

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM MCCORMICK COUNTY  
Court of Common Pleas  
R. Lawton McIntosh, Circuit Court Judge

S.C. SUPREME COURT

Appellate Case Number 2017-002583

J.R. Jones, South Carolina Democratic Party, and  
McCormick County Democratic Party, .....Appellants,

v.

South Carolina Republican Party, McCormick  
County Republican Party, Clarke Anderson Stearns, .....Respondents.

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STATE OF SOUTH CAROLINA

COUNTY OF McCORMICK

J.R. Jones, South Carolina Democratic Party,  
and McCormick County Democratic Party

Plaintiffs,

v.

South Carolina Republican Party, McCormick  
County Republican Party, Clarke Anderson  
Stearns, and State of South Carolina, and  
County of McCormick,

Defendants.

IN THE COURT OF COMMON PLEAS

GWEN DOOLITTLE CHILES

CIVIL ACTION NO.: 2016-CP-35-00135

2017 JAN 20 A 11:00

**ORDER DENYING PLAINTIFFS'  
MOTION FOR TEMPORARY  
INJUNCTION**

WAC #1

This concerns a challenge to the ability of Mr. Clarke A. Stearns to take the oath of office for Sheriff of McCormick County, South Carolina. The only issue before the court is the plaintiffs' request for a temporary injunction under Rule 65, SCRPC. The motion is denied. This is not a determination as to whether Mr. Stearns meets or does not meet the minimum qualifications to serve as Sheriff. Further proceedings and other causes of action are still pending. As to the defendants' challenge that the court lacks subject matter jurisdiction, the court finds that it does have jurisdiction. The matter is one that a circuit court can decide, and there is difference in identity of parties between the election commission protest and this lawsuit. Any relief being sought by McCormick County is unavailable at this stage.

Mr. Clarke A. Stearns, the Republican Party's nominee, received 57% of the vote in the November 2016 general election. His Democratic challenger, Mr. J.R. Jones, and the county and state Democratic parties filed this action. The primary issue is the application of S.C. Code Ann. §23-11-110 (A)(5)(b) and the language at the end of the section which reads, "For purposes of this section, a 'certified law enforcement officer' is a person who has been issued a certificate as a



law enforcement officer pursuant to Section 23-23-10." The applicable statute requires a minimum of three years of experience as a certified law enforcement officer. Mr. Stearns has never been issued a certificate as a law enforcement officer in South Carolina. He has over 30 years of experience as a certified law enforcement officer in Virginia, primarily in Alexandria, Virginia, where he rose to second in command under the Sheriff. He also served a brief stint in the United States Marshals Service. The defendants contend that Mr. Stearns meets the statutory requirements or that they are ambiguous, the ambiguity primarily arising from the reference to §23-23-10.

### INJUNCTIVE RELIEF

WAC #2 The court interprets the pending request to be in the nature of a temporary injunction to maintain the *status quo*, in the nature of injunctive relief *quia timet*. An injunction is a drastic remedy issued by a court in its discretion to prevent irreparable harm to the plaintiff. Injunctive relief is an extreme remedy and should be cautiously applied. *Scratch Golf Co v Dunes Residential Golf Props, Inc.*, 361 S.C. 117, 603 S.E.2d 905 (2004); *LeFurgy v. Long Cove Club Owners Assoc. Inc.*, 313 S.C. 555, 558, 443 S.E.2d 577, 578 (Ct. App 1994).

Traditionally, the sole purpose of an injunction is to preserve the *status quo* and is, therefore, prohibitory. It generally is used to prohibit a defendant from acting to change the *status quo*. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 601, 553 S.E.2d 110, 121 (2001); *Mailsorce, LLC. v. M.A. Bailey & Assoc., Inc.*, 356 S.C. 363, 368, 588 S.E.2d 635, 638 (Ct.App. 2003). If, however, an injunction compels the performance of an affirmative act in order to undo an alleged wrong, it changes the *status quo*, rather than preserving it. Such an injunction is a mandatory injunction, which is "an especially drastic remedy and is rarely granted." *Johnson v. Phillips*, 315 S.C. 407, 417, 433 S.E.2d 895, 901 (Ct.App. 1993) (*rev'd in*

part on other grounds by *Smith v. Phillips*, 318 S.C. 453, 458 S.E.2d 427 (1995)), citing *Forest Land Co. v Black*, 216 S.C. 255, 57 S.E.2d 420 (1950).

To be entitled to injunctive relief, whether mandatory or prohibitory, a plaintiff must allege facts sufficient to constitute a cause of action for injunction and also show that the injunction is necessary to protect his legal rights. *County of Richland v. Simpkins*, 348 S.C. 664, 669, 560 S.E.2d 902, 904 (Ct.App. 2002). Only when a party's "legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected" is the drastic remedy of an injunction appropriate. *LeFurgy*, 313 S.C. at 558, 443 S.E.2d at 578. To obtain a temporary injunction to preserve a party's legal rights pending the resolution of the litigation, a plaintiff must demonstrate (1) that he would suffer irreparable harm if the injunction is not granted; (2) that he will likely succeed on the merits of the underlying litigation; and (3) that he has no adequate remedy at law. See *Poynter Investments, Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010); *Levine v. Spartanburg Reg'l Serv. Dist. Inc.*, 367 S.C. 458, 464, 626 S.E.2d 38, 41 (Ct. App. 2006); *County of Richland v Simpkins*, 346 S.C. at 669, 560 S.E.2d at 904.

Injunctions are equitable in nature and, therefore, are only "granted as a matter of sound judicial discretion, not as a matter of legal right." *Johnson v. Phillips*, 315 S.C. at 417, 433 S.E.2d at 901. Moreover, "[b]ecause the remedy of injunction is drastic, the plaintiff has the burden of proving a clear case, reasonably free from doubt." *Mims vs. Yarborough*, 343 F. Supp. 1146, 1161 (D.S.C. 1971), *affd*, 461 F.2d 1266 (4th Cir. 1972). Even then, injunctive relief should only be granted "when necessary to prevent great and irreparable injury." *Id.* (quoting 42 Am.Jur.2d, Injunctions, Section 26).

### RULINGS

The court addresses the three main requirements for injunctive relief, as follows.

- 1) The primary reason for denying the temporary injunction is that the plaintiffs have failed to prove irreparable harm. The assertion that anyone acting as a deputy sheriff would be without arrest powers has not been proven. The court finds that the claim that the plaintiffs are being denied fundamental civil rights must be balanced with the rights of the electorate of McCormick County. Particularly where there may be issues as to waiver, the court must look at the impact of temporary injunctive relief upon the defendants. Trial courts are cautioned to tread lightly in areas involving election disputes.
- 2) The issue of likelihood of success on the merits is more difficult. At this point, the court believes that there is a substantial possibility that the plaintiffs will prevail, but cannot find at this point that the plaintiffs have proven that it is likely that they will. The court has questions that have not been addressed concerning the interaction of the South Carolina Constitution with this statutory framework and whether the reference to §23-23-10, which is a definitional section, creates ambiguity (the section of the Code denominated as "certification requirement" is §23-23-40). The court acknowledges reservations in this determination, fully aware that, if there is no ambiguity in §23-11-110, Mr. Stearns has never been issued a certificate that he is a certified law enforcement officer by South Carolina authorities, so he obviously lacks three years of experience as such. The court also acknowledges the rule of construction that, where the language is plain and unambiguous, the court does not engage in such review, but enforces the statute. Reservations in finding likelihood of success on the merits, while troubling, must be resolved in the defendants' favor at this point, where injunctive relief is sought without full development of the record.

