 Q. Okay, and can you explain to me why your GIS data
20 would show Ms. Murphy voting in election districts in the
21 General Assembly that are not in Richland County?

22 A. We have nothing to do with the voting precincts
23 whatsoever.

24 Q. And when you say we, are you referring to the
25 assessor's office?

1 A. Mapping department, my section I work in, yes.

2 Q. Thank you, sir.

3 A. That's determined by others.

4 Q. Okay. Other than Mr. Cobb's 1997 survey, do you know
5 if there's any other documents or maps that your office has
6 reviewed in constructing the GIS maps for Richland County
7 in this area?

8 A. No, I am not that familiar with it. Just that, that
9 Mr. Cobb's survey went into play when we tried the
10 placement of the, the line the best we could with what we
11 had.

12 Q. And it would be fair to say that you don't know if
13 your line is correct?

14 A. Absolutely.

15 Q. But you heard Mr. Ballard testify that he knew that
16 his line was correct, didn't you? (

17 MR. MOORE: Objection. Pitting one witness against
18 another witness, Your Honor.

19 MR. MONTGOMERY: I'm not pitting. I'm asking if he
20 heard him say that.

21 THE COURT: I'm going to allow it.

22 WITNESS: Could you repeat the question?

23 THE COURT: Repeat the question for him. I'm going to
24 allow it, Mr. Montgomery.

25 BY MR. MONTGOMERY:

1 Q. You heard Mr. Ballard say that he could tell where the
2 county line was in that area and that it placed her home in
3 Lexington County, didn't you?

4 A. I heard that, yes.

5 Q. Okay, and you, I believe, previously said you had
6 great faith in Mr. Ballard and his qualifications and
7 abilities, didn't you?

8 A. I believe in the whole department, but that's just my
9 own personal opinion.

10 Q. You've never tried to run a line or an azimuth or a
11 bearing from Rocky Ford, have you, to locate the county
12 line.

13 A. No, I certainly have. I've taken the original deed
14 description, which is when we went to them for help, and
15 when you try and run from that old description, we realized
16 you can't do it with the existing statute, what's in the,
17 in the description for Richland County.

18 Q. You could not?

19 A. You could not.

20 MR. MONTGOMERY: Bear with me a second, Your Honor. I
21 don't think I have anything else. I may have a question or
22 two.

23 (A PAUSE.)

24 BY MR. MONTGOMERY:

25 Q. Has anyone in your department ever given you any

1 direction as it relates directly to the parcel in question
2 as to how to handle that parcel?

3 A. Ms. Murphy's parcel?

4 Q. Yes.

5 A. No.

6 MR. MONTGOMERY: I have no further questions.

7 THE COURT: All right, Mr. Moore?

8 MR. MOORE: I have further questions.

9 THE COURT: All right, you may come down, Mr. Harrell.

10 WITNESS: Thank you.

11 (THE WITNESS EXITS THE STAND.)

12 MR. MOORE: Your Honor, Mr. Harrell was subpoenaed.

13 Can I release him from his subpoena?

14 THE COURT: You may.

15 Without objection, Mr. Montgomery? Mr. Montgomery?

16 Without objection, Mr. Harrell is released from his
17 subpoena.

18 MR. MONTGOMERY: Without objection, Your Honor.

19 THE COURT: Very good.

20 MR. MOORE: Call Lucius Cobb.

21 THE COURT: Mr. Cobb, you may come forward. Mr. Cobb,
22 come forward. The court reporter has a few technical
23 things to straighten out here, so if you'll just sit in the
24 chair and relax a minute, then I'll give you the oath
25 shortly.

(A PAUSE.)

LUCIUS D. COBB, SR., BEING DULY
SWORN, TESTIFIES AS FOLLOWS:

THE COURT: Take your seat. Recite your full name for
the court, spelling your last name.

WITNESS: My name is Lucius Debruhl Cobb, Sr.
L-u-c-i-u-s, Lucius. Debruhl, D-e-b-r-u-h-l. Cobb,
C-o-b-b.

DIRECT EXAMINATION BY MR. MOORE:

Q. Lucius, what is your business?

A. Sir?

Q. What's your business? What ---

A. Land surveyor.

Q. How long have you been a registered land surveyor?

A. Forty years.

Q. How many parcels of land you reckon you surveyed in
those forty years?

A. A lot.

Q. You've done it professionally for forty years?

A. Done it professionally forty-seven. I worked for
other companies many years, too.

Q. You have all the certificates and training to be a
professional land surveyor, right?

A. Yes, sir, I do.

Q. Lucius, I want to ask you two basic lines of

1 questions. First of all, did you do the subdivision map
2 for the Murphys when they bought this piece of property?

3 A. Yes, sir, I did.

4 Q. And would you tell me when you did it, did you have to
5 present it to anybody before you could record it?

6 A. Yes, sir. We -- specially Lexington County, they
7 always have what they call a red line review process where
8 they red line where they want you to make changes, and I
9 can't remember about Richland County.

10 Q. Now, when you submitted the plan to the Lexington
11 County, would that have been to the planning commission?

12 A. Well, it was to their -- I don't think it was exactly
13 planning commission, but it was someone they had hired
14 there that reviews all subdivision plats and all prior to
15 recording.

16 Q. All right.

17 A. And this was a person that did that.

18 Q. Would you tell Judge Toal how that county line came to
19 look like it looks on that subdivision plat?

20 A. Well, I used the two tax maps, one from each county,
21 and I have copies of them from my files from 1996 that I
22 used because I had no real information how the old tax map
23 of the old county line went, and there were no -- at the
24 time, that was pretty much the process. It was accepted,
25 and I put approximate county line on it.

1 Q. When you put the approximate county line on it, did
2 anyone have you move it in any way?

3 A. Yes.

4 Q. Would you tell Judge Toal who it is that made you move
5 the county line to where it now shows on that plat?

6 A. That was a person for Lexington County that reviewed
7 the plats. I've got it here. Said they were worried about
8 where it was located. It didn't seem to be right or
9 something like that. I've got it in here if you want to...

10 Q. So, where that county line shows on that plat, was
11 that dictated by you or was that dictated by Lexington
12 County officials?

13 A. Actually, I used the Colson geodetic -- or the
14 geodetic map for that line where it showed it.

15 Q. And ---

16 A. And they thought, they said that didn't jive with
17 their tax maps, and so talked with other surveyors that had
18 the same problems and, you know, it's kind of a process
19 just pretty much accepted back then. This has been almost
20 twenty years ago, you know. So, I got the two tax maps
21 together, conferred with it, talked with people, and then I
22 put it on there like that.

23 Q. And when you put the line in connection with the tax
24 map, was it then accepted by Lexington County?

25 A. Yes, sir, it was.

1 Q. And was it then accepted by Richland County?

2 A. Yes, sir. The best of my knowledge or memory, we got
3 them recorded in each county.

4 Q. So, both counties accepted that line as the
5 approximate location of the county line?

6 A. Yes, sir.

7 Q. And you had to modify it to meet Lexington County's
8 demands where to put it?

9 A. That's correct.

10 Q. And once Lexington County told you how to draw that
11 county line, were you then able to get it recorded?

12 A. Yes, sir, I was.

13 Q. The home site, the place where Kim's house is now
14 located, would that be on the Richland County side of the
15 line or the Lexington County side of the line?

16 A. It's on the Richland side.

17 Q. All right. Now, have you ever tried to do anything at
18 all, reviewing any plats, anything even today, about this
19 Rocky Ford?

20 A. Well, some of that came up when we were just about
21 finishing up, and we were showing on my subdivision plat
22 there we'd labeled this road that went across as Rocky
23 Ford. We looked at it, my crew and I. We went up and down
24 the creek a little ways trying to find a ford, you know,
25 and a ford to me has indentation of being used a lot for

1 wagons. And people and farm animals cross because that was
2 a agricultural farming area, and we saw these depressions
3 on the banks where you could see where things had been
4 moving back and forth. And so at the time, we didn't know
5 what would be happening now. So, I put on there Rocky
6 Ford.

7 Q. Were you able to pinpoint the exact monument, the
8 exact place where ---

9 A. I didn't ---

10 Q. --- it would be?

11 A. I didn't see a monument there, no.

12 Q. Was there any way that you could have put a stake in
13 the ground and said this would actually be the place that
14 it's talking about as Rocky Ford?

15 A. I don't think so because it's a bed of rock. That's
16 why they called it Rocky.

17 Q. All right.

18 A. I mean, in my plat I think I mentioned one of the
19 points being a hole in the rock which was near that point.
20 If you don't mind me looking right quick to get myself
21 reoriented here?

22 (A PAUSE.)

23 A. Yeah, there's a mark on the rock about, I don't know,
24 20 feet north of that old road bed, maybe less, less that.

25 Q. Actually, the mark on that rock is north of the actual

1 ford, isn't it?

2 A. Yeah.

3 Q. Did you deem that mark on the rock ---

4 A. Yeah, that's what I said.

5 Q. --- to be consistent with the actual descriptions that
6 are on the old plats?

7 A. Oh, you mean the, the county plats?

8 Q. Right.

9 A. No. I didn't really -- at the time we were doing
10 that, I mean, there wasn't that much going on about Rocky
11 Creek's importance to the county line.

12 Q. All right. Now when you looked at it, this mark on
13 this rock, did it appear to be some sort of a survey mark?

14 A. If I remember correctly -- and I found it myself --
15 there was a hole in the rock, about a ---

16 Q. Did that appear to be a survey mark?

17 A. About a 3 quarter inch diameter hole, yeah. It's -- I
18 mean, it wasn't natural. It was -- it had to be a drill or
19 something that made it.

20 Q. Now, I believe we heard the surveyor this morning for
21 the Geodetic Survey say that he put the -- his stob in the
22 middle of the creek. How far was that hole in the rock
23 from the middle of that creek?

24 A. It was about in the middle of it.

25 Q. Middle of the creek?

1 A. Yeah.

2 Q. But would it have been in the middle of the ford or
3 somewhere else?

4 A. It wasn't exactly in the middle of the ford, but it
5 was in the middle of the creek.

6 Q. All right. How far would it have been from the middle
7 of the ford?

8 A. I don't know that.

9 Q. Would it have been a decent ways or ---

10 A. Well, I was just looking on here. I'd say 20 feet
11 maybe plus or minus. I had a scale, I could scale it. You
12 know, I hadn't been in that creek in sixteen and a half
13 years.

14 Q. When you were out there, if, if you go out and you
15 establish where Rocky Ford might be, whether it's the
16 middle of the creek at the ford or where that rock is, is
17 that going to be enough to be able to establish where the
18 county line is in regard to Kim's property?

19 A. No. I think it, I think it would take a lot more
20 surveying of that to be sure. I mean, the surveys we have
21 to do anyway -- we can't just survey parts of it and say
22 that's the gospel.

23 Q. All right.

24 A. We have to make a closure acceptable to minimum
25 standards, and I think a lot more old points would have to

1 be found to really hang your hat on it.

2 Q. And you would actually have to be able to find the
3 legitimate starting point at Rocky Ford, correct?

4 A. I guess so, yes, sir.

5 Q. Would you know if that would be the rock with the hole
6 in it, or the place in the middle of the creek where the
7 gentleman placed the line, placed the stob? Do you know?

8 A. I would have to, you know, survey it. I mean, I trust
9 what David and them did, Mr. Ballard. You know, they have
10 a lot of equipment. They've been on it. They know what to
11 look for and they start here, start there. We were doing
12 it twenty years ago.

13 Q. What all would you really have to do? If you had --
14 if you can find the starting point, what do you have to do
15 then in order to make a legitimate determination? A full
16 survey?

17 A. I don't know. That's, that's a lot, but I think if
18 you went the other way from that, if you could find and
19 verify Rocky, Rocky Ford and went towards the subdivision
20 I did, go around that way, go clockwise around that way and
21 try to find everything you can and go from there and nail
22 it down.

23 Q. Would you be able to do it for sure, or are you going
24 to have some guesswork in this thing?

25 A. I mean, anything can be done, but you're talking about

1 money, time, you know. It's just a lot of, lot of stuff to
2 do, I mean, and that's why your county lines aren't always
3 so obvious. Many more now.

4 Q. Based on what you've heard here today in the
5 courtroom, would you be able to express an opinion based
6 upon a reasonable degree of professional certainty as to
7 what county she's in? Could you say that?

8 A. I could just say that upon the information I had at
9 the time and the tax maps -- I don't think they've changed
10 much, at least back then -- that's what I based it on.

11 Q. And what Lexington County told you?

12 A. Yeah.

13 Q. So, you would believe ---

14 A. But I -- but then after I talked with them, like I
15 said, I got the two Lexington and Richland County tax maps,
16 and they almost agreed exactly the same, and so that was
17 what I used.

18 Q. So with the -- and Richland and Lexington County,
19 have, have they historically used their tax maps as their
20 official maps?

21 A. Well, it's their tax maps. I, I would assume so.

22 Q. Do you know of any other documents that they maintain
23 for mapping except for the tax maps?

24 A. Well, yeah. I mean, they maintain their files on all
25 recorded plats that they receive that they use to draw

1 their tax maps.

2 Q. Right.

3 A. I've had to research them all the time. I, I see --
4 especially in Richland County. I'm there at least once a
5 month researching them. I like to go through them instead
6 of the ROD.

7 Q. Based upon the information that you had where you were
8 surveying and the information you've heard here today, in
9 your opinion, based upon a reasonable degree of
10 professional certainty, is Kim Murphy's home located in
11 Richland County or Lexington County?

12 A. I would say Richland County according to what I have
13 done.

14 MR. MOORE: Thank you, sir. No further questions.

15 THE COURT: Mr. Montgomery.

16 MR. MONTGOMERY: Your Honor, may it please the court?

17 CROSS-EXAMINATION BY MR. MONTGOMERY:

18 Q. Mr. Cobb.

19 A. Yes, sir.

20 Q. I'm going -- and, and you've heard testimony, I guess,
21 regarding your plat from Mr. Ballard earlier?

22 A. Yes, sir.

23 Q. Would you agree with him that the area, area line is
24 different than the line shown on the plat as the
25 approximate county line?

1 A. The aerial line?

2 Q. The area line, the line, county line on the area map
3 in the corner of the plat.

4 A. Oh. You mean the location map I call it.

5 Q. Yes, sir.

6 A. Well, just like Lee Harrell said, the location map
7 does not determine the information on the plat. It's a
8 location map. Sometime it's not to scale. I happened to
9 review mine at lunchtime. I had one inch, it was 1600
10 feet. Can you imagine? And, and it might have been I had
11 it one way and then when the county told me to change a
12 line and I went to the, to the tax maps, I forgot to revise
13 that one little thing in the corner. So, it -- no, it
14 means nothing for -- it's just for location. To find.

