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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

R. Knox McMahon, Presiding Judge

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Case No. 2011-CP-32-1393

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Clarence Edward Looney, and  
Grover E. Lown, Jr. .... Respondents

v.

GrassRoots of South Carolina, Inc., Ed Kelleher,  
Robert Butler and Robert Holiday ..... Appellants

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**RESPONDENTS' FINAL BRIEF**

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## STATEMENT OF ISSUES ON APPEAL

- I. **THE TRIAL COURT'S ORDER THAT RESPONDENTS ARE ENTITLED TO BE PROVIDED WITH THE REQUESTED CORPORATE MEMBERSHIP RECORDS IS CORRECT AND SHOULD BE AFFIRMED BY THIS COURT.**
- II. **THE TRIAL COURT CORRECTLY RULED THAT THE MAIL IN BALLOT WHICH RETRIEVED VOTES TO AMEND THE ARTICLES OF INCORPORATION TO CHANGE THE CORPORATE STRUCTURE OF APPELLANT CORPORATION WAS NULL AND VOID.**

## STATEMENT OF THE CASE

This is an appeal from an Order of the Honorable R. Knox McMahon, Presiding Judge of the Eleventh Judicial Circuit, dated May 16, 2011. Judge McMahon's Order grants Respondents Clarence Edward Looney and Grover E. Lown, Jr. a Preliminary Injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure. Judge McMahon ordered Appellants to provide Respondents with copies of certain requested corporate records and membership lists in accordance with South Carolina Law, at a reasonable time and place decided by the corporation and further, that the mail in ballot which retrieved votes to amend the Corporate Appellant's Articles of Incorporation to change the corporate structure of Appellant corporation was null and void. Judge McMahon's Order provided that once a mandatory annual meeting was held, as required by South Carolina Law, the Appellant Corporation may vote on the proposed Amendment only if it was in compliance with Appellant Corporation's bylaws and the South Carolina Nonprofit Corporation Act. (R. p.9).

Respondents commenced this action against Appellants Grass Roots of South Carolina, Inc., ("GrassRoots") Ed Kelleher ("Kelleher."), Robert Butler ("Butler") and Robert Holiday ("Holiday") on or about April 1, 2011 (R. pp. 11-19). Appellant's Verified Complaint sought both declaratory and injunctive relief (R. pp. 11-19). Respondent's filed their Answer and Counterclaim on or about April 8, 2011. (R. pp. 21-32). This matter came before the Court for

hearing on or about April 18, 2011 (R. p. 63). Prior to the hearing, the parties agreed that any evidence taken during the preliminary injunction hearing would be received via affidavit (R. p. 37, lines 15-20). Judge McMahon issued his Order on May 16, 2011, granting the relief requested by Respondents. . (R. pp. 1-9). This appeal followed. (R. p. 33).

### **STATEMENT OF FACTS**

Appellant GrassRoots of SC, Inc is a non-profit corporation organized to promote gun rights in South Carolina. (Exhibit 1 to Affidavit of Clarence Edward Looney, R. p. 68) (R. p. 37, Lines 21-24). Respondents Clarence Edward Looney and Grover E. Lown, Jr. are dues paying members of GrassRoots (R. p. 64). Respondents became concerned that Grass Roots was being run by Appellants Kelleher, Butler and Holiday in a manner contrary to South Carolina Law. These potential violations of South Carolina Corporate law included but not limited to the possibility that the corporation had repeatedly violated its own bylaws by failing to hold required annual membership meetings, and had never held an election of officers or board members since its inception despite actually having officers and board members who, upon information and belief, had been periodically appointed and removed without any input from GrassRoot's Membership. (R. 84). It became increasingly obvious to Respondents that one or more of the individual Appellants were running GrassRoots without any regard to corporate structure or formality, and that the rank and file of GrassRoots' membership was unaware of this fact.

Because of these concerns, Respondent Looney wrote Appellant Ed Kelleher, President of GrassRoots, a certified letter on March 10, 2011, requesting to be provided with certain corporate information. Respondent Looney's letter stated that:

Under South Carolina Law and as a dues paying member I have the right to receive copies of corporate information from you; or to be given access for myself and or my agent to enter the corporate offices and inspect and make copies paper or electronic/digital of the records included in this demand.