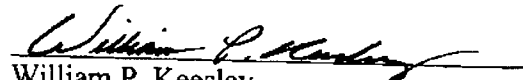
- 3) On the issue of an adequate remedy at law, there are causes of action and avenues to be pursued to challenge and seek to declare the election void and/or to declare that Mr. Stearns is prohibited from holding the office

#5 On the issue of waiver, no ruling is required at this point. The defendants argue that the plaintiffs have waived entitlement to the relief they seek because they sat on the information about the qualifications of Mr. Stearns, waited until after losing the election to raise their challenge, took the matter to the election commission instead of the courts and argued positions inconsistent with what they are now raising in court, then failed to pursue appeals from an adverse ruling on the election protest. At this point, the court does not know when anyone first learned of the qualification issue, when that information was passed on to all the parties-plaintiff in this action, and what reasons there may have been for any delay or choice of forums. The court asked if there has been any effort to pursue this matter in the original jurisdiction of the Supreme Court of South Carolina due to its involving significant public interest.

### CONCLUSION

Because the plaintiffs have not met the burden of proof necessary at this stage, the court determines that it must decline to impose the drastic remedy of a temporary injunction.

AND IT IS SO ORDERED.

  
William P. Keesley  
Circuit Court Judge  
Eleventh Judicial Circuit

January 19, 2017

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-35-00134

J. R. Jones  
PLAINTIFF(S)

South Carolina Republican Party, et al  
DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☒ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP, ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed, ☐ Reversed; ☐ Remanded, ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

## ORDER INFORMATION

DEFENDANT'S MOTION TO DISMISS FOR FAILURE TO PROSECUTE DENIED DUE TO PLAINTIFF ATTORNEYS SERVICE IN LEGISLATURE AND NATIONAL GUARD.

This order ☐ ends ☒ does not end the case.

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2155

Judge Code

Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**


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**ATTORNEY(S) FOR THE DEFENDANT(S)**


---

**CLERK OF COURT**
**Court Reporter:**

**E-Filing Note:** In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered



McCormick Common Pleas

**Case Caption:** J.R. Jones , plaintiff, et al VS South Carolina Republican Party ,  
defendant, et al  
**Case Number:** 2016CP3500134  
**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

STATE OF SOUTH CAROLINA  
COUNTY OF MCCORMICK  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-35-00134

J. R. Jones, et al

South Carolina Republican Party, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered
- ☒ **DECISION BY THE COURT** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information
- ☐ **ACTION DISMISSED** (CHECK REASON). ☐ Rule 12(b), SCRC, ☐ Rule 41(a), SCRC (Vol. Nonsuit), ☐ Rule 43(k), SCRC (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (CHECK REASON). ☐ Rule 40(j), SCRC, ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (CHECK APPLICABLE BOX).  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court

## ORDER INFORMATION

PURSUANT TO STATUTE, PLAINTIFF'S CHALLENGED THE GENERAL ELECTION RESULTS TO THE MCCORMICK COUNTY BOARD OF CANVASSERS (COUNTY ELECTION COMMISSION) WHERE THE ISSUE OF THE DEFENDANT SHERIFF'S QUALIFICATIONS TO SERVE AS SHERIFF UNDER SOUTH CAROLINA STATUTES WAS PRESENTED AND ARGUED. PLAINTIFFS' DID NOT APPEAL THE DENIAL OF THEIR ELECTION PROTEST TO THE SOUTH CAROLINA ELECTION COMMISSION OR THEREAFTER TO THE SOUTH CAROLINA SUPREME COURT.

A MANDAMUS IS THE HIGHEST JUDICIAL WRITE AND IS ISSUED ONLY WHEN THERE IS A SPECIFIC RIGHT TO BE ENFORCED, A POSITIVE DUTY TO BE PERFORMED, AND THERE IS NO OTHER SPECIFIC REMEDY. CITY OF ROCK HILL V. THOMPSON, 349 S.C. 197, 563 S.E.2D 101, (2002).

IN THIS CASE, PLAINTIFFS' SEEK THIS COURT ORDER'S DIRECTING THAT THE MCCORMICK COUNTY REPUBLICAN PARTY (AND SOUTH CAROLINA ELECTION COMMISSION) DE-CERTIFY DEFENDANT SHERIFF AS BEING A QUALIFIED CANDIDATE FOR THE OFFICE OF SHERIFF OF MCCORMICK COUNTY, WHICH WOULD EFFECTIVELY NULLIFY THE ELECTION.

ALTHOUGH THIS COURT QUESTIONS WHETHER THE CERTIFICATION OF A CANDIDATE AS BEING "QUALIFIED" TO RUN FOR THE OFFICE BEING SOUGHT CONSTITUTES A MINISTERIAL DUTY, THE PLAINTIFFS CLEARLY HAD AVAILABLE A SPECIFIC REMEDY TO CHALLENGE DEFENDANT'S CERTIFICATION AS BEING QUALIFIED TO RUN FOR THE OFFICE OF SHERIFF OF MCCORMICK COUNTY. PLAINTIFFS ABANDONED THEIR APPEAL AFTER BEING UNSUCCESSFUL IN THEIR CHALLENGE AT THE COUNTY LEVEL. HAVING A SPECIFIC REMEDY AVAILABLE, PLAINTIFFS CANNOT SEEK A WRIT OF MANDAMUS.



I REQUEST THAT DEFENDANT SHERRIFF'S COUNSEL (OR OTHER ATTORNEY REPRESENTING THE DEFENDANTS) PREPARE A FORMAL ORDER INCORPORATING THIS ORDER, THE STIPULATIONS OF FACT, AND THE ORAL AND WRITTEN ARGUMENTS PRESENTED.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

**INFORMATION FOR THE JUDGMENT INDEX**

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

\_\_\_\_\_  
Circuit Court Judge

\_\_\_\_\_  
Judge Code

\_\_\_\_\_  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:**  
\_\_\_\_\_

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**



McCormick Common Pleas

**Case Caption:** J.R. Jones , plaintiff, et al VS South Carolina Republican Party ,  
defendant, et al  
**Case Number:** 2016CP3500134  
**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

|                                       |   |                                   |
|---------------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA               | ) | IN THE COURT OF COMMON PLEAS      |
|                                       | ) |                                   |
| COUNTY OF MCCORMICK                   | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT |
| J.R. Jones, South Carolina Democratic | ) | Civil Action No.: 2016-CP-35-134  |
| Party, and McCormick County           | ) |                                   |
| Democratic Party,                     | ) |                                   |
|                                       | ) |                                   |
| Plaintiffs,                           | ) |                                   |
|                                       | ) |                                   |
| vs.                                   | ) | ORDER                             |
|                                       | ) |                                   |
| South Carolina Republican Party,      | ) |                                   |
| McCormick County Republican Party,    | ) |                                   |
| Clarke Anderson Stearns, and State of | ) |                                   |
| South Carolina,                       | ) |                                   |
|                                       | ) |                                   |
| Defendants.                           | ) |                                   |
|                                       | ) |                                   |

This matter comes before the Court on J.R. Jones, the South Carolina Democratic Party, and the McCormick County Democratic Party's (collectively, "the plaintiffs") Verified Complaint challenging the qualifications of Clarke Stearns to serve as sheriff of McCormick County and requesting that the Court invoke its equitable powers to grant several forms of relief. Specifically, the plaintiffs ask this Court to (1) declare Stearns does not meet the qualifications for office set forth in section 23-11-110 of the South Carolina Code (Supp. 2016), (2) enjoin Stearns from serving as sheriff of McCormick County, and (3) issue a writ of mandamus directing "the appropriate officials" to remove Stearns from office. For the reasons set forth below, after considering all the evidence and arguments of counsel, the Court declines to grant the extraordinary relief sought by the plaintiffs because this matter already has been decided by the McCormick County Election Commission<sup>1</sup> (the Commission), and the plaintiffs abandoned their

<sup>1</sup> The relevant statutes refer to a county election commission as a "county board of canvassers" and the State Election Commission as the "State Board of Canvassers." In McCormick County, the county election commission is called the Department of Voter Registration and Elections for McCormick County. Regardless of which moniker is assigned to these entities, they are both election commissions for all intents

right to challenge Stearns's qualifications by failing to appeal that decision. Therefore, the Court hereby enters a verdict in favor of the South Carolina Republican Party, the McCormick County Republican Party, Stearns, and the State of South Carolina (collectively, "the defendants").<sup>2</sup>

### BACKGROUND

Jones ran as the Democratic nominee for sheriff of McCormick County and lost by a margin of seventeen percentage points to Stearns, the Republican nominee, in the November 8, 2016, election. Thereafter, Jones filed a formal protest of the election with the Commission in a letter dated November 16, 2016. In the notice of protest, Jones advised he was "submitting this letter in formal protest of the November 8, 2016 McCormick County Sheriff's Race. Mr. Stearns does not meet the qualifications set forth by the State of South Carolina." The Commission held a hearing on Jones's election protest on November 21, 2016. At the hearing, Jones's counsel stated he also was there on behalf of the South Carolina Democratic Party and the McCormick County Democratic Party. After hearing arguments from both parties, the Commission denied the protest. The plaintiffs did not appeal the Commission's ruling to the State Election Commission. Instead, on December 7, 2016, the plaintiffs filed a Verified Complaint in this Court, seeking, inter alia, an injunction and a writ of mandamus.