15 Q. You said you'd used the geodetic line originally. Is
16 that correct?

17 A. The geodetic map. You know, the maps that you go
18 camping with and all, or exploring? Ones have all the
19 contours, 1971? Yeah, that's what I first looked at. It
20 had a line going through there, and that's the line that
21 the county said that doesn't look like right. It's wrong I
22 think. Change it.

23 Q. Okay.

24 (A PAUSE.)

25 Q. I'm going to show you exhibit the Mr. Ballard prepared

1 that's been admitted as Exhibit 4, and is this where you
2 had located Rocky Ford? It's been smudged on that.

3 A. Yeah. I just looked at my plat. Yeah, that's, that's
4 what I called it, you know? And it was a ford and it was
5 rocky.

6 Q. Okay.

7 A. And I heard Rocky Ford was something big and that
8 later -- and with the -- and the descriptions of the
9 property.

10 Q. Okay.

11 A. I mean, the county lines.

12 Q. Right. Have you reviewed the county line statute?

13 A. Sir?

14 Q. Have you reviewed the county line ---

15 A. I have.

16 Q. --- statute?

17 A. But it was after we finished all this, but I even
18 went, after I heard this, I went and looked up these people
19 that live up here to the east of this area, some of the
20 older people, try to get some information from them to find
21 out if that was the name of it. Went to about two or three
22 of the residents trying to track it down, but David
23 probably did the same thing, and most of them couldn't tell
24 me very much, but it's a very old crossing there.

25 Q. Okay, and is it of interest to you as a surveyor that

1 your line from your geodetic map, county line passes
2 through what you identified as Rocky Ford?

3 A. Would you mind repeating that again?

4 Q. Yes, sir. Is it of interest to you as a surveyor that
5 the line that you used from the geodetic survey on the area
6 map before you changed it to Lexington County passes
7 through Rocky Ford when it's scaled?

8 A. Well, I'll tell you. Sometimes a lot of maps,
9 especially like that, you can't always know exactly if they
10 are right or not. Sometimes you have to use what is there,
11 and that happened to be -- at that time, we had to use that
12 geodetic map to get some elevations on there to -- for the
13 roads in the subdivision, and...

14 Q. But it would be significant that the line that you
15 pulled as the county line from the geodetic map actually
16 passed through a point that's described in the statute,
17 wouldn't it?

18 A. Well, see, I never proved to myself that it went
19 through there.

20 Q. Okay.

21 A. See, I just had the line. If you -- I've got a copy
22 if you want to look at it. Maybe you've already got it,
23 but it's a very faint line. You have all kinds of lines on
24 there.

25 Q. So, are you saying if you hit it, you lucked into it?

1 Is that what you're trying to tell me?

2 A. I don't know. No, I'm not going to say that, no.

3 Q. Okay. Mr. Cobb, I noticed as, as we're going out and
4 coming back from lunch you were having a heated discussion
5 with Ms. Murphy. What were y'all talking about?

6 A. I wouldn't say it was heated. I hope it didn't appear
7 that way, but sometimes I do appear to be heated and I'm
8 not.

9 Q. Okay.

10 A. But we were just going over some information that
11 another person had -- she knew about and discussed it with
12 me.

13 Q. Okay. Have you relied on any of that information that
14 Ms. Murphy went over with you in formulating the opinions
15 that you've given Mr. Moore today?

16 A. No, sir.

17 Q. Okay. Have you had any occasion to examine any of the
18 work that Mr. Ballard has done in proving the line that he
19 testified to today?

20 A. I don't believe so. No, I haven't seen anything.

21 Q. Do you any reason to believe Mr. Ballard would not
22 come in and accurately report to the court proof of the
23 line?

24 A. I don't think he would do anything illegal. I think
25 he's an upstanding young man and doing a good job.

1 Q. And, in fact, he's, he's got recent research that led
2 him to a conclusion, doesn't he?

3 A. See, a lot of water's going over Rocky Ford. Like
4 seventeen years ago when this was done, and then now look
5 at all the development, look at all the everything else,
6 look at the taxes. I mean, it's, it's hard to compare any
7 of this.

8 Q. Yes, sir.

9 A. Okay?

10 Q. But you'd agree with me, wouldn't you, that the line
11 established on the plat was based on the tax maps?

12 A. Yes, sir.

13 Q. And it wasn't based on any research to determine where
14 the county line was?

15 A. Yes, sir.

16 MR. MONTGOMERY: Okay, I don't have any further
17 questions. Thank you.

18 THE COURT: All right.

19 MR. MOORE: Nothing further from me.

20 THE COURT: Wait. Whoa, Mr. Cobb.

21 WITNESS: Oh. I'm sorry.

22 THE COURT: Hang on for a minute, please, sir.

23 WITNESS: I was in a hurry to get back.

24 THE COURT: I won't keep you long.

25 WITNESS: No, ma'am. That's all right.

1 EXAMINATION BY THE COURT:

2 Q. I'm just trying to look at your map, and this is Rocky
3 Ford here, is it not?

4 A. It's, it's roughly, but...

5 Q. And the hole is right above it?

6 A. That's correct.

7 Q. Okay, and this little site, site location, locator map

8 ---

9 A. Yeah.

10 Q. --- that's blown up there, if ---

11 A. I'm going to give you a copy of this one if you want
12 this bigger one of that ---

13 Q. Good.

14 A. --- we're looking at. I'll give you right here.

15 Q. Even nicer.

16 A. There you go.

17 Q. And this over there?

18 A. There you go.

19 Q. Is the mark on the rock?

20 A. Yes, ma'am.

21 Q. And Rocky Ford?

22 A. Yes, ma'am.

23 Q. And this locator map shows the county line out more
24 towards here, does it not?

25 A. It does, yeah.

1 Q. And that Mylar overlay gives you a pretty good
2 indication of where it would cut through, and it would cut
3 through Rocky Ford, wouldn't it?

4 A. Look at it, make sure.

5 Q. Take a look at it there.

6 (A PAUSE.)

7 A. I don't really -- oh, is this it here, this ---

8 Q. Yeah.

9 A. --- line right here? Is it this line here?

10 Q. This is the county line as you drew it.

11 A. Yeah.

12 Q. Then take your Mylar.

13 A. That's over it.

14 Q. Yeah. There is your Rocky Ford. This is the line ---

15 A. Okay. That's -- all right.

16 Q. --- that would accord with this one.

17 A. Okay. I'm with you.

18 Q. And this line is the one you ended up putting on this.
19 You got a difference between this.

20 A. This is the one I put on here.

21 Q. That's right, and this is the one that ---

22 A. Yeah, but that use ---

23 Q. --- puts the Mylar on.

24 A. From this, but that's, that's, you know.

25 Q. Understood.

1 A. That's just not the way to do it.

2 Q. But here's my question.

3 A. Yeah.

4 Q. When you went to the Lexington people who got you to
5 change this thing, is this is the line you had to begin
6 with that they said doesn't look right?

7 A. Not quite. If -- would you mind hold this a minute,
8 and I'll pull something out here and show you?

9 Q. Yes.

10 A. You don't mind?

11 Q. Not a bit.

12 (A PAUSE.)

13 A. Okay, this is the -- a copy of the plat I submitted
14 for approval, and here's the line I had.

15 Q. Okay.

16 A. And then look, read there.

17 Q. Note: According to Lexington County TMS, Richland
18 County TMS, the county line may be wrong on this plat. One
19 of the people in Lexington put that on there?

20 A. Yes, ma'am.

21 Q. And the line that you show ---

22 A. See, look what I called it? I said: Approximate
23 county line is taken from U.S. geological map Chapin 1971.

24 Q. Dated 1971, exactly, and if this had been the line
25 that they approved, Ms. Murphy's house would have been in

1 Lexington, correct, her house?

2 A. I can't really tell from here with the...

3 Q. Well, her house is -- let me get my little map out.

4 I'll show you.

5 A. Okay. I'm sorry. I'll hold these for you.

6 Q. Okay. Great. This is where her house is.

7 A. Okay.

8 Q. So, spread, spread yours again and we'll see. Hers
9 would be ---

10 A. Somewhere ---

11 Q. --- right up in here where this -- all these numbers
12 are.

13 A. That's, that's roughly because it's, you know, it's...

14 Q. That's about where she is, and that would be in
15 Lexington if your original line had been used and that ---

16 A. Maybe, yeah.

17 Q. And that line was taken from the U.S. geological map?

18 A. That's what I was explaining to Mr. Montgomery.

19 Q. 1971?

20 A. Yes.

21 Q. Okay. I just wanted to get clari ---

22 A. Can I show you this?

23 Q. Sure.

24 A. These are tax maps that I use. These are the same
25 ones in my folder from 1997. This is the version of

1 Lexington County tax map 800. This is Richland County 600.

2 Q. And that is why you put the ---

3 A. Yes. That's why I got it cutting up like this.

4 Q. Exactly, because you used the tax maps to do that. I
5 think I understand completely.

6 A. If you need any of this stuff, you're welcome to take
7 it.

8 Q. Well, I'll tell you ---

9 MR. MONTGOMERY: Your Honor, I'd move we admit that
10 into the record.

11 THE COURT: Yes.

12 MR. MONTGOMERY: If Mr. Cobb will allow it.

13 THE COURT: We'll, we'll ---

14 BY THE COURT:

15 A. Let me show you one other thing.

16 Q. Sure.

17 A. This is a map of another surveyor that I know real
18 well; I think David knows him, too. This is the piece that
19 I surveyed, and look there. He did this in 1994. Look at
20 where the line's going. Just like the top of that. This,
21 this ---

22 Q. This is the top part right here?

23 A. That right there is this right here.

24 Q. And I am guessing that he would have used that same
25 tax map you used?

1 A. Yes, ma'am.

2 Q. I understand.

3 A. But you're welcome to take all this, ma'am.

4 Q. Well, thank you very much.

5 A. You want me to fold it up for you?

6 Q. Yes, please. Thank you so much.

7 THE COURT: Now, gentlemen, what we're going to do,
8 that one's already in.

9 WITNESS: Okay.

10 THE COURT: Yours I'm going to make a court's exhibit.
11 All right, let's make these three, Madame Court Reporter.

12 (THE WITNESS EXITS THE STAND.)

13 (A PAUSE.)

14 THE COURT: 2, 3, 4, 5.

15 (MAPS INDIVIDUALLY MARKED INTO EVIDENCE AS COURT'S
16 EXHIBITS 2, 3, 4, 5.)

17 THE COURT: All right.

18 MR. MOORE: Call Liz McDonald.

19 THE COURT: Ms. McDonald, would you please come
20 forward?

21 MR. MOORE: Judge, while she's coming forward, could I
22 take two seconds for the restroom?

23 THE COURT: Why certainly.

24 MR. MOORE: I'll be just a second.

25 (A PAUSE.)

1 THE COURT: We'll be at ease about five minutes. Mr.
2 Moore has to take a break, and so does the court reporter,
3 so why don't we just be at ease? I'm just going to stand
4 right up here.

5 (OFF THE RECORD.)

6 THE COURT: Come to order. I think all are back and
7 all are ready. Please keep your seats.

8 And good afternoon, Ms. McDonald.

9 WITNESS: Good afternoon.

10 ELIZABETH M. McDONALD, BEING DULY
11 SWORN, TESTIFIES AS FOLLOWS:

12 THE COURT: Please have a seat on the witness stand.
13 Give your full name to the court reporter, spelling your
14 last name.

15 WITNESS: Elizabeth M. McDonald, M-c-D-o-n-a-l-d.

16 DIRECT EXAMINATION BY MR. MOORE:

17 Q. Ms. McDonald, where do you work?

18 A. In the Richland County Assessor's Office.

19 Q. What is your job?

20 A. The assessor.

21 Q. How long have you been the assessor for Richland
22 County?

23 A. Little bit less than a year.

24 Q. Now as I understand it, how long have you actually
25 worked in the office?

1 A. Seventeen years.

2 Q. So, you worked there before you became the assessor?

3 A. Yes, sir.

4 Q. Does Richland County maintain something known as tax
5 maps?

6 A. We do.

7 Q. And those tax maps, what are they used for?

8 A. For real property valuation and assessment.

9 Q. Does the county actually main -- to your knowledge,
10 does the county have any official maps that it maintains in
11 the county other than the tax maps?

12 A. You have zoning maps, you know, things like that but
13 for taxation and -- this, this is the only map that's used
14 for taxation.

15 Q. On the zoning maps, they basically use the tax maps as
16 ---

17 A. Right.

18 Q. --- their base for ---

19 A. As, as the base map for all other maps.

20 Q. The tax map is what I can look to in the county and
21 see what the county claims to be the county line. Is that
22 right?

23 A. Yes, sir.

24 Q. Now in Richland County, Kim Murphy's home is shown as
25 being in Richland County or Lexington County?

1 A. Richland.

2 Q. And is she assessed and taxed in Richland County?

3 A. Yes, sir.

4 Q. Do you have any idea how long that has taken place?

5 A. For her property, I believe the property itself, just
6 the land itself began in 1998, and then I believe the house
7 was added to the record in 2001.

8 Q. So, her home has been treated by Richland County
9 mapping as being in Richland County for at least eighteen
10 years?

11 A. Yes, sir.

12 Q. Now, I believe you had occasion to answer a question
13 submitted by Councilman Seth Rose concerning this
14 particular piece of property. Is that right?

15 A. I did.

16 A. Would you please explain to me the circumstances that
17 led you to write a letter to Councilman Rose?

18 A. I believe there's a gentleman that's been very
19 concerned about this line, that we, we basically are very
20 inept at how we have the line drawn. I, I can't recall the
21 gentleman's name. He generally signs his letters with his
22 initials and last name, but it, it's been the basis of his,
23 his letters and his inquiries as to why I responded to Mr.
24 Rose.

25 Q. What was it that Mr. Rose was asking you, if you

1 recall? I can hand you the letter. This is unfair to you.

2 MR. MOORE: Your Honor, this is exhibit number...

3 MR. MONTGOMERY: It's actually in the record on
4 appeal, and it's page 404, Your Honor.

5 BY MR. MOORE:

6 Q. Liz, if you would just explain to me what the question
7 Mr. Rose was asking you, and then just go over your letter.
8 And you don't have to read it, but just summarize what it
9 is you told Mr. Rose was going on.

10 A. I guess the, the first paragraph states that:

11 A question has been asked why the residential
12 structure at 154 Laurel Lane in Chapin continues
13 to be valued and assessed by Richland County.