(R. pp. 87-88). Respondent's letter further stated that:

Section 33-31-1602 requires that I describe the purpose for which the records are sought and that the request be made in good faith. This description and good faith request follows.

I Ed Looney state that none of the records sought are for any personal gain, financial or otherwise. The purpose for which these records are sought is purely informational and educational. The information provided by Grass Roots SC will be used by myself and passed on to other dues paying members so they will be educated and informed about corporate behavior. The request is in good faith and reasonable. South Carolina law states every member is entitled to have this information and this demand is only so that the information sought can be made available to other dues paying members.

(R. pp. 87-88). Respondent Looney specifically requested copies of: (1) Articles or restated articles of incorporation and all amendments to them currently in effect; (2) Bylaws or restated bylaws and all amendments to them currently in effect; (3) Resolutions adopted by the board of directors relating to the characteristics, qualifications, rights, limitations and obligations of members of any class or category of members; (4) The minutes of all meetings of members and records of all actions approved by the members for the past three years; (5) All written communications to members generally within the past three years, including the financial statements furnished for the past three years under Section 33-31-1620; (6) A list of the names and business or home addresses of its current directors and officers; (7) Most recent report of each type required to be filed by it with the Secretary of State; and (8) Membership list as described in South Carolina Code 33-31-1601(c). With respect to his request for the membership list, Attorney Looney's letter stated, "this request complies with SECTION 33-31-1605 because it is necessary for those who wish to solicit votes for the upcoming board of director's election. The members list and its use are not sought for any personal gain." (R. pp. 87-88).

Respondent Looney included in his letter a money order for \$30.00 to "defray any costs for reproducing these records," and further indicated that, "All funds not required to offset the

costs for reproduction of records are to be used as a donation to Grass Roots Gun Rights.” (R. pp. 87-88). Respondent’s request concluded:

As it would be faster and cheaper for all involved, I am asking that these records be reproduced electronically on a Compact Disc in a commonly used digital format, MS Office or PDF. I am allowing 10 (ten) days to comply with this demand even though the statutes say 5, (five) days is sufficient. Grass Roots is a small organization and I do not wish to over burden them with the shorter timetable.

(R. p. 88).

On March 24, 2011 Appellant Kelleher partially responded to Respondent Looney’s request, providing; (1) a copy of GrassRoots’ Articles of Incorporation, as amended; (2) a copy of GrassRoots’ Corporate Bylaws; (3) Grass Roots’ 501c4 classification letter from IRS; and (4) GrassRoots’ IRS 99 return for 2009. (R. p. 89). Appellant failed to send Respondent any of the additional information he requested in his letter. (R. p. 89). Appellant did not give Respondent Looney any reason why this information was not provided to him as requested in his March 11, 2011 letter.

On March 23, 2011, one day before to respondent Looney in which he refused to provide him with the information he was entitled to under South Carolina Law, Respondent Kelleher mailed to GrassRoots’ approximately 2493 members a “Membership Ballot,” along with a four page letter. (R. pp. 107-112) Appellant Kelleher stated that the purpose of this communication was to protect the privacy of GrassRoots of South Carolina Inc.’s members. (R pp. 107-112). In highly inflammatory language, the mailing insinuated that GrassRoots was under attack from its “enemies” and that any request for membership information was, “...a declaration of war on your privacy and mine.” (R. pp. 109-112). Respondent Kelleher, allegedly acting on behalf of the “board of directors” of GrassRoots sought permission from the membership of Grass Roots to amend the GrassRoots Articles of Incorporation to change from a corporation “with

members,” to a corporation “without members.” (R. pp. 107-112). The Appellant’s even took the time to pre stamp the “membership ballot” sent out to GrassRoots’ membership. (R. p. 112).

The mailing provided that the ballots must be received or postmarked no later than April 6, 2011 (R. p. 108). Contrary to the express provisions of GrassRoots’ bylaws, the materials did not contain a copy of the actual amendment upon which the members were being asked to vote.