Almost a month later, on January 3, 2017, the plaintiffs filed a motion for a temporary restraining order and a temporary injunction. Stearns filed a response in opposition to the plaintiffs' motion on January 5, 2017. Following a hearing before the Honorable William P. Keesley on January 6, 2017, the Court issued an Order on January 19, 2017, denying the plaintiffs'

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and purposes. See, e.g., S.C. Code Ann. § 7-17-10 (Supp. 2016) ("The commissioners of election . . . shall proceed to organize as the county board of canvassers."); S.C. Code Ann. § 7-17-210 (1976) ("The State Election Commission shall, ex officio, constitute the State Board of Canvassers.").

<sup>2</sup> At the hearing on October 18, 2017, counsel for all parties gave their consent to dismiss McCormick County as a party to this lawsuit, and the Court has amended the caption accordingly.

motion for a temporary injunction. The plaintiffs did not appeal this Order. Aside from serving responses denying Stearns's requests for admission, the plaintiffs took no further action to litigate the case in circuit court. Nearly nine months later, on October 6, 2017, Stearns filed a motion to dismiss for failure to prosecute and, in the alternative, a motion for summary judgment based upon the mootness doctrine. A hearing on the motions was held on October 16, 2017. The Court denied the motion to dismiss in a Form 4 Order dated October 18, 2017, and took the motion for summary judgment under advisement.

The parties appeared for a bench trial before the Honorable R. Lawton McIntosh on October 18, 2017. After counsel conceded the only issue before the Court was a question of law and agreed to stipulate to the relevant facts, the Court determined an evidentiary hearing was not necessary. The parties subsequently filed a joint stipulation of facts and submitted their respective briefs for the Court's review on October 30, 2017. The Court also gave the parties an opportunity to file response briefs. Accordingly, the case is now ripe for this Court's disposition. The plaintiffs are represented by E. Charles Grose, Jr., Esquire; William H. Alexander, Esquire; James E. Smith, Jr., Esquire; and Tommy L. Stanford, Esquire. The defendants are represented by Karl S. Bowers, Jr., Esquire; Robert E. Tyson, Jr., Esquire; and Vordman Carlisle Traywick, III, Esquire.

#### **FINDINGS OF FACT**

The Court finds the following facts based upon the Joint Stipulation of Facts entered into by the parties as well as the evidence in the record before the Court:

1. On March 16, 2016, when he signed the filing affidavit to run for sheriff of McCormick County, Stearns had never been certified as a law enforcement officer in the State of South Carolina.

2. After Stearns's affidavit was filed with the State Election Commission, it was

publicly available on the website of the State Election Commission.

3. Jones was not aware of any issue pertaining to Stearns's statutory qualifications to be a sheriff in the State of South Carolina until after the 2016 General Election.

4. Alonzo Harrison, chairman of the McCormick County Democratic Party, was not aware of any issue pertaining to Stearns's statutory qualifications to be a sheriff in the State of South Carolina until after the 2016 General Election.

5. Stearns obtained his certification as a law enforcement officer in South Carolina from the South Carolina Criminal Justice Academy on September 6, 2017.

6. The Commission made the plaintiffs aware of their right to appeal its decision to the State Election Commission at the conclusion of the hearing and, therefore, they had actual knowledge of this right.

7. The plaintiffs did not file a notice of appeal of the Commission's decision with the State Election Commission.

8. By now challenging the Commission's authority to decide issues of qualifications, which is the exact opposite position the plaintiffs took during the hearing before the Commission, the Court finds the plaintiffs voluntarily and intentionally chose not to appeal the Commission's decision to the State Election Commission.

### ANALYSIS

The plaintiffs argue Stearns is not qualified to serve as sheriff of McCormick County and ask this Court to invoke its equitable powers to grant several drastic forms of relief. The defendants counter that the plaintiffs waived their right to argue this issue because they failed to appeal the Commission's decision to the State Election Commission and, therefore, the Commission's ruling is now the law of the case.

At the October 18, 2017, hearing before the Court, the plaintiffs agreed that the relief they are seeking at this stage is a writ of mandamus.<sup>3</sup> “Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy.” City of Rock Hill v. Thompson, 349 S.C. 197, 199, 563 S.E.2d 101, 102 (2002). “A writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty.” Id. at 200, 563 S.E.2d at 102. The Court will only issue a writ of mandamus “to compel a public official to perform a mandatory legal duty.” Id. “The primary purpose of a writ of mandamus is to enforce an established right and a corresponding imperative duty created or imposed by law.” Ex parte Littlefield, 343 S.C. 212, 223, 540 S.E.2d 81, 86 (2000). “When the legal right is doubtful, or the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued.” In re Lyde, 284 S.C. 419, 421, 327 S.E.2d 70, 71 (1985).

Although the Court questions whether the certification of a candidate as “qualified” to run for the office being sought constitutes a ministerial duty, the plaintiffs had available a specific remedy to challenge Stearns’s qualifications and abandoned their right to appeal after being unsuccessful before the Commission. The Court finds the plaintiffs, therefore, waived their right to bring the present challenge and cannot invoke this Court’s equitable powers because (1) the plaintiffs chose to file their protest with the Commission and it ruled upon the merits; (2) by failing to appeal the Commission’s decision to the State Election Commission, the plaintiffs did not avail

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<sup>3</sup> To the extent the plaintiffs seek a declaratory judgment and an injunction, the Court finds these remedies are also unavailable because an adequate remedy at law existed and the plaintiffs failed to avail themselves of this remedy by following the appellate procedure outlined in the relevant statutes. See, e.g., Smith v. S.C. Ret. Sys., 336 S.C. 505, 527, 520 S.E.2d 339, 351 (Ct. App. 1999) (“[I]t is well settled a court ordinarily will refuse to grant a declaratory judgment where a special statutory remedy has been provided.”); Hampton v. Haley, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013) (“Due to its drastic and extraordinary nature, courts should issue injunctions with caution and only where no adequate remedy exists at law.”).

themselves of a known, adequate legal remedy; and (3) the Commission's unappealed decision is the law of the case and the plaintiffs are barred from litigating it again in this Court.

The General Assembly has vested county election commissions with the authority to "decide all cases under protest or contest that arise in their respective counties in the case of county officers and less than county offices, except for primaries and municipal elections." S.C. Code Ann. § 7-17-30 (Supp. 2016) (emphasis added). "Appeals from county election [commissions] are to be made to the South Carolina State Election Commission." In re November 4, 2008 Bluffton Town Council Election, 385 S.C. 632, 638, 686 S.E.2d 683, 686 (2009); see also S.C. Code Ann. § 7-17-60 (1976) ("The decision of the county board may be appealed to the State Board of Canvassers by any candidate adversely affected thereby. Notices of such appeal and the grounds thereof shall be made not later than noon Monday next following such decision by serving such notices on the chairman of the State Board."). "Appeals from decisions of the State [Election Commission] shall be taken directly to the Supreme Court on petition for a writ of certiorari only based on the record of the State [Election Commission] hearing and shall be granted first priority of consideration by the Court." S.C. Code Ann. § 7-17-270 (Supp. 2016).