14 And, you know, this -- the gentleman that, that
15 inquired, I guess, to Mr. -- Councilman Rose, he states,
16 you know, there are several other sources that says that
17 that's just incorrect. And, you know, our, our office, we
18 respond to information that we receive.

19 Q. Okay.

20 A. And based on all the information we received up until
21 this point, there's nothing that shows us that this line
22 should be reestablished or modified as we have it drawn,
23 and I think Mr. Harrell was, was pretty clear on that.

24 Q. All right. Can you tell me what the county's position
25 is? Do you know the county's position in regard to what it

1 will take to actually modify a county line from where it's
2 presently drawn on the official maps of Richland County?

3 A. What I think it's, it's going to take, as the law
4 requires now -- I believe that was a change in the law
5 three, four years ago -- that it's going to take the South
6 Carolina Geodetic Survey to help us resolve this, this
7 instance that we have here.

8 You know, we're here today because of, of the past.
9 It was a gentleman's agreement. If you, if you, if you're
10 a property owner in the past, how could I -- you know, our
11 stance has always been if you own the property, whether
12 it's a school district line or, or what -- we can't tell
13 you where you're to, to place all your eggs, I, I guess so
14 to speak. You know, you own property in both counties.
15 You own property in both school districts.

16 Q. Do you have an understanding, does Richland County
17 have an understanding with Lexington County about this,
18 this mushy line issue?

19 A. Yes, sir.

20 Q. Would you tell Judge Toal what that line is?

21 A. Well, I mean, the understanding is is that we would
22 carry the house in Richland County. As was alluded to,
23 that Ms. Murphy -- the -- I guess when the building permit
24 was secured, it was secured in Richland County. It --
25 right now, especially with an instance such as this, we're

1 going to hold to what we've agreed to in the past. Again,
2 that was my predecessor, Mr. Cloyd, and the assessor in
3 Lexington County working on -- working through that to get
4 us to where we are today.

5 Q. So, Richland County's position is that Kim Murphy
6 presently is a resident of Richland County or Lexington
7 County?

8 A. Based on our maps and the way they're drawn, Richland
9 County.

10 Q. And has Lexington County agreed to that until somebody
11 can give you a certified line saying something different?

12 A. Yes, sir.

13 Q. And that agreement goes back about eighteen years,
14 doesn't it?

15 A. Yes, sir.

16 Q. So, the agreement to acquiesce to the line is about
17 eighteen years old?

18 A. Yes, sir.

19 Q. Do you know who it is from Richland County that agreed
20 with Lexington County to, to -- where the line was with the
21 tax maps eighteen years ago?

22 A. I would have to assume it's John Cloyd that did that,
23 but I would assume the line was established even before
24 him.

25 (A PAUSE.)

1 Q. Liz, would you -- are you familiar with this set of
2 documents labeled, labeled Defendant's Exhibit Number 20?

3 A. No, I haven't seen these.

4 Q. Okay. No problem.

5 MR. MOORE: I don't have any further questions. Would
6 you answer any questions Mr. Montgomery would have?

7 THE COURT: Mr. Montgomery?

8 MR. MONTGOMERY: Your Honor, I'll be very brief.

9 CROSS-EXAMINATION BY MR. MONTGOMERY:

10 Q. Ms. McDonald.

11 A. Yes, sir.

12 Q. How do you correct errors when you know they're there?

13 A. I would hope that I would have some supporting
14 documentation that would lead me to make those corrections.

15 Q. And I, I presume you'd agree that county council never
16 approved any agreement with regard to how property's taxed
17 between counties, did it?

18 A. I don't believe so.

19 Q. Okay, and this is an informal thing assessors do to
20 try to avoid conflicts, isn't it?

21 A. Yes, sir.

22 Q. And you'd agree with me that the assessors can't agree
23 to change the state -- the count line from where it is
24 located, can they?

25 A. No, sir.

1 Q. But you can agree that we'll tax this if you'll tax
2 that, and you'll tax this if we'll tax that so that you
3 don't have conflicts between the two counties?

4 A. Absolutely.

5 Q. And that's what's happened here, isn't it?

6 A. That's exactly what's happened.

7 MR. MONTGOMERY: I have no further questions.

8 MR. MOORE: I have no further questions, Your Honor.

9 THE COURT: Very good. You may come down, Ms.
10 McDonald.

11 WITNESS: Thank you.

12 (THE WITNESS EXITS THE STAND.)

13 MR. MOORE: We call Mr. Selph.

14 SAMUEL J. SELPH, BEING DULY SWORN,
15 TESTIFIES AS FOLLOWS:

16 THE COURT: Have your seat. State your full name for
17 the court and spell your last name.

18 WITNESS: Samuel J. Selph. And last name spells
19 S-e-l-p-h.

20 DIRECT EXAMINATION BY MR. MOORE:

21 Q. Mr. Selph, what is your job?

22 A. Director of Richland County Voter Registration
23 Election Commission.

24 Q. And how long have you held that position?

25 A. About two and a half years.

1 Q. Are you familiar with this controversy involving Kim
2 Murphy?

3 A. I was. It was brought to my attention when I was
4 initially brought on board.

5 Q. And I believe that in the most recent upcoming
6 election, Ms. Murphy came and made application to run as a
7 candidate for Richland County, correct?

8 A. That is correct.

9 Q. And to be a candidate, she would have to be a resident
10 of Richland County, correct?

11 A. That is correct.

12 Q. Did you check the official documentation of Richland
13 County and verify her residency?

14 A. Yes. My folk on staff did, so she was a registered
15 voter in Richland County.

16 Q. And to be a registered voter in Richland County, you
17 have to be a resident of Richland County. Is that correct?

18 A. That is correct.

19 Q. What steps would your office have taken to determine
20 that she was, in fact, a resident of Richland County?

21 A. Well, there's some steps that's written into the
22 election laws, about five or six criterias. That you must
23 be eighteen years of age. There's about five or six more
24 that you must meet to establish, you know, that you are a
25 qualified elector.

1 A. Did you follow all those steps?

2 A. We did.

3 Q. Under the South Carolina code, whose job is it to
4 determine whether or not a person is a resident of the
5 county?

6 A. Well, I'm, I'm thinking in -- the county election
7 department would be that entity that would make that
8 decision.

9 Q. And that is your department, correct?

10 A. That is my department.

11 Q. Did your department make a decision Kim Murphy was a
12 resident of Richland County?

13 A. It did.

14 Q. And as a result of that -- or can you tell me what,
15 what documentation you would have checked in order to
16 determine that she, in fact, resided in Richland County?

17 A. Well, she was a voter in Richland County, which would
18 tell me that she gone through that proper process of prior
19 -- when I looked at the rolls, I found out that I think she
20 had been voting in Richland County since 2004, and so that
21 process had been completed by the time I got there and, you
22 know, there was no question at that point when she came in
23 and filed as a candidate.

24 Q. And I believe that she had previously run as a
25 candidate in Richland County living where she lives,

1 correct?

2 A. That's my understanding, yes.

3 Q. How many times has she actually been certified by your
4 board to run as a candidate for Richland County?

5 A. Sir, I do not know; I'm not aware. I do not have that
6 information.

7 Q. All right, and the -- I believe that there was a
8 challenge brought by Mr. White and Mr. Gantt as to her
9 residency. Is that correct?

10 A. That is correct.

11 Q. And was that heard by your board?

12 A. It was.

13 Q. And what was the decision of the board?

14 A. The board made a decision that she was a qualified
15 elector in Richland County.

16 Q. And the board has not reversed that decision, correct?

17 A. No, they haven't.

18 Q. And under the code, that is supposed to be the
19 decision of the board, correct?

20 A. That is correct.

21 Q. So, the board has found her qualified as a Richland
22 County resident?

23 A. That is correct.

24 Q. Now, there's been some discussion about what precinct
25 she is in. What precinct is she registered in?

1 A. Basically my understanding is that she is in the
2 Springhill precinct, which is in Richland County.

3 Q. And has anybody from the, from the, the precinct
4 commission or precinct authorities, have they ever raised a
5 question with your office as to what her appropriate
6 precinct is?

7 A. Not to my knowledge. We've had some discussion since
8 all of this, but there -- you know, Mr. Roberts, who works
9 very closely with my office, came over and we identified
10 after I had received emails telling me that there were
11 about 700 plus persons who were somewhat out of their
12 correct precinct. And we sat and we went over the
13 information. The person whom I directed to work with Mr.
14 Roberts, I instructed them. I said any situation that is
15 clearly defined and that is somewhat in the interior of the
16 county, let's make the changes now. I said but anything
17 that is going to cause litigation and that is going to
18 cause a protest, let's wait until, you know, January of
19 next year and we will work on those at that time.

20 Q. All right. So, was there any -- how many people are
21 like Kim, that it's not certain where the line is?

22 A. I think there is about 153, 154.

23 Q. Where are those others 153 or 154 people, where are
24 they going to vote?

25 A. As it stands now for this upcoming election, they are

1 scheduled to run in the Springhill precinct.

2 Q. How about Kim? Where's she going to vote?

3 A. As it stands right now, she's scheduled to vote in
4 Springhill precinct right now.

5 Q. Now, she's registered to run for political office,
6 correct?

7 A. That is correct.

8 Q. If it's found that she's in Lexington County, can she
9 run?

10 A. No.

11 Q. Why not?

12 A. Well, only a person who lives in Richland County can
13 run from Richland County. She can run from Lexington
14 County.

15 Q. How could she get on the ballot?

16 A. That's beyond me. I would have to seek guidance from
17 the State Election Commission.

18 Q. Did she file in the appropriate county as far as all
19 the records are concerned?

20 A. Based on the records that we had before us at the time
21 when she, you know, filed to run, she was qualified at that
22 time, at that time.

23 Q. All right. When does registration end for the next
24 election?

25 A. Voter registration, to be able to vote in the November

1 8th election, that would be Saturday.

2 Q. All right. When your board did what it was legally
3 obligated to do, which was to pass on her qualifications,
4 what was the, what was the vote?

5 A. I think it was four to one.

6 Q. All right.

7 A. Or three-one because one abstained because she was not
8 -- she participated by remote and so she, she was only
9 going to vote unless there was a tie, but I think it was
10 three to one.

11 Q. And I believe that all the evidence we've heard today
12 basically was the same evidence that was heard then,
13 correct?

14 A. Basically.

15 Q. Not a whole lot of difference, is it?

16 A. Same personalities testified, yes.

17 Q. Now, what is it -- do, do you know what it is in the
18 South Carolina code that gives the board the authority to
19 pass on the issue of qualifications?

20 A. I am not aware. I, I don't, I do not know.

21 Q. Okay.

22 MR. MOORE: I have no further questions. Thank you,
23 Your Honor.

24 THE COURT: All right, Mr. Montgomery?

25 MR. MONTGOMERY: Your Honor, may it please the court?

1 CROSS-EXAMINATION BY MR. MONTGOMERY:

2 Q. Mr. Selph, when you were referring to the
3 qualifications for registration, you were referring to
4 qualifications enumerated in Section 7-5-120 of the code?

5 A. That's correct, that it lays out those six or seven
6 criterias for one to be up to vote.

7 Q. And one of those criteria is a resident of the county
8 and the polling precinct in which the elector offers to
9 vote. Is that correct?

10 A. That's right.

11 Q. Now, have you taken a look at the polling precinct
12 based -- strike that. Let me try it this way. Legislative
13 seats, seats in the General Assembly, are drawn by
14 districts, are they not?

15 A. That's true.

16 Q. And certain precincts are assigned to those districts.

17 A. Right.

18 Q. Is that correct, and have you taken a look at the
19 Richland County political map that was introduced as
20 Plaintiff's Exhibit 3 in this matter?

21 A. Yes.

22 Q. How does somebody in the Springfield district vote in
23 Senate District 18?

24 A. I'm, I'm thinking that my folk was going on the
25 history on the, the -- of what has taken place prior to

1 2016. That's -- that was the decision made. We were
2 hoping that we would get some direction, some guidance as
3 to how to handle this matter, and until such time as we get
4 some guidance, that's -- we were just going to go forward
5 with what we have done in the past.

6 Q. Were y'all aware that a circuit court judge had
7 previously ruled that Ms. Murphy lived in Lexington County?

8 A. I had discussed that and because my understanding was
9 because we were not a party to that decision, that we were
10 not bound by that decision.

11 Q. Okay, and did y'all rely -- or, or do you know if your
12 board relied on the tax situation as a basis to make that
13 determination?

14 A. I'm, I'm thinking that that was part of that decision.
15 I'm thinking also that the evidence was -- that was
16 presented because we were told -- and I told my board
17 strictly. Listen to the evidence and make your decision
18 based on the evidence presented.

19 Q. And is there any way that the Richland County ballots
20 that are planned would show anyone in the Springhill
21 precinct voting in Senate District 18?

22 A. This is a unique situation, very unique situation and
23 I'm hoping that we can get it resolved and we can move
24 forward. But the way it is situated and the evidence that
25 I've heard, even on August 29th and here today, it needs to

1 be straightened out. It needs to be straightened out.

2 Q. And you would be happy with the court giving you some
3 instruction on that regard, I suppose?

4 A. There's no question.

5 Q. Okay, but you would agree, Mr. Selph, that if, in
6 fact, Ms. Murphy's house, regardless of where she pays
7 taxes, is located in Lexington County, you wouldn't be able
8 to register her to vote in Richland County, would you?

9 A. If she was a -- if, if it was clearly delineated that
10 she was a resident of Lexington County, she could not
11 register to vote in Richland County.

12 Q. And I take it your position is that a court order is
13 not clearly delineating it then?

14 A. Well, the court order didn't enjoin me to do anything.

15 Q. Okay. Okay.

16 MR. MONTGOMERY: I thank you, Mr. Selph. I have no
17 further questions.

18 MR. MOORE: Nothing further, Your Honor.

19 THE COURT: Very good. You may step down, Mr. Selph.

20 (THE WITNESS EXITS THE STAND.)

21 MR. MOORE: Call Kimberly Murphy.

22 THE COURT: Let me ask if you could do me a favor, Mr.
23 Moore.

24 MR. MOORE: Yes, ma'am.

25 THE COURT: Before you call your client, I would like

1 to ask Ms. McDonald to retake the stand for a couple of
2 questions from now me.