Respondents commenced this action in response to Appellants’ mailing on April 8, 2011. (R. pp. 11-19). Respondent’s Complaint alleged that upon information and belief the finances and conduct of the corporation had been dictated by the individual Appellants; that the individual Appellants had abused corporate structure and had “turned the corporation into their own political soap box in order to meet their own political purposes;” and had abused the corporate structure and had sought to speak and act for the GrassRoots to the exclusion of its members. (R. pp., 11-19). Respondent’s complaint, for declaratory and injunctive relief, sought an Order declaring the activities of Appellants illegal until such time as a membership meeting could be held; sought a financial accounting of the finances of GrassRoots; and sought to have the ongoing voting to change the corporate structure, based upon fraudulent and misleading information, declared null and void. Respondent’s Complaint sought an injunction enjoining any change in the bylaws until such time as a membership meeting could be held. Finally, the Appellant’s sought an order enjoining any further activities by the Corporation until such time as the above matters could be resolved. (R. pp. 11-19).

This matter came before the Honorable R. Knox McMahon, Presiding Judge of the Eleventh Judicial Circuit on April 18, 2011. After receiving affidavits and hearing argument of counsel, Judge McMahon issued his order granting the relief sought by Respondent’s on May 16, 2011. (R. pp. 1-9). This appeal followed. (R. p. 33).

## STANDARD OF REVIEW

The decision whether to grant or deny an injunction is ordinarily left to the sound discretion of the Trial Court. *Metts v. Wenberg*, 158 S.C. 411, 417, 155 S.E.734, 736 (1930). The grant or denial of an injunction by the Trial Court will not be reversed absent an abuse of discretion. An abuse of discretion occurs when the decision of the Trial Court is unsupported by the evidence or controlled by an error of law. *Levine v. Spartanburg Regional Services District, Inc.* 367 S.C. 458, 626 SE.2d. 38 (Ct. App. 2006).

## ARGUMENT

### I. THE RESPONDENTS ARE ENTITLED TO THE REQUESTED CORPORATE DOCUMENTS

The Trial Court correctly held that Respondents were entitled to all of the corporate information requested by Respondent Looney in his March 10, 2011 letter. South Carolina Code Section 33-31-1601 sets forth a list of corporate records that each non-profit corporation is required to maintain at its principal place of business. These records must be maintained by any South Carolina non profit corporation such as Grass Roots. These records include the corporation's articles of incorporation, its bylaws, the resolutions adopted by the Board of Directors, the minutes of all meetings and records of all actions taken within the past three years, all written communications to general membership within the past three years, a list of names and business or home addresses its current directors and officers, and its most recent report of each type required to be filed with the Secretary of State. South Carolina Code Annotated 33-31-1601(e). These records must be maintained in a written form or in another form capable of being converted to a written form within a reasonable time. South Carolina Code Annotated, 33-31-1601(e). These records must be kept in a form that allows the corporation to comply with

member rights to obtain and inspect the corporate records. Official Comment 4 to South Carolina Code Ann. 33-31-1601.

South Carolina Code 33-31-1602 provides that members such as Respondents are entitled to inspect and copy at a reasonable time and location specified by the corporation the records required to be maintained under 33-31-1601(e). The member must give the corporation written notice or written demand at least five (5) business days before the date on which the member wishes to inspect or copy the records. South Carolina Code 33-31-1602 carves out additional requirements for certain requested records. With respect to certain accounting records and membership lists, a member may inspect and copy these records if (1) the member's demand is made in good faith and for a proper purpose; (2) the member describes with reasonable particularity the purpose and records the member desires to inspect; and (3) the records are directly connected to this purpose. Further, South Carolina Code Section 33-31-1605 provides that the membership list, once obtained, may not be used sold, used for any commercial purpose, or used to solicit money or property, unless the money or property will be used solely to solicit the votes of the members in an election to be held by the corporation. Official Comment 2 expressly provides that a request of membership records to contact fellow members regarding the corporation or to determine whether or not improper transactions have occurred is a "proper purpose."