In this case, the Commission denied the plaintiffs' protest challenging Stearns's qualifications on November 21, 2016. Accordingly, the only means by which the plaintiffs could seek review of that decision was by filing notice of appeal with the State Election Commission prior to noon on Monday, November 28, 2016. See S.C. Code Ann. § 7-17-60. The plaintiffs, however, failed to appeal the Commission's decision. Instead, the plaintiffs filed a Verified Complaint in circuit court, seeking equitable relief from this Court on December 7, 2016.

The law of the case doctrine "applies to an order or ruling which finally determines a substantial right." Shirley's Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778,



785 (2013) (quoting Weil v. Weil, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989)). It is axiomatic that “[a]n unappealed ruling is the law of the case.” Id. Here, the Commission’s denial of the plaintiffs’ protest constituted a filing ruling on the merits that determined a substantial right. See id. Because the plaintiffs failed to appeal that final ruling to the State Election Commission, it is now the law of the case and they are barred from litigating it again in this Court. See Shirley Iron Works, Inc., 403 S.C. at 573, 743 S.E.2d at 785 (“An unappealed ruling is the law of the case.”); Carolina Renewal, Inc. v. S.C. Dep’t of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.”); Bennett v. S.C. Dep’t of Corr., 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991) (observing our appellate courts have “repeatedly held that, under the doctrine of . . . collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action” (emphasis omitted)).

Having the Court to step into the shoes of the State Election Commission by styling the action as one for equitable relief would not only create an end-run around the statute, but also would go against the longstanding principle that a party may not invoke the Court’s equitable powers when an adequate remedy at law exists. See Key Corporate Capital, Inc. v. Cty. of Beaufort, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) (“While equitable relief is generally available where there is no adequate remedy at law, an adequate legal remedy may be provided by statute.”); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm’n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (asserting that a “court’s equitable powers must yield in the face of an unambiguously worded statute”).

The Court finds an adequate remedy at law does exist, and the General Assembly provided

for it in sections 7-17-30, -50, -60, -70, -250, and -270 of the South Carolina Code (1976 & Supp. 2016). Nothing is inadequate about the remedy of appealing the Commission's decision to the State Election Commission. See S.C. Code Ann. § 7-17-60. Indeed, the plaintiffs still could have appealed the State Election Commission's decision to our supreme court. See S.C. Code Ann. § 7-17-270. But the plaintiffs chose to ignore the available legal remedy at their own peril, and they are not permitted to receive another bite at the proverbial apple by attempting to invoke this Court's equitable powers. Because the plaintiffs circumvented the appellate process outlined in sections 7-17-60 and -270, which afforded an adequate remedy at law, the Court declines to invoke its equitable powers and issue a writ of mandamus in this case.<sup>4</sup>

Interestingly, the plaintiffs now take the position that the Commission was not "the appropriate venue to resolve this controversy." Pls.' Br. at 4. The plaintiffs, however, filed the protest in that forum and asked the Commission to rule upon their challenge. It makes little sense for the plaintiffs to criticize the choice of forum when the decision of where to file this action rested solely with the plaintiffs. Further, the plaintiffs' argument to this Court is the exact opposite of the argument they articulated at the hearing before the Commission. In response to Stearns's motion to dismiss, the plaintiffs defended their decision to file the protest with the Commission, arguing the Commission could decide issues of qualifications. According to the plaintiffs,<sup>5</sup> "nothing in the statute . . . says it is limited to voting irregularities. These are the protests of an election and we have an election in which a timely protest was filed [, and] there's nothing that says that [the Commission does not] have the power to look at the qualifications of Mr. Stearns."

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<sup>4</sup> For the reasons set forth in note 3, supra, the Court also declines to issue a declaratory judgment or an injunction in this case.

<sup>5</sup> All plaintiffs in the present lawsuit were represented by counsel at the hearing before the Commission. See Comm'n Transcr. at 5.

Comm'n Transcr. at 17. The Commission agreed with the plaintiffs, denied Stearns's motion to dismiss the protest, and ruled upon the merits of the protest.

The plaintiffs chose their path for contesting Stearns's qualifications, and they were required to follow it through to the end. Notably, the Commission reminded the plaintiffs of their right to appeal this matter to the State Election Commission after their protest was denied. Comm'n Transcr. at 49. But the plaintiffs never filed a notice of appeal and now argue the Commission could not decide this case. Because the plaintiffs voluntarily abandoned their known right to appeal the Commission's decision to the State Election Commission, the Court finds they have waived the right to challenge Stearns's qualifications in this Court. See Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994) ("Waiver is a voluntary and intentional abandonment or relinquishment of a known right."). Simply put, the plaintiffs cannot skip the statutory appellate process and then try to invoke this Court's equitable jurisdiction to raise the same issue.

At the end of the day, the plaintiffs had complete control over the choice of forum, and their failure to avail themselves of a known, adequate legal remedy precludes them from litigating these issues again in this Court. See, e.g., Santee Cooper Resort, Inc., 298 S.C. at 185, 379 S.E.2d at 123 (asserting that a "court's equitable powers must yield in the face of an unambiguously worded statute"); Shirley Iron Works, Inc., 403 S.C. at 573, 743 S.E.2d at 785 ("An unappealed ruling is the law of the case."); Bennett, 305 S.C. at 312, 408 S.E.2d at 231 (observing our appellate courts have "repeatedly held that, under the doctrine of . . . collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action"); In re Lyde, 284 S.C. at 421, 327 S.E.2d at 71 (stating that, "when there is another adequate remedy, a writ of mandamus cannot rightfully be issued").

CONCLUSIONS OF LAW

1. The plaintiffs voluntarily and intentionally abandoned a known legal right by failing to appeal the Commission's decision to the State Election Commission and, therefore, waived the right to challenge Stearns's qualifications in this Court.

2. The Commission's decision denying the protest to Stearns's qualifications is now the law of the case.

3. The plaintiffs are collaterally estopped from challenging Stearns's qualifications because the Commission issued a final ruling on that issue and the plaintiffs failed to appeal it to the State Election Commission.

4. The plaintiffs cannot invoke this Court's equitable powers because they had an adequate remedy at law of which they knowingly chose not to avail themselves.

Based upon the foregoing, the Court hereby enters a verdict in favor of the defendants in this matter because the plaintiffs waived their right to contest Stearns's qualifications to serve as sheriff of McCormick County by failing to appeal the Commission's decision to the State Election Commission as provided by statute.

AND IT IS SO ORDERED.

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Honorable R. Lawton McIntosh  
Presiding Judge, Eleventh Judicial Circuit



McCormick Common Pleas

**Case Caption:** J.R. Jones , plaintiff, et al VS South Carolina Republican Party ,  
defendant, et al  
**Case Number:** 2016CP3500134  
**Type:** Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

STATE OF SOUTH CAROLINA  
COUNTY OF MCCORMICK  
IN THE COURT OF COMMON PLEAS

## JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-35-00134

J. R. Jones, et al

South Carolina Republican Party, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy, ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX).**  
☐ Affirmed, ☐ Reversed; ☐ Remanded, ☐ Other

NOTE ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL

**IT IS ORDERED AND ADJUDGED:** ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

## ORDER INFORMATION

**PLAINTIFFS' MOTION PURSUANT TO RULE 59 OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE IS DENIED WITHOUT THE NECESSITY OF A FORMAL HEARING OR FORMAL ORDER (UNLESS A FORMAL ORDER IS REQUESTED BY ANY PARTY).**

This order ☐ ends ☒ does not end the case

Additional Information for the Clerk : \_\_\_\_\_

## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|----------------------------------------------------------|
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |
|                                              |                                          | \$                                                       |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

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**ATTORNEY(S) FOR THE PLAINTIFF(S)**

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**ATTORNEY(S) FOR THE DEFENDANT(S)**

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**CLERK OF COURT****Court Reporter:**  

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**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**



McCormick Common Pleas

**Case Caption:** J.R. Jones , plaintiff, et al VS South Carolina Republican Party ,  
defendant, et al  
**Case Number:** 2016CP3500134  
**Type:** Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH



November 16, 2016

Dear McCormick County Election Commission

I am submitting this letter in formal protest of the November 8, 2016 McCormick County Sheriff's Race. Mr. Stearns does not meet the qualification sets forth by the State of South Carolina.