3 MR. MOORE: I have no problem with that.

4 THE COURT: Does anyone have a problem with that?

5 MR. MONTGOMERY: No, Your Honor.

6 THE COURT: Ms. McDonald, would you come forward?

7 MR. MONTGOMERY: Mr., Mr. Spillane, I think, is
8 consenting, Your Honor.

9 MR. SPILLANE: No objection.

10 MR. MONTGOMERY: He's blocked by the, by the, by the
11 column and feels left out.

12 THE COURT: Thank you.

13 Ms. McDonald.

14 WITNESS: Yes, ma'am.

15 THE COURT: You're still under oath, please.

16 WITNESS: Okay.

17 EXAMINATION BY THE COURT:

18 Q. I'm hoping you might be someone who can clear this up.
19 A lot of questions have been asked by a lot of folks.

20 A. Right.

21 Q. This is the Richland County GIS Department sheet on
22 154 Old Laurel Lane.

23 A. Yes, ma'am.

24 Q. And the GIS Department is the tax map outfit, correct?

25 A. Well, this is where I don't think I'm going to be much

1 help because no, it's a separate department within the IT
2 Department.

3 Q. I see. Well, what relation does it have to your tax
4 maps? Is that what you ---

5 A. They use our data and the base data of the tax map,
6 and they overlay all the data that's collected on that on
7 top of our base map.

8 Q. Well, do you use their product to ---

9 A. No, ma'am.

10 Q. Well, is their product any different in terms of the
11 outlines on it from your product from the standpoint of the
12 tax maps, the parcels?

13 A. The parcel boundaries should be the same.

14 Q. I see. Well, can you explain how this on Petition's
15 Exhibit 3, that there's a sheet that says political and it
16 indicates that this parcel is in Senate District 18 and
17 South Carolina House District 85, which are not in the
18 Richland precinct?

19 A. I, I, I think that's, that's something that is, is
20 kind of the crux of what we had today. And, you know, when
21 Mr. Rainwater, Mr. Ballard, and Mr. Roberts testified, they
22 each had different responsibilities. Mr. Roberts is to
23 maintain precinct lines, just like our office is -- we're,
24 we're maintaining parcel lines within Richland County. You
25 know, we don't maintain that county line.

1 Q. . Well, I wonder where the GIS people got that
2 information from. Do you have any idea?

3 A. I, I have no idea. I would have to assume, knowing
4 Dr. Bresnahan, that he would gather that information from
5 the source that's responsible for it, and that would be
6 from Mr. Roberts's office, I would assume.

7 Q. Okay.

8 THE COURT: Thank you so much.

9 Counsel, do either of y'all have any questions?

10 MR. MOORE: No, ma'am.

11 MR. MONTGOMERY: Nothing, Your Honor.

12 THE COURT: Very good. I don't know if that's done
13 anything but muddy the waters.

14 WITNESS: Yes.

15 THE COURT: But it's been asked about so much.

16 WITNESS: I, I, I was waiting for that question to
17 come up.

18 THE COURT: I wanted to give you a chance to say
19 something to say about.

20 WITNESS: Yeah, but...

21 THE COURT: Thank you, Ms. Roberts. You may step
22 down.

23 Ms. Murphy, will you come around, please?

24 MR. MOORE: Your Honor, I know everyone is concerned
25 about the storm and so forth, although it hadn't started

1 yet, but could these witnesses, I know that they'd love to
2 be excused. Could I possibly be able to release them?

3 THE COURT: I have no objection.

4 MR. MONTGOMERY: I have no objection, Your Honor.

5 THE COURT: Please, any witnesses that have finished
6 their testimony and would like to be excused can. If you
7 would like to stay until the conclusion of the proceedings,
8 you can do that.

9 Mr. Selph, I think you being one of the parties in the
10 matter, you may want to stick around.

11 MR. SELPH: I think I will.

12 THE COURT: Good.

13 Ms. Murphy, would you come around, please, ma'am?

14 MR. MOORE: She's right here.

15 THE COURT: Good.

16 KIM A. MURPHY, BEING DULY SWORN,
17 TESTIFIES AS FOLLOWS:

18 THE COURT: Please be seated. State your full name
19 for the record and spell your last name.

20 WITNESS: Kim Allison Murphy, M-u-r-p-h-y.

21 DIRECT EXAMINATION BY MR. MOORE:

22 Q. Kim, you bought your property when?

23 A. I believe we bought it in '95.

24 Q. And how many acres did you buy?

25 A. We bought a total of 60 acres with another couple.

- 1 Q. When you bought it, it was -- you, you basically had
2 it surveyed. Is that right?
- 3 A. Correct.
- 4 Q. And who surveyed it for you?
- 5 A. Lucius Cobb.
- 6 Q. When Mr. Cobb surveyed it, I believe that he did a
7 survey map and that was approved by Lexington County,
8 right?
- 9 A. That's correct.
- 10 Q. He put a proposed county line on that map, didn't he?
- 11 A. Yes.
- 12 Q. Lexington County made him change it. Is that right?
- 13 A. Correct.
- 14 Q. Now, does Lexington County make any claim, to your
15 knowledge, that your home is located in Richland County?
- 16 A. Absolutely. They, they confirm we're in Richland
17 County.
- 18 Q. The question is does Lexington County agree your home
19 is in Richland County?
- 20 A. Yes.
- 21 Q. How long have you been paying taxes on your home site
22 in Richland County?
- 23 A. Since 2000.
- 24 Q. When did you build your house?
- 25 A. We began shortly before 2000, moved in 2000.

1 Q. So, you've been paying taxes on your house and living
2 there since the year 2000?

3 A. Yes.

4 Q. On your house, you pay taxes to which county?

5 A. We pay our residential tax to Richland County.

6 Q. Are your cars -- you pay taxes on your car?

7 A. Yes, to Richland County.

8 Q. And you've been registered to vote in Richland County
9 for how long?

10 A. Since 2000.

11 Q. Roughly sixteen years?

12 A. Correct.

13 Q. How many times did you run for school board?

14 A. I have run -- this will be my third time.

15 Q. Have you been frustrated by the way you've been
16 treated?

17 A. No question about it, yes.

18 Q. I believe that you've raised some right significant
19 questions about the operation of that school district. Is
20 that right?

21 A. That's, that's correct.

22 Q. First time you ran, who did you run against?

23 A. Mr. Gantt.

24 Q. Did you win?

25 A. I did not.

1 Q. How about the second time?

2 A. I won.

3 Q. And how long did you serve?

4 A. Approximately two and a half years.

5 Q. What happened?

6 A. The school board voted to remove me, alleging I didn't
7 live in the county where I reside.

8 Q. Now, you had an attorney who advised you not to go to
9 that hearing, right?

10 A. Yes.

11 Q. So, y'all didn't go to the hearing?

12 A. No, we did not.

13 Q. So, none of the evidence that was presented here today
14 or before the board on your behalf was presented before the
15 school board, was it?

16 A. Can you repeat the question, please?

17 Q. Oh. From, from there, the lawyer told you not to go
18 to the hearing. Was there another hearing before Judge
19 Cooper?

20 A. No.

21 A. Did you go to a hearing before Judge Cooper?

22 A. That was the initial hearing at the board, at the
23 school board's office.

24 Q. And you didn't go ---

25 A. That we did not participate in.

1 Q. And then somehow that got to the court. Is that
2 right?

3 A. Yes.

4 Q. How did it get there?

5 A. We appealed the school district's motion to remove me.

6 Q. And I believe your lawyer also told you not to
7 participate in that, right?

8 A. We did participate in the circuit court hearing.

9 Q. But you didn't present any evidence there?

10 A. Very little.

11 Q. All right, and I believe from there an order was
12 issued and you appealed it, and that's on appeal to the
13 Supreme Court?

14 A. Yes, it is. Yes.

15 Q. Thereafter, this election cycle rolled around,
16 correct?

17 A. Yes.

18 Q. And your decision was on appeal to the Supreme Court.
19 You wanted to run again, right?

20 A. Yes.

21 Q. I believe you made a conditional filing -- it's
22 already in the record -- in Lexington, but you're not
23 registered to vote there, right?

24 A. I was never registered in Lexington, that's correct.

25 Q. You're not registered there now?

1 A. Correct.

2 Q. And as I understand it, when you decided you wanted to
3 run, you registered to vote in Richland County -- I mean,
4 you registered to run in Richland County?

5 A. That's correct.

6 Q. Why is that?

7 A. Because I'm a resident of Richland County and where I
8 pay my taxes and where I've been voting.

9 Q. And were you certified to run?

10 A. Yes.

11 Q. Then you went to the hearing and the board of
12 elections certified you to remain a candidate, right?

13 A. Correct.

14 Q. And you simply want to want run?

15 A. That's right.

16 Q. If you win, you. You lose, you lose. That's fine,
17 but you want the right to run?

18 A. Absolutely.

19 Q. Now, you know an awful lot about these maps, don't
20 you?

21 A. Yes, I do.

22 Q. You've researched them, looked at them, and, and you
23 probably know more about them than anybody here today. So,
24 let's talk for a minute. You've heard about this point
25 that the gentleman, the surveyor stuck a stake in the

1 middle of the river. Is that stake correct? Is that point
2 correct?

3 MR. MONTGOMERY: Your Honor, I'm going to object to
4 this line of questioning. I think under Rule 702, she's
5 not qualified to give expert testimony. That's essentially
6 what he's asking her to do. This is beyond the knowledge
7 and scope of a layperson to give testimony as to the
8 boundary survey, which is essentially what counsel is
9 asking her to do.

10 MR. MOORE: Your Honor, she's a party.

11 THE COURT: Let me, let me hear you on that.

12 MR. MOORE: She's a party. She ought to be able to at
13 least tell you what, what she thinks is wrong about what
14 they've done.

15 THE COURT: Well, what I want you to do is phrase it
16 in a way that gets her to testify about her knowledge of
17 the physical aspects on the ground rather than to try to
18 get into expressing a surveying opinion. I think you can
19 walk that line. She's certainly perfectly free to say
20 she's been out on that property a number of times. She's
21 been dealing with this issue, and what she sees is
22 certainly proper testimony.

23 MR. MOORE: Thank you, ma'am.

24 BY MR. MOORE:

25 Q. Kim, you've looked at the maps. Is that correct?

1 A. Yes.

2 Q. Now, have you gone out onto the ground?

3 A. Yes.

4 Q. When you went out, when you went out to Rocky Ford,
5 what did it look like?

6 A. There's an area behind our house that's bounded by the
7 creek, and there is a rocky road crossing there.

8 Q. And have you looked in the area on the map where
9 there's supposed to be a pin or something in the ground?

10 A. I have and I've also looked downstream and found
11 another Rocky Ford crossing as well. There is a point that
12 I believe Mr. Cobb spoke about that is north of the creek
13 crossing that statute recognizes, and I should say the
14 annexation plat recognizes a point north of the road
15 crossing as a point they call Rocky Ford.

16 Q. Is there any way you can go on the ground and tell
17 looking at the property description which of the two fords
18 is what they were referring to as Rocky Ford?

19 A. The only way you can conclusively determine that point
20 is by verifying other points around it by doing a survey.

21 MR. MONTGOMERY: Your Honor, I'm going to again
22 object. This is -- she's -- under Rule 702 she's giving
23 testimony how you can determine this. She's saying you
24 have to do a survey; you have to verify points. That again
25 is beyond the scope of a layman's typical knowledge. She's

1 giving expert opinion on the ultimate issue of fact.

2 THE COURT: All right. Well, I'll tell you. I'm
3 going to be flexible because she's really describing what
4 she sees on the ground. It will certainly be up to the
5 court to decide these issues of technical expertise about
6 surveying..

7 But you may move forward.

8 MR. MONTGOMERY: Thank you, Your Honor.

9 MR. MOORE: Thank you. Thank you, Your Honor.

10 BY MR. MOORE:

11 Q. Kim, is -- of the two rocky crossings there behind
12 your house, have you been able to determine which of those
13 two is, in fact, Rocky Ford?

14 A. No, and there may be other areas that are Rocky Ford
15 -- have Rocky Ford crossings as well.

16 Q. Now, as you're going out behind your house to look,
17 you describe this area that's in the description that's
18 north of the actual ford. Have you found any type of stake
19 in the ground or monument there?

20 A. No, sir, and I don't even know that this Rocky Ford is
21 the same Rocky Ford that's shown on the annexation plats.

22 Q. Is there any way to tell, or there's any monument or
23 sign there that says Rocky Ford or any stobs anywhere?

24 A. There's, there is a stake not near the ford but on the
25 other end of the line which has not been surveyed yet by

1 the South Carolina Geodetic Survey.

2 Q. Let me ask you this question. In this whole area that
3 we're talking about, how many stakes do you know of that
4 actually have been located?

5 A. I know of one stake that's purported to be the corner
6 of the county line that apparently Lee Harrell found ten,
7 ten, twelve years ago with a neighbor.

8 Q. Other than that, have any other stakes or any other
9 monuments been found that you know of?

10 A. No. No, sir.

11 Q. And has there actually been any type of a survey done
12 to try and establish the county line?

13 A. They are in the process of surveying the line now.

14 Q. Okay. Now, when you, when you decided you wanted to
15 run again, why is it you elected to run in Richland County?

16 A. I would not be able to file to run in Lexington
17 County.

18 Q. Why is that?

19 A. Because I'm registered in Richland County. They send
20 me a tax bill. If I don't pay my tax bill, my house will
21 get sold on the courthouse steps. I have -- I'm in
22 Richland County.

23 Q. So, Richland County recognizes you as a Richland
24 resident and so does Lexington.

25 A. Yes.

1 Q. Is that right?

2 A. Yes.

3 Q. Now, have there been, since this whole controversy
4 started, since you got actually elected, have there been
5 changes in some of these lines on computers and precincts
6 and all sorts of stuff?

7 A. Yes. I think the GIS Department is evolving as things
8 come around, but the lines are changing and nothing is,
9 nothing's consistent. Nothing lines up yet like it's
10 supposed to.

11 Q. Do any of the lines, the GIS line, the survey lines,
12 the county lines, tax lines, the -- any of the lines, do
13 any of them agree?

14 A. The tax map line shown on our plat agrees with the tax
15 map line from Richland County, and it also agrees with the
16 tax map line of, of Richland County, and if you overlay
17 them, you can see that they all three agree. And the
18 Richland County GIS line also agrees with that same tax map
19 line.

20 Q. So, the GIS line agrees with the tax line?

21 A. Correct.

22 Q. Of both counties?

23 A. Correct.

24 Q. So, they both show you in Richland County?

25 A. Correct.

1 Q. The Lexington County GIS did show you in Richland.
2 Now it shows Lexington sort of?

3 A. The, the, the digitized version is moving. It's, it's
4 not -- it's, I guess, like the disclaimer says. It's, it's
5 not accurate yet.

6 Q. Now, if you're a citizen with the right to vote, and
7 you're citizen with the right to run as guaranteed under
8 the Constitution and the lines keep moving, how are you
9 able to exercise your right to offer for office?