The Trial Court correctly found that Respondent's request complied with the requirements of South Carolina Law. Respondent did not request any records apart from those that South Carolina Law requires Grass Roots to maintain. In fact, the Respondent's document requests contained in his March 11, 2011 letter were lifted verbatim from the language contained in South Carolina Code Section 33-31-1601(e). Respondent Looney only requested the

information that he was entitled to inspect and copy as a member under South Carolina Law. With respect to the membership list, Respondent Looney's request satisfied each of the requirements of South Carolina Code Annotated 33-31-1605. Under South Carolina Law Respondent Looney was entitled to all of the information he requested in his letter. The Trial Court correctly determined that based on South Carolina Corporate Law and the evidence before it Respondent had set forth facts sufficient to set forth a cause of action for injunctive relief and that Respondent was entitled to an Order requiring Appellant's to produce the requested information. The Trial Court's Order granting Respondents the temporary relief requested in their Complaint pending a trial on the merits should be affirmed by this Court.

**A. THE LACK OF A SPECIFIC DATE FOR THE RECORDS TO BE PRODUCED DOES NOT INVALIDATE RESPONDENT'S REQUEST**

Appellants argue that the fact that Respondent Looney did not specify a specific date for the records to be provided to him invalidates his request for documents. This argument should be rejected by the Court.

While Respondent Looney did not specify a specific date for the records to be produced to him, he gave Appellants ten (10) days from the date of his letter to produce the records instead of the five (5) as set forth in the Statute. South Carolina law provides that once the request is made by the member, the member is entitled to inspect and copy at a time and place specified by the corporation. In the case before the Court, Respondent demanded a copy of the requested records within ten (10) days of the date of his letter. South Carolina Law clearly gives corporations such as Appellant the right to designate the time and place for the inspection, rendering the lack of a definite date in Respondent's request a moot point. Appellants never specified any alternative time and place for Respondent's to review the requested information as South Carolina Law clearly allows them to do. They merely refused to produce this requested

information. The fact that Respondent did not specify a specific time and place to review the documents does not render his request void as urged by Appellants' Brief.

The Appellant's argument to this Court throughout its Brief that Respondent's request caused undue corporate hardship and inconvenience lacks merit and should be rejected. Respondent only requested the documents that South Carolina Law dictates that corporations not only maintain, but maintain in such a way that they can be provided to members who request it. Further, even before the ten (10) days specified by Respondent Looney in his letter, Appellants had the time and resources to put together an 8 page mailing that was sent out to all Grass Roots approximately 2500 members, asking them to turn Grass Roots into an organization without members, arguably so that Respondents would not have to turn over to Appellants, or anyone else, the documents that they are required to maintain and produce pursuant to South Carolina Law. Appellants' arguments that Respondent Looney's request created an undue burden on Appellants should be rejected by this Court.

**B. THE BURDEN OF MAINTAINING AND PRODUCING CORPORATE RECORDS IS ON THE CORPORATION AND NOT THE INDIVIDUAL MEMBER**

Appellants argue that South Carolina law, specifically South Carolina Code Section 33-31-1602 places the burden of inspecting or obtaining copies of requested corporate documents on the party seeking to review of copy these documents. This is not the law in South Carolina. South Carolina law mandates that a non-profit corporation such as Grass Roots must maintain certain corporate records at its place of business. This information must be maintained in a fashion that so that it can be made readily available to corporate members who request it. The Law further grants the member a right to obtain copies of this information. Once a valid request is made by a member, the law requires that the corporation produce these documents to the

member. As set forth above, the corporation may set forth a time and place for the requested documents to be provided. However, once a valid request is made under South Carolina Law, the documents must be produced to the member.

Appellant's argument that somehow the burden of obtaining requested documents is on the party seeking copies lacks merit. If the burden were on the party seeking production of corporate documents, the corporation could easily make it difficult or impossible for the member to obtain this information. This is clearly not the intent under South Carolina law. Appellant's argument should be rejected by this Court.

**C. THERE IS NO EVIDENCE OF IMPROPER MOTIVE OR INTENT**

Despite their repeated assertions, both in the mailing to GrassRoots members, and in their initial Brief that Respondents' are "enemies" of GrassRoots, attempting to "destroy GrassRoots" from within, there is no evidence in the record that Respondents' request for the corporate documents and membership lists is governed by an improper motive or intent. To the contrary, there is ample evidence in the record that Respondents' motivations are governed and controlled by a concern for corporate well being and health of GrassRoots and a concern over the manner in which is being manipulated and run by the individual Appellants to the possible detriment of its members. (R. pp. 11-19) (R. pp. 64-67).