Respectfully,

  
J.R. Jones

NOV 16 2016  
10:52 am  
DCJ

STATE OF SOUTH CAROLINA FILED IN THE COURT OF COMMON PLEAS  
 COUNTY OF CHARLESTON )  
 2016 DEC -7 A 11: 31

J.R. JONES, SOUTH CAROLINA ) Civil Action No. 2016-CP-35- 134  
 DEMOCRATIC PARTY )  
 MCCORMICK COUNTY )  
 DEMOCRATIC PARTY, )

Plaintiff, )

**SUMMONS**

vs. )

SOUTH CAROLINA REPUBLICAN )  
 PARTY; MCCORMICK COUNTY )  
 REPEUBLICAN PARTY; CLARKE )  
 ANDERSON STEARNS, STATE OF )  
 SOUTH CAROLNA and GOVENOR )  
 NIKKI HALEY, )

Defendants. )

TO THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Verified Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Verified Complaint upon the subscribers at their offices, 1422 Laurel Street, Columbia, South Carolina 29201, within thirty (30) days after service hereof or at an earlier date as may be set by the Court, exclusive of the day of service, and if you fail to answer the Verified Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in said Verified Complaint.

JAMES E. SMITH JR., R.A.

By: \_\_\_\_\_

James E. Smith, Jr., Esquire  
 1422 Laurel Street

Columbia, SC 29201  
803-933-9800

Tommy L. Stafford, Esq.  
307 Main Street  
Greenwood, SC 29646

Attorneys for Plaintiffs

Columbia, South Carolina  
December 7, 2016

STATE OF SOUTH CAROLINA FILED IN THE COURT OF COMMON PLEAS  
 COUNTY OF MCCORMICK )  
 GWENDOLYN D. CHILES )

2016 DEC -7 A 11:31

J.R. JONES, SOUTH CAROLINA ) Civil Action No. 2016-CP-35- 134  
 DEMOCRATIC PARTY and )  
 MCCORMICK COUNTY )  
 DEMOCRATIC PARTY, )

Plaintiffs, )

vs. )

SOUTH CAROLINA REPUBLICAN )  
 PARTY; MCCORMICK COUNTY )  
 REPEUBLICAN PARTY; CLARKE )  
 ANDERSON STEARNS, STATE OF )  
 SOUTH CAROLNA and GOVENOR )  
 NIKKI HALEY. )

Defendants. )

**VERIFIED COMPLAINT FOR  
 DECLARATORY JUDGMENT, WRIT  
 OF MANDAMUS, APPLICATION FOR  
 TEMPORARY RESTRAINING  
 ORDER AND MOTION FOR  
 INJUNCTIVE RELIEF**

TO: THE DEFENDANTS ABOVE NAMED

COMES NOW the Plaintiffs, by and through his undersigned counsel, before this Court seeking a Declaratory Judgment under Rule 57 and a Temporary Restraining Order and Injunctive Relief under Rule 65 of the S.C. Rules of Procedure to declare the Defendant Clarke Anderson Stearns (Stearns) not qualified pursuant to S.C. Code Ann. Sec. 23-11-110 to be Sheriff of McCormick County and enjoin the Defendant Stearns from serving as Sheriff of McCormick County.

**PARTIES AND JURISDICTION**

1. Plaintiff, J.R. Jones is a registered voter, resident and citizen of McCormick County, South Carolina.

2. Plaintiff, South Carolina Democratic Party (SCDP), is a political party certified by the South Carolina Election Commission and operating subject to South Carolina Code of Laws §7-9-10, et. seq.

3. Plaintiff, McCormick County Democratic Party (MCDP) is a county committee of the SCDP certified by the South Carolina Election Commission and the McCormick County Board of Elections and Voter Registration to nominate candidates for offices to be voted on in a general or special election and nominates candidates of that party on a regular basis by party primary.

4. Defendant, South Carolina Republican Party (SCRPP), is a political party certified by the South Carolina Election Commission and operating subject to South Carolina Code of Laws §7-9-10, et. seq.

5. Defendant, McCormick County Republican Party (MCRP), is a county committee of the South Carolina Republican Party—certified by the South Carolina Election Commission and the McCormick County Board of Elections and Voter Registration to nominate candidates for offices to be voted on in a general or special election and nominates candidates of that party on a regular basis by party primary. It is further the responsibility of the MCRP to certify to that the candidates they certify are qualified for the office they seek.

6. Defendant Clarke A. Stearns (Stearns) is a citizen and resident of McCormick County, State of South Carolina.

7. The State of South Carolina and Governor Nikki Haley in her official capacity are added as Defendants in this action as necessary for complete relief to be granted.

8. This Court has personal jurisdiction of the parties named herein and subject matter jurisdictions of the matters alleged herein.

9. Venue is proper before this Court.

**SUPPORT FOR GRANT OF TRO, INJUNCTIVE RELIEF  
DECLARATORY JUDGMENT AND WRIT OF MANDAMUS**

The above-named Plaintiff respectfully submits the following:

10. This action is brought pursuant to the S.C. Uniform Declaratory Judgments Act under S.C. Code Section 15-53-10 through 15-53-140 for the declaration of rights, status, and other legal relations.

11. Incorporated in this action is a Petition for a Writ of Mandamus<sup>1</sup> to compel officers charged with ministerial duties, to perform those duties, to immediately comply with the laws of South Carolina and carry out their respective duties.

12. Plaintiff seeks a temporary restraining order and permanent injunction pursuant to Rule 65 of the South Carolina and respectfully requests this Court to exempt them from submitting a security as contemplated in Rule 65(c).

13. A real and substantial controversy exists in this matter, and there is a definite assertion of legal rights and a positive legal duty with respect thereto.

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<sup>1</sup> Writ of Mandamus is a form of relief. *Plum Creek Development Co. Inc. v. City of Conway*, 334 S.C. 30 (1999)

14. Plaintiffs have substantial interest in the subject matter of this complaint and will be directly affected by the non-enforcement of the statute in question. That is, Plaintiff Jones is an individual who's civil and political rights are directly affected by the statute at issue here.

15. A Declaratory Judgment by this Court would terminate the uncertainty and controversy as complained of below.

16. A Writ of Mandamus is needed to command those Defendants with ministerial duties, to perform those duties which Plaintiff (Petitioner) have a specific right therein, and which the Plaintiff (Petitioner) have no other legal remedy.

17. If injunctive relief is granted against any or all of the Defendants, Plaintiffs believes they are entitled to an award of attorney's fees for the cost associated with bringing this action as this Court deems appropriate, based on Defendants who have violated the statute at issue.

### **FACTS AND ALLEGATIONS**

18. On March 16, 2016, Defendant Stearns signed a Filing Affidavit seeking the office of Sheriff of McCormick County in the 2016 Republican Primary and General Election ("Affidavit"). (The Affidavit is attached and incorporated by reference as Exhibit A.)

19. In the Affidavit Defendant swore that he met the requirements of law set forth in S.C. Code of Laws Section 23-11-110.

20. Notwithstanding the fact the Defendant swore that he met the requirements of law set forth in S.C. Code of Law Section 23-11-110, Defendants Stearns under sworn

testimony before the McCormick County Voter Registration and Elections Board that as of November 21, 2016 he was not and had never been a certified law enforcement officer in South Carolina. (See Hearing transcript excerpts attached and incorporated herein by reference as Exhibit B.)