10 A. I can only go on what the counties tell me. I am, I
11 am very frustrated that this is -- could potentially affect
12 my vote.

13 Q. And it can also your candidacy?

14 A. Absolutely.

15 Q. If you were determined now to be a resident of
16 Lexington County, why don't you just run in Lexington
17 County?

18 A. The time to file has expired.

19 Q. Well, then how can you exercise your right -- if this
20 court upsets this, how can you exercise your right to run?

21 A. I, I don't ---

22 Q. You can't, can ---

23 A. I'd be disenfranchised.

24 Q. Yes, ma'am. The, the mobility of these lines
25 timewise, have they seemed to move at all in conjunction

1 with your offering for political office?

2 A. It seems that way.

3 Q. How timewise? Did the line start moving at the same
4 time you started trying to become a candidate?

5 A. It's probably about the last couple of years.

6 Q. So when you offered as a candidate, the lines started
7 moving?

8 A. It looks that way timewise.

9 Q. Before you offered as a candidate, had the lines had
10 any problem? Been there for years, hadn't they?

11 A. Up until the issue in 2012, I was always recognized as
12 a citizen of Richland County, and all the tax maps show I'm
13 a resident of Richland County.

14 Q. How frustrating is it for you to basically offer as a
15 candidate and then your lines start moving?

16 A. It's, it's extremely frustrating because I've got to
17 spend a lot of time in the courtroom instead of trying to
18 do what I, what I'd like to do and serve the school board,
19 but I'm...

20 Q. As we sit here right now, what, if any, disagreement
21 do you know of between Richland County and Lexington County
22 about your citizenship? Is there any?

23 A. There's none.

24 Q. All right. So, Richland County and Lexington don't,
25 don't disagree. How about what disagreement is there for

1 the Board of Elections?

2 A. They agree I'm in Richland County.

3 Q. Well, do you have any idea who it is that doesn't
4 agree besides Mr. Gantt and Mr. White?

5 A. I don't, I don't know that there's, that there's
6 others.

7 Q. Now, I believe ---

8 A. No one seems to know where I live. People, people
9 always ask me has that been resolved yet? Which county do
10 you live in?

11 Q. I believe that you have tried to work with something
12 called the South Carolina Geodetic Survey. Is that right?

13 A. Yes.

14 Q. Has the South Carolina Geodetic Survey ever
15 established a certified line to the county in the proximity
16 of your home?

17 A. No.

18 Q. Have you asked them to?

19 A. I have not asked them to.

20 Q. Have you talked with them about when they might get
21 around to doing it?

22 A. I went up to their office and I was told -- this was
23 -- that's three quarters of a year ago -- told that they
24 could not talk to me unless I had an attorney present.

25 Q. Do you know who set those rules that the Geodetic

1 Survey would not even talk to you without a lawyer?

2 A. Some of the witnesses who have been here today.

3 Q. Give me the names. Who was it that refused to even
4 talk to you?

5 A. Matt Wellslager, I believe David Ballard, and there
6 may have been one other present.

7 Q. Did you have questions you wanted to ask them about
8 the, the condition of their work and why they hadn't done a
9 survey and what they were going to do?

10 A. I did. I also wanted to give them information because
11 I have found some old points that I believe are points on
12 the county line.

13 Q. Now those old points that you have found, are those
14 points that have been considered by any of the surveyors to
15 this day?

16 A. No, sir.

17 Q. Why were we able -- unable to give the Geodetic Survey
18 that information about the points that you actually have
19 found on the ground?

20 A. I don't understand why.

21 Q. What -- why did you want them to know that there were
22 points that you actually had found that the surveyors had
23 not found?

24 A. It's important they have the correct information.

25 Q. And they don't have the correct information because of

1 what reason?

2 A. They had never done a survey to ---

3 Q. And they wouldn't talk to you so you could give them
4 the information, correct?

5 A. That's correct.

6 Q. When they would not talk to you so that you could give
7 them the correct information about what you believed to be
8 points on the ground that you had found that they had not
9 found, did that frustrate you?

10 A. Yes.

11 Q. Why is that?

12 A. Because I think it's important information that can
13 help them do their job, and I don't understand why they
14 wouldn't, wouldn't take that. I -- it seems like this, the
15 new process of establishing county lines, is kept from the
16 public until it's all said and done, and I wanted to -- and
17 there's only a sixty-day appeal period. So, I wanted to be
18 sure that I could communicate with them and, you know, I
19 could make their job a little bit easier and make sure that
20 the line is right.

21 Q. The gentlemen, any of the surveyors that have
22 testified today, have any of those seen those points in the
23 ground that you found that you wanted to share with them?

24 MR. MONTGOMERY: Your Honor, I'm going to object. She
25 can't testify to what someone else has seen or not seen.

1 THE COURT: I've been pretty flexible but, you know,
2 we're not trying them. We're trying to establish this
3 line.

4 BY MR. MOORE:

5 Q. Ma'am, have you ever seen any survey anywhere that
6 shows your house anywhere other than Richland County?

7 A. No official certified survey, only various lines, many
8 different lines. No official survey.

9 Q. There actually is one map that shows the house in both
10 counties, isn't there?

11 A. That's a GIS map that the GIS state office was trying
12 to create to merge the Lexington County parcels with the
13 Richland County parcels, but you can clearly see that it
14 doesn't line up. So, the line really is -- that, that map
15 that they presented, I think it's in evidence, is
16 worthless.

17 MR. MOORE: Thank you very much.

18 Have no further questions, Your Honor.

19 THE COURT: Mr. Montgomery?

20 MR. MONTGOMERY: Your Honor, may it please the court?

21 CROSS-EXAMINATION BY MR. MONTGOMERY:

22 Q. Now, Ms. Murphy, you have known since 2013 that there
23 was an issue about your residency, haven't you?

24 A. Yes.

25 Q. In fact, you knew that you were afforded an

1 opportunity to present evidence to a special referee, Judge
2 Tommy Cooper, weren't you?

3 A. Yes.

4 Q. And Judge Cooper did an examination of the location of
5 your residence and he issued a report, didn't he?

6 A. Based on what state mapping provided.

7 Q. Okay, but you had an opportunity to provide anything
8 you wanted to at that time, didn't you?

9 A. I believe so.

10 Q. Okay, and his report found that you lived in Lexington
11 County and based upon that, there was a hearing before the
12 school board that you were present at, wasn't there?

13 A. Yes.

14 Q. And, in fact, additional evidence was heard there,
15 wasn't it?

16 A. To some degree.

17 Q. And you had an opportunity during that hearing to
18 present any evidence that you wanted to, didn't you?

19 A. I'm not sure.

20 Q. Okay, and after that hearing, the school board voted
21 that you were not eligible to serve as a representative
22 from Richland County, didn't they?

23 A. Yes.

24 Q. And they voted that because you were not qualified as,
25 as a Richland County resident, you were ineligible to

1 serve, correct?

2 A. Yes.

3 Q. And you abided by that decision, didn't you?

4 A. When I went to the next school board meeting, my name
5 placard had been removed from the table, and I was never
6 sent a board packet, so.

7 Q. Okay, but you didn't go -- you had counsel. You
8 didn't go to the lawyer and say I want to stay on the board
9 until this is decided, did you?

10 A. I can't talk about what I discussed with my attorney,
11 I suppose.

12 Q. Well, you told Mr. -- with Mr. Moore here, you said,
13 well, your attorney advised you not to participate, right?

14 A. What he said to the court is to Judge Cooper in that
15 hearing is in the record.

16 Q. Okay, and so you knew there, and you appealed that
17 decision even though you didn't try to stay on the board at
18 that point, did you?

19 A. I appealed, yes.

20 Q. Okay, and you had an appeal hearing before Judge
21 Benjamin, didn't you?

22 A. Yes.

23 Q. And Judge Benjamin issued an order, and in her order
24 she said you lived in Lexington County, didn't she?

25 A. She affirmed what the school district did.

1 Q. Okay. Well, she, she didn't just affirm it because
2 that was a -- what's called a *de novo* hearing, right?
3 You've read the order that she issued, right? It's in the
4 record here.

5 A. Yes.

6 Q. And the order says that the standard review is what's
7 called a *de novo* hearing. Do you know what that means?

8 A. I think maybe a new hearing?

9 Q. It means she considers all the evidence with reference
10 to what was done below. So -- and in that situation she
11 found, among other things, that you were -- you lived in
12 Richland -- in Lexington County. You didn't live in
13 Richland County, and that you didn't meet the requirements
14 to serve on the school board as a representative from
15 Richland County, correct?

16 A. I believe that's what...

17 Q. Okay. So, that puts you on notice that there was an
18 issue that you needed to resolve, didn't it?

19 A. How, how do I resolve that?

20 Q. Well, I show you this.

21 MR. MONTGOMERY: I'm going to ask the court reporter
22 to mark this. I believe this is 6 for identification.

23 COURT REPORTER: 5.

24 (APPLICATION MARKED AS PETITIONER'S EXHIBIT NUMBER 5
25 FOR IDENTIFICATION.)

1 THE COURT: Now show it to Mr. Moore.

2 MR. MONTGOMERY: Mr. Moore's seen it. It's -- it was
3 what we took out of the record the other day, Your Honor.

4 THE COURT: Yes, sir. Very good.

5 MR. MOORE: Your Honor, I don't think the fact that
6 there was a provisional registration that has no efficacy
7 at all has any relevance to the facts of the case.

8 THE COURT: Well, I understand. That document was
9 offered before. In fact, I think you expostulated about it
10 and discussed. I'll receive it into evidence. Overruled.

11 MR. MONTGOMERY: I haven't actually moved it yet, Your
12 Honor, but thank you.

13 (APPLICATION MARKED INTO EVIDENCE AS PETITIONER'S
14 EXHIBIT NUMBER 5.)

15 BY MR. MONTGOMERY:

16 Q. Ms. Murphy, could you identify this document for me?

17 A. Yes. This is part of some documents I submitted to
18 the Lexington County Voter Registration office.

19 Q. And you did that in May 2014, correct?

20 A. Yes.

21 Q. And that is actually an application for voter
22 registration, isn't it?

23 A. Yes.

24 Q. And I believe you testified earlier you sent a letter
25 saying words to the effect that I'm not sure what my status

1 is, but I want to make sure I have the right to vote, so
2 I'm going to register provisionally. Correct?

3 A. The election director, Mr. Crepes, wrote to me and
4 informed me that a judge in a court of law had ruled that I
5 was in Richland County -- I mean, I was in Lexington County
6 and if I wanted to register to vote, I needed to do so by
7 the deadline for registering.

8 Q. And you, in fact, completed and I think every member
9 of your family completed an application like that, didn't
10 they?

11 A. And -- yes.

12 Q. Okay, and there's an oath on there that you swore,
13 that you said you were a resident of that county and
14 precinct that you were registering to vote in, isn't there?

15 A. Yes, there is.

16 Q. And you signed it. That's your signature on that
17 document, isn't it?

18 A. I completed this as if -- if anything happened between
19 then and the election that would prevent me from, from the
20 primary, that would prevent me from voting, and I had to
21 complete it like this in order to have it placed in their
22 file. I was never registered.

23 Q. But you had -- had you gone forward with registering,
24 you would have been registered in Lexington County at that
25 time, wouldn't you?

1 A. I, I don't, I don't know.

2 Q. Well, Mr. Crepes wrote you and basically told you if
3 you come and register, you can register in Lexington
4 County, didn't he?

5 A. I can't be registered to vote one county and pay taxes
6 in another.

7 Q. And, and what is your basis for that?

8 A. That's taxation without representation. I, I can't --
9 if, if, if my registration -- if my property taxes are
10 being paid in Richland County, I can't, I can't do anything
11 in Lexington County.

12 Q. Ms. Murphy, you pay property taxes in Lexington
13 County, too, don't you?

14 A. But not on my house.

15 Q. Okay, but the fact that you pay property taxes is not
16 dispositive of where you live, is it?

17 A. Where I pay residential property tax has something to
18 do with, with -- of where I live and the qualification to
19 determine that.

20 Q. And you've heard all these folks today, I think,
21 testify that they've allowed the status quo because
22 basically nobody's come with them to any information and
23 said you need to change this, haven't they?

24 A. Can you repeat your question, please?

25 Q. Yes, ma'am. You've heard a number of witnesses today

1 come and say that they -- all they were looking for to
2 change the records was better information, correct?

3 A. Or information that says they needed to change the
4 line they recognize.

5 Q. Well, let's just presume for a second that you had
6 taken this order from Judge Benjamin to the Richland County
7 assessor and said the judge says I live in Lexington
8 County. Will you move me to Lexington County? Do you
9 think they'd have done that?

10 A. I, I don't know. The Richland County election,
11 interim election director said that, that they, they can't
12 remove voters that way. So, you know, I, I don't know.
13 There's a lot more to it.

14 Q. Well, they can't remove you, but if you ask them to,
15 they certainly would remove you, wouldn't they?

16 A. I don't know.

17 Q. Okay, and you didn't try to find out, did you?

18 A. Well, I believe the counties are, are well aware of
19 the controversy, and when -- you know, Lexington had the
20 opportunity to, I guess, come after me for, for taxes,
21 they, they recognized me as a Richland County resident.

22 Q. Okay. Ms. Murphy, you, you're here today and you've
23 told this court, and I quote your lawyer, that you're being
24 disenfranchised if this court should rule that you live in
25 Lexington County instead of Richland County, but that's

1 really not true, is it, because you've had the opportunity
2 to correct this situation. But instead you've chosen to
3 keep the controversy boiling. Isn't that correct?

4 A. That's wrong.

5 Q. Well, what's wrong with that?

6 A. I'm a resident of Richland County; I have been since
7 2000. I have the surveys, plats, legal documents, tax
8 bills that the county sends me. I'm a resident of Richland
9 County.

10 Q. And from what you've heard today, every document that
11 supports that you're a resident of Richland County is based
12 upon the tax map, isn't it?

13 A. It's, it's based upon the, the tax map and an
14 agreement that was made between the two counties in 1978.

15 Q. Okay, and it's an agreement not made between the two
16 counties, is it? It's an agreement between the two
17 assessors.

18 A. Oh, it's between the counties per home rule.

19 Q. Well, and again you heard the testimony here, Ms.
20 Murphy. Did you hear any of these witnesses say that the
21 county councils of these counties have entered into a
22 memorandum of agreement or understanding about this?