Respondent Looney clearly stated his purpose in requesting this information as required by South Carolina Law. Respondent Looney's letter to Grass Roots expressly states his purpose in making his request for the corporate records was not for personal gain, financial or otherwise. State that purpose was purely informational. March 11, 2011 letter specifically states:

I Ed Looney state that none of the records sought are for any personal gain, financial or otherwise. The purpose for which these records are sought is purely informational and educational. The information provided by Grass Roots SC will be used by myself or passed on to other dues paying members so they will be educated and informed about

corporate behavior. This request is made in good faith and reasonable. South Carolina Law states every member is entitled to have this information and this demand is only so that the information sought can be made available to me and other dues paying members.

(R. pp. 87-88).

Respondent has consistently maintained that his purpose in requesting this information was to contact other members to share his concerns about the manner in which Grass Roots has been run by the individual Appellants. Appellants' assertions to the contrary have no evidence to support them. Appellant's presented no evidence to refute Respondent's good intentions in requesting this corporate information. While it is correct that Respondents do intend to "share" this information, their argument ignores the evidence presented to the Trial Court that the only individuals who Respondent intends to share this information with are the other members of Grass Roots, something that the law expressly allows him to do. See Official Comment 2 to South Carolina Code Annotated 33-31-1602.

## **II. RESPONDENT'S ATTEMPT TO AMEND THEIR ARTICLES OF INCORPORATION ARE INVALID**

Appellant Grass Roots did not full respond to Respondent Looney's legitimate request for Appellant Grass Roots' corporate records and membership list. Instead, the Appellants Kelleher, Butler and Holliday continued their pattern of refusing to comply with South Carolina Corporate Law (as Respondent asserts they have done all along) by seeking to quickly amend Grass Roots' articles of incorporation in order to change the corporate structure from a corporation "with members," to a corporation "without members." (R. pp. 1-9) It is telling that Appellants did not attempt to address these issues at a membership meeting, but through a mailing in which only their "side" of the issues would be heard or received by GrassRoots' membership. Respondent submits that the Appellant's sole purpose in attempting to change Grass Roots to a corporation without members was to allow the individual Appellants to continue to run Grass Roots in a

secretive manner contrary to the clear requirements of South Carolina Corporate Law. This effort to circumvent South Carolina Law by amending Grass Roots' articles of incorporation fails as a matter of law.

The South Carolina Nonprofit Corporation Act defers to a corporation's bylaws and articles, permitting both limitations and expansion of its statutory requirements. With language such as "[u]nless the articles provide otherwise," (South Carolina Code Section Annotated Section 33-31-202(b)), "[u]nless a more limited purpose is set forth in the articles of incorporation," (Section 33-31-301(a)), and "[u]nless the bylaws require otherwise," (Section 33-31-705(d)), the Act acknowledges that the bylaws and articles may contain provisions not anticipated or prevented by the Act.

Grass Roots' bylaws, Article IV, Section 3 contains a number of very specific requirements for amendment to the Articles of Incorporation and how these must occur. Article IV, Section 3 specifically provides that the articles may be amended by the Board of Directors at a regular or scheduled meeting when the amendment is for the limited purpose of qualifying the corporation as exempt from either federal or state income tax. An amendment for all other purposes may be done by a majority of members at any regular or special meeting or by written consent or written ballot. The bylaws of Appellant Grass Roots also specifically provide that if the Board of Directors or members seek to use a written consent or written ballot (such as they did in the present case) then the material seeking the approval must also contain a copy of the proposed amendment to the bylaws. (R. p. 71).

The Trial Court correctly found and ruled that the information sent to Appellant Grass Roots' membership did not comply with the clear and unequivocal language and requirements contained in its by laws. The material that accompanied the mail out to Grass Roots Membership

is attached to the Memorandum and Affidavit of Respondent Ed Kelleher. (R .pp. 107-112). The material sent to GrassRoots' membership requests "permission" for the Board of Directors to amend the Articles of Incorporation. While it describes the amendment that the Board intends to adopt, no where in these materials is the actual proposed amendment attached. The Trial Court carefully reviewed and considered the material sent out to GrassRoots' membership and determined that it did not comply with the express language contained in GrassRoots' bylaws. Therefore, under the terms of the Grass Roots bylaws, the proposed Amendment fails as a matter of law and the Trial Court's Order declaring the attempt to amend GrassRoot's bylaws null and void should be affirmed by this Court.