21. Defendant Stearns testified at the time he signed the affidavit he was not a certified law enforcement officer in South Carolina. (Exhibit B.)

22. S.C. Code Ann. 23-11-110(A)(5)(b) requires that All Sheriffs in this State must *inter alia* “have obtained a two-year associates degree and three years of experience as a **certified law enforcement officer...**” [Emphasis Added].

23. S.C. Code Ann 23-11-110 provides further that “For the purposes of this section, a “certified law enforcement officer” is a person who has **been issued a certificate** as a law enforcement officer pursuant to Section 23-23-10.” [Emphasis Added]. Section 23-23-10 is the Law Enforcement Training Council and Criminal Justice Academy which only issues a certificate for a South Carolina law enforcement officer.

24. Defendant Stearns has not been issued a certificate as a law enforcement officer pursuant to Section 23-23-10.

25. Defendants Stearns does not have three years experience as a certified law enforcement officer as defined by S.C. Code Ann. 23-11-110.

26. Defendants Stearns does not possess the necessary qualifications to be Sheriff of McCormick County.



27. As a result, Defendant Stearns does not possess the power to arrest in South Carolina nor does the power of arrest devolve to any of his deputies should he attempt to serve as sheriff of McCormick County.

28. Defendant Stearns service will call into question every arrest made by him or his deputies should he ever serve.

29. Defendant Stearns cannot take the oath of office and tell the truth because he is not duly qualified to serve in the office of Sheriff for McCormick County.

30. Defendants MCRP and SCRP certified Defendants Stearns as a candidate who in fact met with qualifications for the office of Sheriff for McCormick County when in fact he does not.

31. The State of South Carolina and Governor Nikki Haley are made parties to this action to facilitate complete relief of the removal of Defendant Stearns from office to the extent that is necessary for complete relief.

#### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs have shown that this Court may grant relief on equitable and legal grounds based on this Verified Complaint, but believe that the only meaningful relief is that which is granted in a timely fashion. Plaintiff prays that this Court issues the Ex-Parte relief of a temporary restraining order then set this matter to be heard as soon as this Court deems appropriate under the circumstances and that Defendants be required to respond within forty-eight (48) hours after being served with this Summons and Complaint.

Plaintiff prays, in the interest of Justice, that a Writ of Mandamus be issued against those several Defendants who have failed to carry out their duties under S.C. Code. Plaintiffs pray for declaratory and injunctive relief declaring that Defendant Stearns does not meet with qualifications set forth in S.C. Code Ann. 23-11-110. Plaintiff specifically requests that this Court issue an ORDER:

- (1) declaring that Defendant Stearns does not meet with qualifications set forth in S.C. Code Ann. 23-11-110;
- (2) enjoining the Defendant Stearns from serving as Sheriff of McCormick County;
- (3) to the extent necessary, directing the appropriate officials of the State of South Carolina to remove Defendants Stearns from the Office of Sheriff by granting a Writ of Mandamus directed the Defendants tasked with ministerial duties to discharge those duties by the removal of Defendant Stearns from office;
- (4) award court costs and attorneys' fees to Plaintiffs pursuant to Rule 65 of the South Carolina Rules of Civil Procedure; and

(5) any other relief the Court deems proper to support the allegations brought by the Plaintiffs.

RESPECTFULLY SUBMITTED

JAMES E. SMITH, JR., P.A.

By: \_\_\_\_\_

James E. Smith, Jr., Esquire  
1422 Laurel Street  
Columbia, S.C. 29201  
(803) 933-9800

Tommy L. Stafford, Esq.  
307 Main Street  
Greenwood, South Carolina 29646

Attorneys for Plaintiffs

Columbia, South Carolina

*December 7*, 2016

**VERIFICATION**

I HAVE READ THE ABOVE COMPLAINT IN ITS ENTIRETY AND VERIFY THAT ITS CONTENTS ARE TRUE TO THE BEST OF MY KNOWLEDGE.

*J. R. Jones*  
\_\_\_\_\_  
JR JONES

Sworn before me on December 7 2016.

Notary Public for South Carolina

*Stuckert*  
\_\_\_\_\_  
My Commission Expires May 3 2017

STATE OF SOUTH CAROLINA  
COUNTY OF MCCORMICK  
IN THE COURT OF COMMON PLEAS  
IN THE ELEVENTH JUDICIAL CIRCUIT  
2016 DEC 12 A 11:10

J.R. JONES, SOUTH CAROLINA  
DEMOCRATIC PARTY and  
MCCORMICK COUNTY  
DEMOCRATIC PARTY,  
CLERK OF COURT  
Civil Action No. 2016-CP-35-134

Plaintiffs,

**EXHIBITS TO PLAINTIFFS'**  
**COMPLAINT**

vs.

SOUTH CAROLINA REPUBLICAN  
PARTY; MCCORMICK COUNTY  
REPEUBLICAN PARTY; CLARKE  
ANDERSON STEARNS, STATE OF  
SOUTH CAROLNA and GOVENOR  
NIKKI HALEY.

Defendants.

TO: THE DEFENDANTS ABOVE NAMED

COMES NOW the Plaintiffs, by and through their undersigned counsel, before this  
Court submits exhibits "A" and "B" to be included in the complaint filed on December 7<sup>th</sup>,  
2016.

JAMES E. SMITH JR., P.A.

By: \_\_\_\_\_

James E. Smith, Jr., Esquire  
1422 Laurel Street  
Columbia, SC 29204  
803-933-9800

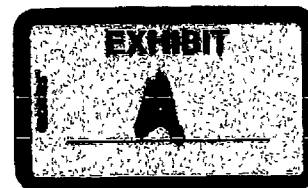
Tommy L. Stafford, Esq.  
307 Main Street  
Greenwood, SC 29646

Attorneys for Plaintiffs

Columbia, South Carolina  
Penelope B. 2016

## Filing Affidavit- Sheriff

FILED  
State of South Carolina  
GWENDOLYN CHILES  
County of McCormick



I, CLARKE ANDERSON STEADFURT being duly sworn, make this affidavit to meet the requirements of law set forth in S.C. Code of Laws §23-11-110.C

1. I am a candidate for the REPUBLICAN Party for nomination for Sheriff.
2. My date of birth is                      and my place of birth is MUNICH GERMANY.
3. I am a resident of McCormick County and have been a resident for 2 years.
4. I am a registered voter in McCormick County.
5. I am a citizen of the United States.
6. I have, or will have, attained the age of at least twenty-one years prior to the date of election for this office.
7. I have not been convicted of or plead guilty to a violation of Section 56-1-460 or 56-5-2930, or both, within the past ten years or a felony in this State or another state.
8. I received a high school diploma or its recognized equivalent in educational training as established by the State Department of Education on the following date: June 16, 1979.
9. I have 31 year(s) experience as a certified law enforcement officer. (if none, enter zero)
10. I received a two-year associate degree on the following date: May 1982. (if not, leave blank)
11. I received a four-year baccalaureate degree on the following date:                     . (if not, leave blank)
12. I have served as a summary court judge for: 0 year(s). (if none, enter zero)
13. I have been fingerprinted and had the State Law Enforcement Division search local, state, and federal fingerprint files for any criminal record, and the results have been filed with the appropriate filing officer; or I will submit the fingerprints necessary to conduct this search to SLED no later than 130 days prior to the General Election.
14. I meet one of the following education and experience requirements:
  - a. obtained a high school diploma or its recognized equivalent in educational training as established by the State Department of Education and have at least five years experience as a certified law enforcement officer; or
  - b. obtained a two-year associate degree and have three years experience as a certified law enforcement officer; or
  - c. obtained a four-year baccalaureate degree and one year experience as a certified law enforcement officer or
  - d. served as a summary court judge for at least ten years.

| Completed by Notary Public for South Carolina |                        |
|-----------------------------------------------|------------------------|
| Signature                                     | <u>Tonyace Edmunds</u> |
| Sworn before me on this date                  | <u>March 16, 2016</u>  |
| Commission expiration date                    | <u>March 12, 2018</u>  |

| Completed by Candidate |                                                  |
|------------------------|--------------------------------------------------|
| Signature              | <u>Clarke A. Steadfurt</u>                       |
| Address                | <u>613 HERITAGE COVE<br/>McCORMICK, SC 29835</u> |

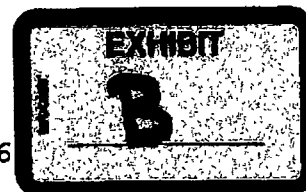
VOTER REGISTRATION AND ELECTIONS  
FOR MCCORMICK COUNTY

COPY

**ELECTION PROTEST HEARING**

\*\*\*\*\*

Monday, November 21, 2016  
11:05 a.m. - 12:20 p.m.