23 A. I don't ---

24 MR. MOORE: Your Honor, I would have to object to
25 pitting one witness against another. She's given the

1 answer that she's chosen to give. Now what he's asking is
2 -- he's trying to pit the witness against any of the other
3 witnesses in the, in the courthouse. She can testify to
4 what she knows. What's been said by other witnesses,
5 surely the court has heard, but to say, well, so and so
6 didn't say that, that's ---

7 THE COURT: Well, Mr. Montgomery, help her out and
8 rephrase it slightly if you would, please.

9 MR. MONTGOMERY: I'll be happy to.

10 BY MR. MONTGOMERY:

11 Q. Ms. Murphy, do you know what is required for two
12 counties to enter into an agreement?

13 A. I do not.

14 Q. Okay. So, when you say that these two counties
15 entered into an agreement, you don't know whether they did
16 or not, do you?

17 A. I have documentation that shows that.

18 Q. And the documentation shows that who entered into an
19 agreement, Ms. Murphy?

20 A. Both counties.

21 Q. Both counties? Who signed it?

22 A. Richland County and Lexington County.

23 Q. What representative of Richland County signed it?

24 A. John Cloyd.

25 Q. And he was the assessor, correct?

1 A. Yes. Yes.

2 Q. Okay, and who signed it for Lexington County?

3 A. Gordon. I can't remember the last name.

4 Q. Do you know if the assessors have the authority to
5 enter into agreements that bind the counties?

6 A. I have no idea.

7 Q. Okay. So, when you say they entered into agreement,
8 you're saying that they entered into agreement because you
9 believe that, not because you're aware that there's
10 actually a binding agreement that exists?

11 A. Well, ever since the 36 acres was transferred from
12 Lexington County to Richland County in 1978, the same 36
13 acres is recognized as Richland County and a portion of
14 that is where our home is. And Richland County recognizes
15 that area as Richland County far as 911 goes, as far as the
16 sheriff goes, far as taxing me, as far as garbage pickup.

17 Q. I don't think anyone will dispute that at the present
18 time, that's true Ms. Murphy. Now, let me ask you this.

19 MR. MOORE: Your Honor, could I ask the counsel to ask
20 questions instead of ---

21 THE COURT: He's on cross-examination. I'll be a
22 little flexible with him.

23 BY MR. MONTGOMERY:

24 Q. Ms. Murphy, now, you made, you made some comments and
25 you said people from the Geodetic Survey would not speak

1 with you without a lawyer present.

2 A. That's correct.

3 Q. Do you think you did anything that might have given
4 them pause to want to speak with you on the telephone?

5 A. I went out there in person.

6 Q. But you also talked to them on the telephone and
7 recorded those conversations without their knowledge,
8 didn't you?

9 A. There were a couple of conversations I recorded.

10 Q. And you didn't tell them you were recording those
11 conversations, did you?

12 A. I did not.

13 Q. Okay. Now, you also have some concern that, based on
14 the location of Rocky Ford, that your residence actually is
15 in Lexington County, don't you?

16 A. When it's all said and done with, I don't know what
17 county I'm in, and I won't until the county line is
18 surveyed.

19 Q. Isn't it true that on Monday, December 7, 2015, you
20 wrote an email to Mr. Ronnie Tyler? In that email you
21 said, and I'm going to quote, and I'll be happy to show it
22 to you if you don't agree with me:

23 The only thing that bothers me about documenting
24 its location is that if Rocky Ford point they
25 used is for whatever reason deemed to be the same

1 as the point referenced in statute, it's very
2 possible that using the iron stake at the other
3 end of the line, I believe I would be in
4 Lexington County.

5 A. They never used the iron stake, and I don't know if it
6 would put me in Lexington County, and I won't know until
7 the survey's done.

8 Q. Okay, but you haven't undertaken to have a survey,
9 have you?

10 A. We surveyed our own property, and we know where that
11 is, and it's very costly to survey a county boundary. Our
12 survey -- our surveyor wasn't paid to survey the county
13 boundary, and now there is a process that the state
14 surveys, does the surveying.

15 Q. Okay. Now, Ms. Murphy, you have contended and
16 continued to contend that you live in Richland County in
17 spite of a court order, in spite of testimony and other
18 things from the Geodetic Survey, in spite of the fact that
19 at least two judges and a couple of other panels have
20 determined from looking at the evidence that you live in
21 Lexington County. So, what you're telling the court,
22 though, as I understand your testimony -- and you correct
23 me if I'm wrong -- that you're unwilling to take any steps
24 yourself to prove that. You're waiting for somebody else
25 to do it for you. Is that correct?

1 A. I don't think I have the authority to do it.

2 Q. But you have had the authority in the more than three
3 years that this controversy's been brewing to try to gather
4 additional information to -- and, and offer it as to the
5 location of that county line, haven't you?

6 A. Ask your question again, please?

7 Q. Yes, ma'am. You have had the authority and the
8 opportunity for over three years to gather additional
9 information or to have a professional come in and look at
10 that county line, haven't you?

11 A. And I did give, attempted to give some information to
12 the state mapping office.

13 Q. Ms. Murphy, have you have conversation with a lady
14 named Ms. Paige Lee?

15 A. Yes.

16 Q. Tell me about your conversation with her.

17 A. I believe I heard about her in a newspaper article
18 that she was challenging where a GIS line -- or she
19 received a tax bill from Spartanburg County and she's a
20 resident of Cherokee County. Spartanburg County's GIS
21 Department sent -- or assessor sent her a bill that said
22 according to their GIS she now owes \$8000 and she protested
23 that, and she had the resources to survey a county
24 boundary, \$16,000 for a 6-mile stretch, and it showed she
25 was in the county where she thought she was.

1 Q. Now, another thing about this time that you were
2 trying to talk to the Geodetic Survey, isn't it true that
3 you were also engaged in a lawsuit that you brought against
4 the then-director Mr. Bowers, as well as Mr. Gantt,
5 alleging that they have somehow conspired to have you
6 thrown off the school board?

7 A. I'm not sure of the timing.

8 Q. Okay, and -- but you did file a lawsuit, didn't you?

9 A. Yes.

10 Q. And I presume you spent money on that lawsuit, didn't
11 you?

12 A. Yes, I have.

13 Q. And you could have used that money to have the survey
14 done, couldn't you?

15 MR. MOORE: Your Honor, I would have an objection to
16 the relevance.

17 THE COURT: On cross-examination. Y'all have kind of
18 opened this door about who's got what motives. I don't
19 know how any of that makes any difference to what I have to
20 decide. So, it might be well to get it wrapped up, Mr.
21 Montgomery.

22 MR. MONTGOMERY: Okay.

23 BY MR. MONTGOMERY:

24 A. My survey is not going to do any good. The survey,
25 the state has got to do it.

1 Q. Ms. Murphy, other than the survey that was prepared
2 for you in 1997 and the fact that you've paid taxes and
3 registered with Richland County based upon that survey, do
4 you have any other evidence that you can offer to the court
5 today that would indicate that your residence is in
6 Richland County?

7 A. Can you ask your question one more time?

8 Q. Yes, ma'am. Other than the approximate county line
9 shown on the survey, and the tax maps and what's emanated
10 from the tax maps in Richland County, do you have any other
11 evidence as we sit here today that you can offer to this
12 court that indicates that your residence is in Richland
13 County as opposed to Lexington County?

14 A. Well, I guess if I, if I look at how domicile is
15 established, I think I've provided all of that appropriate
16 information.

17 Q. You'd agree with me that you can't establish domicile
18 in a county where you don't live, can you?

19 A. I live in Richland County and if that stake is used, I
20 may actually live in -- not -- it, it won't be determined
21 where I live until that stake is found and the survey is
22 done.

23 Q. And why do you say that?

24 A. Because you have to find the corners in order to
25 establish the line, and, you know, what -- my basis of

1 looking at aerials and where that is, it looks like it
2 comes pretty close to my house. So, until a survey is
3 done, I'm not going to know if there is -- if I'm in a, in
4 a different county.

5 Q. Have you spoke -- who have you spoken with at Richland
6 County, if anyone, in an effort to ensure that your
7 property remains in Richland County?

8 A. Can you ask that question again?

9 Q. Yes, ma'am. Who, if anyone, have you spoken to in
10 Richland County in an effort to ensure that your property
11 remains in Richland County?

12 A. I have not spoken to any, anyone in that regard.

13 Q. Okay. Now as I recall, during the time that we were
14 talking about the hearing with Judge Cooper back in 2013,
15 at that point your lawyer mentioned that you were going to
16 conduct a process to be annexed into Richland County. Did
17 you ever do anything along those lines to pursue that?

18 A. We actually filed the petition, but in order to -- and
19 what we were going to attempt to do is, is have all of our
20 boundary of our property connect to some point on the
21 Richland County line where the Richland County line crossed
22 our property. We could not determine where that was
23 because there's not a survey of the county line. We could
24 use our, our plat that shows it, but it would be necessary
25 to have a survey of the county line so we knew exactly

1 where the county lines were. And at that point, it looked
2 like I could be -- you know, the line is in a place where
3 it might put me in Lexington County or I might be in
4 Richland County, but until a survey is done, we just, we
5 can't make that call.

6 Q. Okay. Ms. Murphy, bear with me one minute. I don't
7 think I have anything else.

8 (A PAUSE.)

9 MR. MONTGOMERY: Your Honor, I have no further
10 questions.

11 THE COURT: Thank you.

12 Anything in reply, Mr. Moore?

13 MR. MOORE: No, ma'am.

14 THE COURT: Ms. Murphy, you may step down.

15 (THE WITNESS EXITS THE STAND.)

16 MR. MOORE: That would be our case, Your Honor.

17 THE COURT: Very good. What I would like to be able
18 to do is this. We know that time is important in this
19 thing, but it is also very important to carefully consider
20 the exhibits that have been put forth here, and I'm going
21 to do that. In that connection, Mr. Moore -- well, let's
22 see how I can figure out how to do this.

23 I need to look, Anne, at all these exhibits.

24 CLERK OF COURT: Yes, ma'am.

25 THE COURT: Including Mr. Moore's testimony from Mr.

1 Tyler, et cetera. I sped read it as best I could, but it
2 deserves detailed consideration, as do the rest of these
3 exhibits.

4 What I would like to be able to do is to communicate
5 with you gentlemen tomorrow and let you know of my
6 decision, and have you all either each draw proposed orders
7 or have the prevailing party draw a proposed order. I've
8 got to study this before I can decide who that might be.

9 MR. MONTGOMERY: Would the court be willing to
10 entertain some very short comments or argument from us?

11 THE COURT: Certainly. I know that time is important
12 to all of us. I don't want to prevent you from
13 summarizing. So, certainly I will allow that and then what
14 we'll do is adjourn, and I will make some arrangements with
15 Ms. Henley to take these Richland County documents home
16 with me, to take a look at them and then get them back to
17 you all when Richland County's courthouse reopens. Is that
18 going to be -- I always try -- some judges take these
19 things home and lose them and everything, and I don't like
20 that. So, I have made it a practice not to take the court
21 files home, but I think I need to do that to be completely
22 fair to all the detailed information that's come forward.
23 And I want to carefully consider this and the law involved
24 before I let y'all know. So, I'm going to make a strenuous
25 effort to do that and then let you all know something

1 tomorrow so that you might get me something.

2 I don't know exactly what the deadlines are for Mr.
3 Selph and the election commission. My guess is if the
4 governor's office does what it used to do when I was still
5 chief, that some of these things may be slightly expanded
6 because of the hurricane situation we got going. I hope
7 that's so, but I don't want to be a fly in the ointment to
8 anybody. If Ms. Murphy's candidacy is to proceed, I want
9 that to be known very quickly and if it's not, I want that
10 to be known so those ballots can get on out there. That's
11 going to be my goal.

12 And, Mr. Selph, it's my understanding that you all
13 will agree to be bound by what we decide so that you can
14 get the ballots on out of there.

15 Now, that's not going to prevent the losing party,
16 whoever that might be, from making an attempt to get folks
17 to review what I did, and it shouldn't. You should be able
18 to do that, but I know that the election commission is
19 going to try to move forward with whatever is decided, as I
20 understand.

21 So, that having been said, Mr. Montgomery, you are the
22 plaintiff, so I'll allow you to sum first.

23 MR. MONTGOMERY: I'd like to reserve -- I'll try to be
24 brief, and I'd like to some time to reply.

25 THE COURT: Understood.

1 MR. MONTGOMERY: Your Honor, I, I think that the
2 issues here, as we know, are very clear and there's very
3 little to discuss. The simple fact is that there has been
4 a determination made as to the location of Ms. Murphy's
5 residence in Lexington County. Has been made and it's
6 demonstrated by a number of facts. It's demonstrated by a
7 very clear determination looking at the statute from the
8 location where Rocky Ford is identified. And you heard Mr.
9 Ballard, who's the only witness who's been out and actually
10 investigated this, give testimony that under any
11 circumstance -- we're talking about a residence that's
12 hundreds of feet within Richland County -- excuse me,
13 within Lexington County, outside Richland County. We also
14 have the other authorities: the census mapping, the
15 precinct maps, the House and Senate districts established
16 by the General Assembly. Each of those demonstrates that
17 this property is attached to Lexington County. It's in a
18 Lexington County House district; it's in a Lexington County
19 Senate District. And even Richland County's own
20 information demonstrates that conflict.

21 And I think it's important particularly to note the
22 circumstance we find ourselves. We have a lady here who
23 has been on notice that there's been an issue; she's been
24 on pretty strong notice. There is a court order by a
25 circuit court judge that looked at a record *de novo* and

1 made a very strong determination. I briefed this. I won't
2 quote all of the language in the order, but let's just say
3 that it's fair to say that judge found by clear and
4 convincing evidence that Ms. Murphy was a resident of
5 Lexington County, not Richland County. And while she
6 wishes to carry herself on and posture herself as an
7 injured party and suggest to the court that her rights have
8 been infringed upon by this action, it was clearly
9 foreseeable.

10 She is dealing with a situation where she ran for, was
11 elected to the board. There was a due-process proceeding
12 that's been appealed and upheld so far and that has not
13 stayed, and in that proceeding she was found to live in
14 Lexington County and not to be eligible, and we haven't
15 really talked about Act 326 of 2002 Section 9 is pretty
16 clear. You got to live in Richland County if you're going
17 to have a Richland County seat. She's run for, been
18 elected to a Richland County seat, and been removed from
19 that seat on the grounds that she didn't live in Richland
20 County.

21 Rather than try to solve the problem -- and it looks
22 like she did try to solve the problem to some extent. She
23 went to Lexington County, signed a voter registration form,
24 and qualified it, saying it was a provisional registration.
25 It was in response to probably the only time that we've

1 heard that one of the counties stood up and said, you know,
2 we need to do something to solve this problem. Mr. Crepes
3 in Lexington County sent her a letter saying it's a court
4 order says you live in Lexington County. Here's a voter
5 registration form. If you want to vote in Lexington
6 County, you need to register. She provisionally did it,
7 but she tried to have her cake and eat it, too, Your Honor.
8 She wanted to have the option to be in Lexington County or
9 in Richland County depending on what suited her best.