The Appellants argue that the Trial Court committed an error of law by stating several times in his Order that the Grassroots by laws require that a copy of the proposed amendment be attached to the actual ballot as opposed to being included in the materials soliciting the vote. The Court correctly recognized that the bylaws of Grass Roots, Inc provide that if a Board of Directors or members seek to use a written consent or written ballot, then, "...the material soliciting the approval must also contain a copy of the proposed amendment to the articles." (R. p. 7). The Court then stated, "...the *mail in ballot* sent to the members of the Defendant (Appellant) corporation is a solicitation and recommendation of votes to approve an amendment to the articles of incorporation in order to protect the membership list from being inspected. The *ballot* does not have attached a copy of the proposed amendment to the articles of incorporation." (R. pp. 7-9). The Court added, "It included a paragraph that states: 'by filling out the ballot and saying 'yes' to approve the change, you will be authorizing the board of directors to amend the Articles of Incorporation of Grass Roots from a Corporation 'with members' to a corporation 'without members.'" (R. pp. 7-9). The Court concluded that, "This ballot does not comply with

the requirement of the bylaws since it does not contain an attached copy of the proposed amendment as is required with a notice of a meeting of the members or with a written ballot.” (R. pp. 7-9).

Appellant asserts the Trial Court concluded in his Order that a copy of the proposed amendment had to be attached to the actual ballot, as opposed to being included in the solicitation materials as required under Grass Roots’ bylaws. However, reading the Order in its entirety, it is clear that the Trial Court correctly recognized that the Grass Roots bylaws specifically require that a copy of the proposed amendment be attached to the material soliciting the material and that while the material submitted to the membership was a “...solicitation and recommendation of votes to approve an amendment to the articles of incorporation,” no actual copy of the proposed amendment was provided with these materials as required by Grass Roots’ bylaws. (R. p. 8). This finding and ruling is correct. It is clear that when the Trial Court was referring to the “ballot,” he was referring to the solicitation materials as a whole and not just the actual ballot and any error caused this choice of words would be harmless. The materials sent out to Grass Roots’ membership clearly did not have a copy of the proposed amendment to the Articles of Incorporation, only a description of the proposed amendment, and is therefore null and void, as correctly stated by the Trial Court.

**A. PUBLIC POLICY DOES NOT REQUIRE THAT THE COURT’S ORDER BE REVERSED**

Appellants argue that public policy favors reversal of Judge McMahon’s Order. Nothing could be further from the truth. In fact, public policy strongly supports an Order of this Court affirming Judge McMahon’s Order.

Grass Roots of SC, Inc is a corporation organized and existing under the laws of the State of South Carolina, specifically the South Carolina Nonprofit Corporation Act, South Carolina

Code Section 33-31-101, et. seq. The South Carolina Nonprofit Corporation Act governs South Carolina nonprofit corporations by setting forth certain corporate responsibilities as well as rights for the members of the corporation

South Carolina law specifically requires that corporations such as GrassRoots maintain certain corporate records regardless of its size, membership, budget or resources. In addition to maintaining this information, corporations such as Grass Roots are required to keep and maintain it in such a way that it can be provided to its members upon request.

Despite Appellant's unsupported allegation and insinuations to the contrary, Respondents are dues paying members who became concerned about the manner in which Grass Roots was being run by its officers and directors (R. pp.11-19) (R. pp. 64-67). Respondents became concerned about the lack of membership meetings, the lack of elections and the manner in which finances were being managed. They became concerned with the veil of secrecy that shrouded the running of Grass Roots by the individual Appellants. They became concerned that Grass Roots was being run by these individuals in violation of South Carolina Law (Affidavit of Ed Looney, R. pp. 64-67).