The Election Protest Hearing was held at the McCormick Administration Building, 610 South Mine Street, Multipurpose Room, McCormick South Carolina, on the 21st day of November, 2016 before Barbara S. Ham, Court Reporter and Notary Public in and for the State of South Carolina.



**CREEL COURT REPORTING, INC.**  
1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896

## ELECTION PROTEST HEARING - MCCORMICK

22

1 of McCormick County?

2 A: Three years.

3 Q: And are you currently a resident?

4 A: Yes, sir.

5 Q: And when did you move to McCormick County?

6 A: October of '13.

7 Q: And where was that from?

8 A: Alexandria, Virginia.

9 Q: Okay. Prior to your moving to -- so when you  
10 first moved to South Carolina that's when you  
11 moved to McCormick County. Is that correct?

12 A: I moved to McCormick and then was back in  
13 Virginia for seven months and then moved  
14 back.

15 Q: Okay.

16 A: But I have established residence here in  
17 McCormick County.

18 Q: Okay. So tell me have you ever been a  
19 certified law enforcement officer in South  
20 Carolina?

21 A: No.

22 Q: Okay. And did you -- when you signed this  
23 affidavit help me understand under paragraph  
24 14 which of those following education and  
25 experience requirements that you have met?



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## ELECTION PROTEST HEARING - MCCORMICK

24

1 long were you a certified law enforcement  
2 officer in Virginia?

3 A: 31 years.

4 Q: Can the State of Virginia write qualifications  
5 for offices in South Carolina?

6 A: I'm now aware if they can or not. I don't  
7 know.

8 Q: Okay. And being a qualified or a certified  
9 law enforcement officer in South Carolina, I  
10 understand you have never held that  
11 certification. Is that correct?

12 A: Never in South Carolina.

13 Q: Okay. And that status have you pursued that?  
14 Have you sought certification ever?

15 A: I have not.

16 Q: Okay.

17 A: I'm still certified in Virginia.

18 Q: Okay. Do you intend to seek certification  
19 under South Carolina law?

20 A: When elected sheriff. Yes, sir.

21 Q: When you were elected to sheriff you decided  
22 to do it after the election?

23 A: By statute there's one year and that's  
24 something Mr. Tyson and I will discuss.

25 Q: Okay. When you signed this affidavit on



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## ELECTION PROTEST HEARING - MCCORMICK

25

1 March 16th, 2016, you were not a certified  
2 law enforcement officer in South Carolina?

3 A: In South Carolina, no, sir.

4 Q: Okay. And you have not been one for at least  
5 three years. Is that correct?

6 A: That is correct.

7 Q: Okay. So in fact "b" you did not meet that  
8 qualification?

9 **MR. TYSON:** Object. Already asked and answered.

10 Q: I have not asked -- you did not meet the  
11 qualifications did you?

12 A: That's up to Mr. Tyson and you to discuss as  
13 far as the statute goes in South Carolina  
14 because in the state of Virginia I am still a  
15 certified law enforcement officer.

16 Q: Okay.

17 A: And it doesn't stipulate here that's it's  
18 anywhere other.

19 Q: But you are running for Sheriff in South  
20 Carolina?

21 A: That's correct.

22 Q: Okay. Thank you. One moment please. If you  
23 were, you know, certified and to take office  
24 as Sheriff for McCormick County, you would  
25 not have the constitutional authority to



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1           arrest you make and every arrest your deputy  
2           makes if you are not certified in South  
3           Carolina?

4       A:    What I know is that the Republican Party  
5           certified me as a candidate and put me on the  
6           ballot so I campaigned and I won.

7       Q:    Is the Republican Party an arbiturer of who  
8           can arrest in South Carolina?

9       A:    Not that I know of.

10      Q:    No, I wouldn't think so. So if you're not  
11           certified to arrest in South Carolina none of  
12           your deputies are going to be certified to  
13           arrest in South Carolina and everyone who  
14           commits a crime in McCormick County will not  
15           have a sheriff that can arrest them. Do you  
16           understand that?

17      A:    No, I don't understand that.

18      Q:    I have nothing further.

19      A:    That's something my attorney and I need to  
20           talk about.

21      Q:    Thank you.

22      **MR. STEARNS - RE-CROSS-EXAMINATION BY MR. TYSON:**

23      Q:    Mr. Stearns, you just heard Mr. Smith and he  
24           got pretty excited about all of that but let  
25           me ask you something he said that the 'GOP is



STATE OF SOUTH CAROLINA        )  
                                                  )  
COUNTY OF MCCORMICK        )

IN THE COURT OF COMMON PLEAS  
IN THE ELEVENTH JUDICIAL CIRCUIT

J.R. JONES, SOUTH CAROLINA ) Civil Action No. 2016-CP-35-0135  
DEMOCRATIC PARTY and )  
MCCORMICK COUNTY )  
DEMOCRATIC PARTY. )

Plaintiffs,

vs.

SOUTH CAROLINA REPUBLICAN PARTY; MCCORMICK COUNTY REPEUBLICAN PARTY; CLARKE ANDERSON STEARNS, STATE OF SOUTH CAROLNA and COUNTY OF MCCORMICK.

Defendants.

**FIRST AMENDED COMPLAINT FOR  
DECLARATORY JUDGMENT, WRIT  
OF MANDAMUS, APPLICATION FOR  
TEMPORARY RESTRAINING  
ORDER AND MOTION FOR  
INJUNCTIVE RELIEF**

TO: THE DEFENDANTS ABOVE NAMED

COMES NOW the Plaintiffs, by and through his undersigned counsel, before this Court seeking a Declaratory Judgment under Rule 57 and a Temporary Restraining Order and Injunctive Relief under Rule 65 of the S.C. Rules of Procedure to declare the Defendant Clarke Anderson Stearns (Stearns) not qualified pursuant to S.C. Code Ann. Sec. 23-11-110 to be Sheriff of McCormick County and enjoin the Defendant Stearns from serving as Sheriff of McCormick County.

## PARTIES AND JURISDICTION

1. Plaintiff, J.R. Jones is a registered voter, resident and citizen of McCormick County, South Carolina.

2. Plaintiff, South Carolina Democratic Party (SCDP), is a political party certified by the South Carolina Election Commission and operating subject to South Carolina Code of Laws §7-9-10, et. seq.

3. Plaintiff, McCormick County Democratic Party (MCDP) is a county committee of the SCDP certified by the South Carolina Election Commission and the McCormick County Board of Elections and Voter Registration to nominate candidates for offices to be voted on in a general or special election and nominates candidates of that party on a regular basis by party primary.

4. Defendant, South Carolina Republican Party (SCRCP), is a political party certified by the South Carolina Election Commission and operating subject to South Carolina Code of Laws §7-9-10, et. seq.

5. Defendant, McCormick County Republican Party (MCRP), is a county committee of the South Carolina Republican Party—certified by the South Carolina Election Commission and the McCormick County Board of Elections and Voter Registration to nominate candidates for offices to be voted on in a general or special election and nominates candidates of that party on a regular basis by party primary. It is further the responsibility of the MCRP to certify to that the candidates they certify are qualified for the office they seek.