10 So, we've gone from 2013 in March to 2016 in November.
11 Ms. Murphy had the opportunity throughout that to try to
12 clarify that situation. She could have registered in
13 Lexington County; she could have run for the same school
14 board in Lexington County had she chosen to do that. And I
15 would suggest to the court that if an individual takes a
16 court order into one of the counties and says the county
17 says I live in this county, I want to register, and goes to
18 the other county and says the court says I live in -- don't
19 live in this county, move me to the other line, then that
20 would have happened posthaste. That didn't happen because
21 for whatever reason, this particular individual decided to
22 ignore that court order effectively.

23 And she can say, oh, it was under appeal, but as the
24 court is well aware, there are steps one takes to preserve
25 one's right on an issue under appeal. You ask for a stay

1 of the order. You do other things to protect yourself, and
2 you have an opportunity to do that in the system. None of
3 that took place here.

4 So, we have an order in place and, you know, we talk
5 about -- and Mr. Moore is going to get here and talk about
6 acquiescence and estoppel and try to say that the Richland
7 and Lexington County assessors can make a deal. They can
8 make a deal to move the county line wherever they want it
9 because that's essentially what they did, but we all know
10 that tax assessors for convenience -- one thing I think we
11 also learned is that none of these local officials want to
12 take responsibility for where that line is. They want the,
13 they want the state to step in and do it. They don't want
14 it. They want to have deniability. Oh, I didn't -- I
15 didn't move it. The state did, and they won't take action
16 even when they have information. You heard them. Well,
17 we, we, you know, until we get real information, we get
18 better information, we just leave it as it is, and we
19 talked about the idea that things can improve. Technology
20 gets better. Information gets better, but we might upset
21 someone, so as a county, we don't want to do that. We'd
22 rather wait until the state comes in, and boy I tell you.
23 The legislature ought to get the Geodetic Survey millions
24 of dollars to do this county so that all these officials
25 can, can fix all the things -- the problems they have.

1 But really what we have is a situation where because
2 of inertia, because the local officials didn't want to
3 address the situation, and because Ms. Murphy refused to
4 take the bull by the horns and try to deal with the
5 situation, she's now come into the court and saying, well,
6 you're going to hurt me, you're going to prejudice me,
7 you're going to disenfranchise me if, if you go against me,
8 and that's not the consideration we have.

9 The task for this court is where's the line. Is her
10 house on the Lexington County side or is it on the Richland
11 County side. And the only evidence that's really come out
12 in this hearing or in any of these hearings is that aside
13 from the county's sitting on their hands, she went and got
14 a building permit in Richland County so her property landed
15 in Richland County. A surveyor moved a line because a
16 planning official wanted him to so it would match the tax
17 map, which certainly is not a definitive county line. So,
18 because that happened and nobody wanted to fix the problem,
19 the problem continues, and a court order should put someone
20 on notice as to what their rights are and what their
21 situation is, and this individual simply chose to ignore
22 it. Well, I believe I live in Richland County. It doesn't
23 matter what the court says. It doesn't matter where the
24 state Geodetic Survey says the line is because I believe
25 it. I don't have to play by the rules. I can do whatever

1 I want, and that's what's happened here.

2 And she had the audacity to bring a lawsuit against
3 the official at the state and Mr. Gantt for initiating the
4 proceeding when the state's records kicked out and said she
5 doesn't live here. They did something about it; they took
6 action and what they got was a lawsuit. Maybe that's why
7 none of these other county officials wants to take action
8 because they're scared they might meet the same, the same
9 plight.

10 Really what we simply have is the only evidence here,
11 the only surveyor who's gone out, walked the line, checked
12 the bearings, and closed the survey from these plats from
13 1910, 1916, and 1922 came in here and said, Your Honor,
14 there's no question as to the location of this line. It
15 isn't even close and because it isn't even close, the
16 decision ought to be easy for the court.

17 But I just want to caution you, and, and like I say.
18 I briefed it. I'm not going to run back through it, but
19 this isn't an issue of estoppel against the government. We
20 can't say because county officials would rather wait for
21 somebody above them to be the heavy and make a decision and
22 tell them to change something that a taxpayer or anybody
23 else establishes a right to say, well, they let me have it.
24 They didn't. And again as I mentioned in my motion to
25 strike, I would suggest to the court that in this case,

1 those arguments aren't even valid because they're not pled.

2 The case law says what you have to show. You have to
3 show reliance. You have to show prejudice. You have to
4 show all kind of factors. One thing you also have to show
5 is that there wasn't any other way you knew it was
6 different. And I would suggest to you when you have a
7 court order, you know it's different. When you have a plat
8 that has approximate county line, you know maybe I ought to
9 ask a question about this. Maybe I ought to be sure before
10 I act and, more importantly, before I ignore the rules and
11 proceed because I want to and because I can, and that's
12 what I have to say right now. Thank you, Your Honor.

13 THE COURT: Thank you, Mr. Montgomery.

14 Now wait a minute.

15 (A PAUSE.)

16 THE COURT: Mr. Moore.

17 MR. MOORE: Your Honor, the issues in this case are
18 really interesting. One of the things that I would point
19 out is that when the court enters into the political
20 processes, it should do so with a great deal of caution.
21 We have a time-tested, a time-tested system in this country
22 dealing with separation of powers, and there are certain
23 questions which the law recognizes to be political
24 questions. That's the reason why Mr. Gantt didn't have a
25 right to appeal the decision of the board.

1 The statutory scheme sets forth the legal entity with
2 the legal right to declare who's qualified to be an
3 elector, and that's the county board. So, what you wind up
4 with is a process to where you have a hearing, and the only
5 way that hearing can go any further--statutorily is if the
6 person seeking the candidacy is denied. There's a reason
7 why it's set up that way: because the statutory authority
8 to make that decision is vested in the county board.

9 Now, we have a situation where if the court does
10 decide to go into political questions, it should certainly
11 do so very cautiously, and the federal doctrine is known as
12 an extension doctrine when the court has said we will
13 abstain from political questions and, and we will not
14 answer a political question that has to be answered unless
15 we absolutely have to do so.

16 We have worked hard to get this matter heard rapidly,
17 but I would respectfully submit the best way for this thing
18 to proceed would be for the court to abstain, at least at
19 this point. Allow the election to happen. If Ms. Murphy
20 loses, the matter is moot and there's no reason for
21 judicial intervention to begin with.

22 However, we come back to many, many questions. What
23 is the court's reaction supposed to be to the decision of
24 the political body that's made the decision the lady is
25 qualified? Should we simply ignore it? Do we give lip

1 service to it? Do we give deference to it? Certainly if
2 we look at the legislative scheme, the scheme is set up to
3 provide great deference to the county body which is
4 designed to hear the issue. So, if we have a conclusion
5 that there should be any type of regard or deference given
6 to the political body which is to make the decision, the
7 question becomes then where is the burden of proof? Is it
8 preponderance of the evidence? Is it clear and convincing
9 evidence? Is it something the court shouldn't decide to
10 begin with?

11 Now, I certainly don't have the intellectual
12 background as Your Honor does, former chief justice of the
13 Supreme Court, only not there because you had to retire
14 because of age, so I don't, I don't -- I -- that's way
15 beyond my pay grade, but I can't figure it out. I think
16 the law would say that at the very least there must be
17 great deference given to the board because they are the
18 people charged with the legislative function of making a
19 decision, and they decided. I don't know the answer; I
20 don't think anybody does.

21 I do think this. Nobody knows where the county line
22 is. We've got maps all over the place, and there is a
23 legislative scheme in place for how to determine that line.
24 With all due respect to my friends at the Geodetic Survey,
25 that probably should already have been done by now, but I

1 understand limited resources and I understand they do the
2 best they can. But as of right now, the legislative scheme
3 which is required to be in place to set a line, that hasn't
4 been followed and we're in a posture of having to deal with
5 mush. The lines are mushy. Nobody can tell us to a
6 reasonable degree of professional certainty where the line
7 is.

8 Now, we do have various concepts in the law known as
9 boundary lines by acquiescence, and in a surveying business
10 it's generally called boundary line by parole evidence. In
11 private property disputes, I do know that where two private
12 landowners basically acknowledge the existence of a line by
13 erection of a fence in the course of dealing -- a hedgerow
14 -- and the line is mushy, then the court will basically say
15 it's a boundary line by practical application, boundary
16 line by estoppel, boundary line by acquisition, by
17 acquiescence.

18 Now in this case, we have two counties through county
19 officials who have recognized the validity of a particular
20 line. Whether that ultimately is determined to be the line
21 or not God only knows but as of today, Lexington and
22 Richland County have acquiesced in the placement of the
23 line and the treatment of this lady as being a resident of
24 Richland County. Richland County has accepted financial
25 benefit from that. Richland County has taken taxes on

1 houses, Richland County has taken taxes on cars, and
2 Lexington County acquiesced in Richland County doing that.
3 So, we have a line established by acquiescence.

4 Now, Mr. Montgomery talks about, well, it's just the
5 county assessors. That's not true. When the property was
6 subdivided, the official planning commission of Lexington
7 County insisted that the line be moved on the recorded plat
8 to match the tax map lines, and the planning commissions of
9 Richland County and Lexington County both certified that
10 plat as accurate with the approximate county line of being
11 right there. So, we have the planning commissions of both
12 counties, the taxing authorities of both counties, the
13 Richland County accepting the benefits of the taxation, and
14 this lady being told for years you live in Richland County.
15 The truth of the matter is she may not, but she may and as
16 of right now no one can say.

17 Let's take a look at the surveyors. The first one you
18 have is Mr. Tyler. We have an affidavit and a report from
19 him, a very well qualified land surveyor who is somehow or
20 another in Charleston and we can't get him here. We've got
21 his affidavit in court, and they're pretty significant.
22 What he says is this. There is not enough information
23 available in order to be able to do a legitimate decision
24 and survey in regard to where it, this line, is. You've
25 got to find more points in order to do it, and you can't go

1 out there and just make up points. You can't just go drive
2 a stake in the middle of the river, and you can't even make
3 up a point and say, well, this is Rocky Ford. We don't
4 know which one's Rocky Ford.

5 We know this. If you look closely at the map, the
6 points that have been placed by Mr. Ballard are not the
7 same points that show on the map. What do you have there?
8 Mr. Tyler says to you as a registered land surveyor if I
9 had to guess, if we found the points, I think she's in
10 Richland County, but I don't know because there's not
11 enough out there on the ground to be able to tell you, and
12 you got to do a survey.

13 Then you got Mr. Ballard, who says I've done no survey
14 and I've established what I think is Rocky Ford, and
15 everything is off by so many feet here, there, or yonder,
16 and I haven't done a survey, and I'm working for the
17 Geodetic Survey, and my work doesn't become certified until
18 the processes have been followed. And I believe that it's
19 in Richland County, but I haven't done a survey -- I mean
20 Lexington County, but I haven't done a survey, and I don't
21 know.

22 Then you got Mr. Cobb. Mr. Cobb says, okay, when I
23 first went out there, I went to the geodetic survey lines
24 and those were the old geodetic systems, none of which
25 anybody says are reliable. As a matter of fact, the code

1 says that you can't rely on them, but I used that, but the
2 county's told me that's wrong. So, if I had used what I
3 had available to me from geodetic stuff, I would have said
4 where the house is was in Lexington County. But I was told
5 no, that the counties know. Lexington County made me draw
6 the county land and showed me that the county line was
7 here, not here. So, you have an acknowledgment by both
8 counties that this house is in Richland County. I don't
9 know. With all due respect, I don't think any of the
10 surveyors know either.

11 Mr. Ballard is guessing. Mr. Cobb did what he could,
12 but he was relying on survey information that we know is
13 not accurate. Mr. Tyler has enough fortitude to say
14 there's not enough information here yet. Well, that's what
15 the statutory scheme set forth by our legislature says. It
16 says okay -- if you look at this, this is exactly what it
17 says. It says the Geodetic Survey is responsible to
18 establish certified lines, and this is how you do it. If,
19 if there is a dispute between the two counties, then the
20 Geodetic Survey mediates that dispute.

21 Well, the negative implication of that is if there's
22 not any dispute, then what we're supposed to do is to
23 accept the agreed-upon line which they have acquiesced in.
24 Would that not be the negative implication of such a code
25 section? It says if there's a dispute between the counties

1 -- which there's not -- if there is a dispute, the Geodetic
2 Survey is supposed to mediate. You mediate. That
3 basically means you come to an agreement. Boom. Counties
4 have already done that. Both counties agree where the line
5 is. That's what the tax map is, at least that's what we
6 seem to say.

7 In any event, it says if the parties cannot agree on
8 the placement of the line, then the Geodetic Survey has to
9 do a survey and they set the line, but that's not the end
10 of the matter. If the Geodetic Survey sets the line, any
11 party, any interested party, any interested citizen can
12 come forward with additional information and have the line
13 moved if it can convince the Geodetic Survey. Once that
14 system takes place, there's an entire appeal process to
15 where the Administrative Law Court is the ultimate arbiter
16 of where the line is when the process is followed.

17 And at this point you have -- the Geodetic Survey
18 simply hasn't done that for two reasons. A, there is no
19 dispute between the counties. The counties agree. And B,
20 they don't have enough money. South Carolina is a big
21 state. A lot of lines. They just hadn't got around to it.

22 Okay, that brings us back to mush. We know that there
23 is no certified lines, and the counties are in a posture of
24 what do we do with mush? We have to deal with the status
25 quo until such time as the mush becomes concrete. So, what

1 do we do?

2 The counties have agreed to do this. Until we get a
3 certified line, we're going to do it the way we've always
4 done it. Until we get a certified line, we're going to do
5 what we have historically recognized as being true. Does
6 that not make sense? I submit that it does.

7 What they, what they come to the agreement of is
8 nobody is going to do anything with these lines other than
9 what's been historically recognized until we have a
10 certified geodetic survey in accord with the statute.
11 Makes perfectly good sense.

12 If we start moving lines willy-nilly, changing these
13 people, these people, seven hundred people here, fifty
14 people, 150 people there, you're going to wind up with a
15 mess. How you going to do schools? How are you going to
16 do taxes? How you going to do law enforcement? You're
17 just willy-nilly moving lines back and forth as the
18 geodetic survey lines change, which they've already told
19 you they're not accurate. Doesn't it make sense for the
20 parties to acquiesce in a line until the South Carolina
21 statutes are complied with?