In light of this concern Respondents made a request for corporate information pursuant to South Carolina Law. As set forth above, Respondents tailored and limited their request to the exact information that South Carolina Law requires Grass Roots to maintain and keep available for its members. Instead of producing this information as South Carolina law clearly requires them to do, Appellants refused. Instead of taking the time to provide Respondents with the information South Carolina Law provides they were entitled to receive, Appellants embarked on a campaign to strip Respondents and other members of their membership rights by amending the Articles of Incorporation. Again it should be noted that while Appellant claims that Respondent's

request placed an undue burden on Appellant, this extensive mailing was sent out before the ten days for providing this material was to expire. This mailing insinuated that Respondents, who were making a request that South Carolina Law clearly allows them to make were enemies of the corporation. As set forth above, Respondents find it telling that Appellants attempted to do this not at a Membership Meeting where open discussion was allowed but through a ballot that was one-sided and only tells their side of the story. In their haste to continue to keep the manner in which they run GrassRoots secret from its membership, Appellants failed to comply with South Carolina Law by attaching a copy of the proposed amendment to the materials given out to the Grassroots' membership.

Contrary to Appellant's argument, public policy does not support Appellant's argument that the Trial Court's Order be reversed. This is not a case where political speech has been squelched. Judge McMahon's order simply requires that Appellants follow its own bylaws and South Carolina Law. Judge McMahon's Order simply requires Appellant's to produce corporate documents and membership lists as required by South Carolina Law. While Judge McMahon's order declares that the mail in ballot attempting to amend GrassRoots' Articles of Incorporation is null and void, it further provides that once an annual meeting of GrassRoots' membership is held as required by South Carolina Law, Appellant's may vote on any amendments to its articles of incorporation it wishes to, provided this is done in accordance with corporate bylaws and/or South Carolina Law. Nothing in Judge McMahon's order is contrary to public policy and the Appellants' arguments based on public policy should be rejected by this Court.

**B. THE "ELECTION" RESULTS TO NOT STRIP RESPONDENT'S OF THEIR MEMBERSHIP RIGHTS**

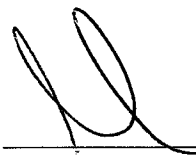
Appellants repeatedly argue that the Grass Root's Membership stripped the Respondent's of any membership rights when they voted to change Grass Roots from a corporation with

members to a corporation with members. This argument should be rejected by the Court. Judge McMahon determined that the Appellant's efforts to silence and free and open debate by rushing through an amendment to amend GrassRoots' Articles of Incorporation was null and void. As set forth above, the materials sent to GrassRoots membership did not contain a copy of the proposed amendment and therefore the entire process was null and void.

Further, pursuant to the express terms of the information sent out to Grass Roots' membership, ballots had to be returned or post marked to Grass Roots by April 6, 2011. On April 8 2011 the Respondents filed their Summons and Complaint. There is no evidence in the record that all of the votes that were postmarked and on April 8, 2011 had been received. Further, the Appellants produced no evidence that the actual amendment had been acted on in any way by GrassRoots Board of Directors. The Court held in its Order that the ongoing process of attempting to amend GrassRoots bylaws was null and void. Therefore the election results are invalid. Respondent's are still members in good standing and therefore are entitled to the information requested in Respondent Looney's letter.

### **CONCLUSION**

For the reasons set forth above, this Court should affirm the judgment of the Circuit Court.



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R. Knox McMahon, Presiding Judge

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Case No. 2011-CP-32-1393

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Clarence Edward Looney, and  
Grover E. Lown, Jr. .... Respondents

v.

GrassRoots of SC, Inc., Ed Kelleher,  
Robert Butler and Robert Holiday.....Appellants

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**CERTIFICATE OF COUNSEL**

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The undersigned hereby certifies that the Final Reply Brief complies with Rule 211 (b) of  
the SCACR.



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March 30, 2012

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

R. Knox McMahon, Presiding Judge

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**PROOF OF SERVICE**

I certify that I have served the Respondents' Final Brief, by mail, to Stephen Fulton Shaw, Esquire, 27 S. Main Street, Travelers Rest, South Carolina 29690 and Jonathan P. Whitehead, Esquire, 410 East Butler Road, Suite E, Mauldin, South Carolina 29662, on March 30, 2012.



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