22 So, we come back to this question. If the legislative
23 bodies of the counties or the elected officials of the
24 counties in their official capacity have recognized mush
25 and have come up with a legitimate way to deal with mush

1 until the matter can be properly rectified according to
2 statute, how can the court come in and say our decision is
3 better than yours? Is that really what the court is
4 supposed to be up to? I mean, no matter how we look at it,
5 now matter how we look at this case, there, there is no
6 certified line which has been drawn in compliance with the
7 South Carolina mandates of the General Assembly. We're
8 dealing with mush.

9 And I would respectfully submit that the counties have
10 done a pretty good job working this thing out and that
11 until somebody says otherwise, it's very simple. Our
12 position is until people with the appropriate authority in
13 the compliance with the statute say otherwise, we're going
14 to do what we historically recognized as being true.

15 Then what you have is this. As the court knows, my
16 politics are all over the board, but you wind up with a
17 little lady like Kim, who you can say anything you want to
18 about her. Her heart's in the right place. She winds up
19 finally getting elected and the next thing you know,
20 somebody comes out and starts sharpening a pencil and
21 saying, well, gee, you don't live where you've lived for
22 twenty years and where you paid taxes for twenty years.
23 Political processes. But, you know, no matter what this
24 court does, Richland County is going to continue to tax
25 her. She's going to continue to get law enforcement from

1 Richland County Sheriff's Department. The, the Richland
2 County board, I guess she won't be able to vote in Richland
3 County, but she'll still be paying taxes there. How in the
4 world could she be paying taxes in Richland County and vote
5 in Lexington County? That's doesn't make a lick of sense.
6 That's why it's a political question.

7 The court should abstain from this case until the
8 legislature and the, the executive bodies do their jobs.
9 Once the executive does its job pursuant to the legislative
10 mandate, court won't have to be involved in this. It will
11 be clear. It's clear as mud right now.

12 You know, counsel talks about this, prior court
13 orders, and they concern me. For whatever reason when the
14 board decided it was going to expel one of its members,
15 which I don't think it had the authority to do, the counsel
16 for Ms. Murphy said don't go. Don't introduce any of this
17 evidence, and then they showed up to a trial *de novo*, not
18 knowing it was a trial *de novo*. The record again did not
19 get made. So, what Judge Cooper had and what Judge
20 Benjamin had was only half a loaf. They didn't have
21 everything we have now, but what they want to do is come
22 back and wave that court order and say look, look, look,
23 look, look what all these judges have found because it is
24 so tempting, it is so tempting to want to do and follow
25 what other very well respected -- and judges I happen to

1 love -- have done. But when you recognize that neither
2 Judge Benjamin nor Judge Cooper had the information that
3 now is available to us about the mushy nature and the
4 acquiescence of what the heck was going on, and when we
5 recognize *res judicata* and collateral estoppel don't apply
6 because the commission wasn't a party, the question then
7 becomes, well, okay, I got two judges that ruled a
8 particular way who didn't have all the facts that I have.
9 But I want to give deference to the court order, but I
10 can't give deference to the court order because *res*
11 *judicata* doesn't apply, and I've got to give deference to
12 the political order of a legislative body that I'm supposed
13 to defer to. So, you got ---

14 THE COURT: Mr. Moore, Mr. Moore, I think we are
15 getting a little bit repetitive. We've got ---

16 MR. MOORE: We're getting way repetitive. Your Honor,
17 here's what I would say. I do think the wise thing to do
18 is defer until after the election. Quite frankly, the
19 election will probably make this whole thing moot, quite
20 frankly. Maybe, maybe not. I don't know. There's
21 certainly a chance it will do, but I do think however all
22 the sharp-pencil legal arguments is, the right thing to
23 have happen in this case since we are dealing with utter
24 unmitigated mushy issues -- mushy facts they are -- is the
25 status quo should be maintained until we can get the

1 ruling. That's all. That, that's, that's where I am.

2 THE COURT: Very good.

3 MR. MOORE: Thank you.

4 THE COURT: Thank you.

5 Now, Mr. Spillane has sat very patiently, and he is
6 also involved in the matter. So, Mr. Spillane, the floor
7 is yours.

8 MR. SPILLANE: Your Honor, thank you. The commission
9 would, would go along with whatever the court decides as to
10 the validity of the candidacy, yes or no.

11 THE COURT: And that's what we have in front of us.

12 MR. SPILLANE: Or deferred.

13 THE COURT: Exactly. Mr. Spillane, we have here today
14 the validity of her candidacy. The validity of her
15 registration is something that has a whole different set of
16 mechanisms available. If she presents herself to vote in
17 the Springhill precinct, whether or not this ruling goes
18 her way or goes the way of the plaintiffs. My bet is that
19 no matter which way that goes, there will probably be
20 someone who will challenge her ability to go cast her vote
21 on the same basis that there's been some argument today.
22 And if that happens, then that ballot will be put in a
23 challenged ballot envelope and there would be a process
24 which takes place to decide the qualified elector casting
25 vote issue.

1 Our issue, which you're also very involved in as you
2 have correctly said, is simply and solely at this time the
3 question of her candidacy, her presence on the ballot, and
4 you have indicated that the board intends to -- that the
5 board wants some guidance and will rely on what the court
6 decides. If we say she's qualified, you'll keep her on the
7 ballot and move forward. If we say that she's ---

8 MR. SPILLANE: Or the third ---

9 THE COURT: --- not resident ---

10 MR. SPILLANE: There was a third option.

11 THE COURT: Well, of course the third option is Mr.
12 Moore's suggestion that we simply defer it, let the
13 election go on and do nothing further, and that we will
14 consider.

15 MR. SPILLANE: And we would keep it at -- as the
16 status quo.

17 THE COURT: Exactly.

18 MR. SPILLANE: The commission.

19 THE COURT: You would then ---

20 MR. SPILLANE: That would be ---

21 THE COURT: --- keep your ballot like it is and move
22 forward.

23 MR. SPILLANE: Yes.

24 THE COURT: -As I understand.

25 MR. SPILLANE: Is there anything that you ---

1 THE COURT: I don't think there's anything else to be
2 said. I'd like to thank ---

3 Mr. Montgomery, do you have any pearls of wisdom?

4 MR. MONTGOMERY: Very brief, Your Honor.

5 THE COURT: All right, sir.

6 MR. MOORE: Judge, could I find the restroom one
7 second before he -- brief? I mean two seconds. I, I'm ---

8 THE COURT: Yes, sir, you may.

9 (OFF THE RECORD.)

10 THE COURT: Mr. Montgomery.

11 MR. MONTGOMERY: Thank you, Your Honor, and may it
12 please the court? I'm going to be brief. I will just try
13 to touch on a couple legal issues that were raised by Mr.
14 Moore. I think the court has heard the facts a multitude
15 of times.

16 First of all, I want to just touch on the political
17 question argument that's made, and I'd point out to the
18 court this isn't a political question. A political
19 question, as the United States Supreme Court has, has, has
20 deemed, is one which deals with coequal branches of
21 government and, you know, that is *U.S. vs. Munoz-Flores*.
22 There are several other cases, but essentially here that's
23 not the question and, of course, one of the interesting
24 permutations of that would be then why was the court able
25 to get involved in an appeal of the school board's decision

1 -- because it regulated the control of its body -- and the
2 answer is because they are not coequal branches of
3 government. And the court here is really not dealing with
4 the political question anyway. It's dealing with a simple
5 question of fact: where's the boundary.

6 The second legal point that I think is important is
7 this idea that in order to determine a boundary, there's
8 only one standard that can be used. And Mr. Moore for
9 obvious reasons wants to suggest to the court that unless
10 you have an absolute certified line plat, that you can't
11 have a decision as to where someone lives. And the simple
12 fact is, Your Honor, you know, I've seen deeds from the
13 1700s and we have in this state had to make decisions on
14 boundaries, and our courts have had to make decisions on
15 county lines for almost 300 years. And until 2014, the
16 idea of a certified plat like this wasn't even in the code.
17 So, the courts have had to look at the evidence as the
18 court's seen before here today and make a legal decision.

19 And so while it's an attractive sideshow to look at,
20 the simple fact is, is that there is evidence here that's
21 been offered and the court has, as the trier of fact in
22 this case, the ability to weigh that evidence and make a
23 determination as to both its credibility and its efficacy
24 and make a decision.

25 The third issue from a legal standpoint I want to

1 address is another sort of attractive argument that after
2 the election this will be moot. And I'd suggest to the
3 court that that's not quite right either because there's
4 nothing after the election, should Ms. Murphy not prevail,
5 stopping her from in 2018 filing to run again from Richland
6 County and putting us right back here on this same hamster
7 wheel. So, while it's possible that something could happen
8 in the intervening time, we don't know that. And as we
9 look at historical doctrines of mootness and ripeness, this
10 case is certainly ripe for adjudication. And again when
11 you deal with doctrines of mootness, the question is might
12 the -- it's not might the issue be moot in the future.
13 It's is the issue moot today, and clearly the issue is one
14 that's justiciable today, and it's not moot. So, the idea
15 that it's moot, while again it's sort of an attractive
16 sideshow, it's really not an appropriate consideration for
17 the court.

18 And the final thing I'll talk about is this idea of
19 counties by mutual agreement of some officials in the
20 county can decide where the county line is. And while they
21 may be able to horse trade as to what parcels they tax and
22 what parcels they don't, they don't have the legal
23 authority to change the county line or alter it. Only the
24 General Assembly has that, and I would suggest to you --
25 and having a little experience having served on the county

1 council, I think most county council people would be really
2 surprised to think that they had zoning and planning
3 officials or even the assessor making agreements that were
4 binding upon the county, and which a court would then issue
5 a ruling based on where the council had not had a
6 resolution where it hadn't approved it. That would be no
7 different than, you know, any official in any company that
8 doesn't have authority making an agreement. While they may
9 be able to horse trade at work and nobody objects to it,
10 that isn't an agreement that's binding on the county. And
11 from a legal standpoint, a statutory standpoint, there's
12 nothing that anyone's presented that affords the statutory
13 ability of a county assessor or a county zoning official to
14 make an agreement with regard to the location of the county
15 line which binds the county, and that's essentially the
16 argument that has been made by the defendants in this case
17 is you can't decide the county, Judge, because there's
18 already an agreement, and you don't want to disturb it.
19 They can't make an agreement. They don't have the legal
20 authority, and since they can't make one, the idea that
21 they could doesn't bind anyone. It's certainly not binding
22 on the court.

23 And, Your Honor, I think that the, the real sum, sum
24 here is, is that we've heard the best evidence, and the
25 court will get to weigh that, and we've heard what really

1 happened here. And what really happened is that the county
2 officials have used property taxes as a basis to make their
3 decisions, and that basis, while it works and it's
4 convenient and it's expeditious for the county, it is not
5 setting a legal standard or a standard that's binding on
6 this court.

7 And, and I think Mr. Moore is well served to be
8 concerned about the court order because while we can talk
9 about concepts of *res judicata* and say, well, this, this
10 body or this body wasn't a party to this suit, one person
11 that was a party is Ms. Murphy. And Ms. Murphy doesn't
12 like the outcome, and what she's been able to conveniently
13 do here is try to get a do-over. I know prior to your
14 being on the bench you tried a few cases in your time, and
15 I don't know any lawyer that's had a case that they didn't
16 like the outcome of that wouldn't like a do-over. And if
17 you can get a do-over and say, well, Judge, I didn't put
18 all the evidence in I should have put in the first time, so
19 let me try it again -- maybe I'll get a different outcome
20 this time -- we wouldn't be worried about having -- not
21 having judges for terms of court because there'd be an
22 awful lot of terms of court.

23 And so the idea, I think, is, is that while you can
24 talk about *res judicata* and say all these parties aren't
25 bound, one party who is bound and the one party had a full

1 opportunity and experienced due process to participate
2 throughout was Ms. Murphy. And it's rather disingenuous
3 for her to say well, Judge, the other judge didn't hear all
4 the evidence, so I should get a do-over. But I don't think
5 that really matters because I think if you look at the
6 evidence here, it's pretty clear that despite paying taxes
7 -- I think I'd stipulate to all that, but I also think
8 she's had a choice, and she's chosen not to try to act upon
9 things that came to her knowledge. And she's trying to
10 essentially allow the -- ask the court to let her profit
11 from her failure to deal with the issue, to let her say now
12 it's eleven hours. It's too late; I've waited too long.
13 You know, bail me out. So, Judge, I'd just ask you to do
14 what I know you'll do and give due consideration, and I
15 think when you do, you will find that Ms. Murphy, in fact,
16 resides in Lexington County and is not eligible to run for
17 this office. Thank you.

18 THE COURT: Thank you, Mr. Montgomery.

19 Let me just say to you counsel that I appreciate your
20 professionalism. I appreciate your making the sacrifices
21 that it took to get this matter in a posture where the
22 court can make a decision that can maybe bring some clarity
23 and at least get this matter moved another step towards its
24 final resolution. I thank you very much.

25 And I want to convey on behalf of all of us the

1 gratitude to Kershaw County for stepping into the breach
2 when Richland could not accommodate us to hear this matter.
3 I know you'll all join me in sending a word of thanks to
4 Joyce McDonald and to the sheriff's department for helping
5 us out in this.

6 Sergeant Hudson, we really appreciate all of your help
7 here in Kershaw County for letting --- .

8 SERGEANT HUDSON: It's been a pleasure having you
9 here.

10 THE COURT: --- letting Richland people come over here
11 and get this matter T'd up for trial. Thank you so much.

12 Court will be adjourned.

13 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 6TH DAY OF OCTOBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

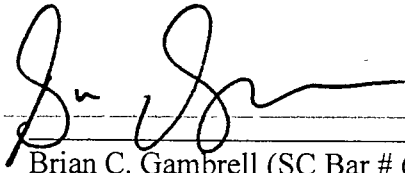
/s/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

APRIL 13TH, 2017

CERTIFICATE OF COUNSEL.

I, Brian C. Gambrell, the attorney for Appellant, do hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

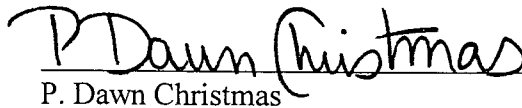


Brian C. Gambrell (SC Bar # 68253)

PROOF OF SERVICE

I, P. Dawn Christmas, an employee of Law Firm of Jason E. Taylor, the attorneys for Appellant, do hereby certify that I served the initial Record on Appeal on Respondents' counsel via hand delivery on November 10, 2017.

Michael H. Montgomery
1002 Calhoun Street
Columbia, SC 29201-2406



P. Dawn Christmas