6. Defendant Clarke A. Stearns (Stearns) is a citizen and resident of McCormick County, State of South Carolina.

7. The State of South Carolina and the County of McCormick are added as Defendants in this action as necessary for complete relief to be granted.

8. This Court has personal jurisdiction of the parties named herein and subject matter jurisdictions of the matters alleged herein.

9. Venue is proper before this Court.

**SUPPORT FOR GRANT OF TRO, INJUNCTIVE RELIEF  
DECLARATORY JUDGMENT AND WRIT OF MANDAMUS**

The above-named Plaintiff respectfully submits the following:

10. This action is brought pursuant to the S.C. Uniform Declaratory Judgments Act under S.C. Code Section 15-53-10 through 15-53-140 for the declaration of rights, status, and other legal relations.

11. Incorporated in this action is a Petition for a Writ of Mandamus<sup>1</sup> to compel officers charged with ministerial duties, to perform those duties, to immediately comply with the laws of South Carolina and carry out their respective duties.

12. Plaintiff seeks a temporary restraining order and permanent injunction pursuant to Rule 65 of the South Carolina and respectfully requests this Court to exempt them from submitting a security as contemplated in Rule 65(c).

13. A real and substantial controversy exists in this matter, and there is a definite assertion of legal rights and a positive legal duty with respect thereto.

14. Plaintiffs have substantial interest in the subject matter of this complaint and will be directly affected by the non-enforcement of the statute in question. That is, Plaintiff Jones is an individual who's civil and political rights are directly affected by the statute at issue here.

---

<sup>1</sup> Writ of Mandamus is a form of relief. *Plum Creek Development Co. Inc. v. City of Conway*, 334 S.C. 30 (1999)

15. A Declaratory Judgment by this Court would terminate the uncertainty and controversy as complained of below.

16. A Writ of Mandamus is needed to command those Defendants with ministerial duties, to perform those duties which Plaintiff (Petitioner) have a specific right therein, and which the Plaintiff (Petitioner) have no other legal remedy.

17. If injunctive relief is granted against any or all of the Defendants, Plaintiffs believes they are entitled to an award of attorney's fees for the cost associated with bringing this action as this Court deems appropriate, based on Defendants who have violated the statute at issue.

#### **FACTS AND ALLEGATIONS**

18. On March 16, 2016, Defendant Stearns signed a Filing Affidavit seeking the office of Sheriff of McCormick County in the 2016 Republican Primary and General Election ("Affidavit"). (The Affidavit is attached and incorporated by reference as Exhibit A.)

19. In the Affidavit Defendant swore that he met the requirements of law set forth in S.C. Code of Laws Section 23-11-110.

20. Notwithstanding the fact the Defendant swore that he met the requirements of law set forth in S.C. Code of Law Section 23-11-110, Defendants Stearns under sworn testimony before the McCormick County Voter Registration and Elections Board that as of November 21, 2016 he was not and had never been a certified law enforcement officer in South Carolina. (See Hearing transcript excerpts attached and incorporated herein by reference as Exhibit B.)

21. Defendant Stearns testified at the time he signed the affidavit he was not a certified law enforcement officer in South Carolina. (Exhibit B.)

22. S.C. Code Ann. 23-11-110(A)(5)(b) requires that All Sheriffs in this State must *inter alia* “have obtained a two-year associates degree and three years of experience as a **certified law enforcement officer**...” [Emphasis Added].

23. S.C. Code Ann 23-11-110 provides further that “For the purposes of this section, a “certified law enforcement officer” is a person who has **been issued a certificate** as a law enforcement officer pursuant to Section 23-23-10.” [Emphasis Added]. Section 23-23-10 is the Law Enforcement Training Council and Criminal Justice Academy which only issues a certificate for a South Carolina law enforcement officer.

24. Defendant Stearns has not been issued a certificate as a law enforcement officer pursuant to Section 23-23-10.

25. Defendants Stearns does not have three years experience as a certified law enforcement officer as defined by S.C. Code Ann. 23-11-110.

26. Defendants Stearns does not possess the necessary qualifications to be Sheriff of McCormick County.

27. As a result, Defendant Stearns does not possess the power to arrest in South Carolina nor does the power of arrest devolve to any of his deputies should he attempt to serve as sheriff of McCormick County.

28. Defendant Stearns service will call into question every arrest made by him or his deputies should he ever serve.



29. Defendant Stearns cannot take the oath of office and tell the truth because he is not duly qualified to serve in the office of Sheriff for McCormick County.

30. Defendants MCRP and SCRP certified Defendants Stearns as a candidate who in fact met with qualifications for the office of Sheriff for McCormick County when in fact he does not.

31. The State of South Carolina and County of McCormick are made parties to this action to facilitate complete relief for the granting of any injunctive relief the Court may deem appropriate to include the removal of Defendant Stearns from office.

### **PRAYER FOR RELIEF**

WHEREFORE, the Plaintiffs have shown that this Court may grant relief on equitable and legal grounds based on this Verified Complaint, but believe that the only meaningful relief is that which is granted in a timely fashion. Plaintiff prays that this Court issues the Ex-Parte relief of a temporary restraining order then set this matter to be heard as soon as this Court deems appropriate under the circumstances and that Defendants be required to respond within forty-eight (48) hours after being served with this Summons and Complaint.

Plaintiff prays, in the interest of Justice, that a Writ of Mandamus be issued against those several Defendants who have failed to carry out their duties under S.C. Code. Plaintiffs pray for declaratory and injunctive relief declaring that Defendant Stearns does not meet with qualifications set forth in S.C. Code Ann. 23-11-110. Plaintiff specifically requests that this Court issue an ORDER:

- (1) declaring that Defendant Stearns does not meet with qualifications set forth in S.C. Code Ann. 23-11-110;
- (2) enjoining the Defendant from assuming the office of Sheriff of McCormick County and further taking any official action as Sheriff of McCormick County;
- (3) enjoining the Defendant Stearns from serving as Sheriff of McCormick County;
- (4) to the extent necessary, directing the appropriate officials of the State of South Carolina to remove Defendants Stearns from the Office of Sheriff by granting a Writ of Mandamus directed the Defendants tasked with ministerial duties to discharge those duties by the removal of Defendant Stearns from office;
- (5) award court costs and attorneys' fees to Plaintiffs pursuant to Rule 65 of the South Carolina Rules of Civil Procedure; and

(6) any other relief the Court deems proper to support the allegations brought by the Plaintiffs.

RESPECTFULLY SUBMITTED

JAMES E. SMITH, JR., P.A.

By: \_\_\_\_\_

James E. Smith, Jr., Esquire  
1422 Laurel Street  
Columbia, S.C. 29201  
(803) 933-9800

Tommy L. Stafford, Esq.  
307 Main Street  
Greenwood, South Carolina 29646

Attorneys for Plaintiffs

Columbia, South Carolina

Jan 3, 2017

STATE OF SOUTH CAROLINA       ) IN THE COURT OF COMMON PLEAS  
                                           ) IN THE ELEVENTH JUDICIAL CIRCUIT  
COUNTY OF MCCORMICK          )

J.R. JONES, SOUTH CAROLINA ) Civil Action No. 2016-CP-35-0135  
DEMOCRATIC PARTY, MCCORMICK )  
COUNTY DEMOCRATIC PARTY, )

Plaintiffs, )

VS.

SOUTH CAROLINA REPUBLICAN )  
PARTY, MCCORMICK COUNTY )  
REPUBLICAN PARTY, CLARKE )  
ANDERSON STEARNS, STATE OF )  
SOUTH CAROLINA, NIKKI HALEY, )  
GOVERNOR )

Defendants. )

**NOTICE OF MOTION AND MOTION**  
**FOR TEMPORARY RESTRAINING**  
**ORDER AND**  
**TEMPORARY INJUNCTION**

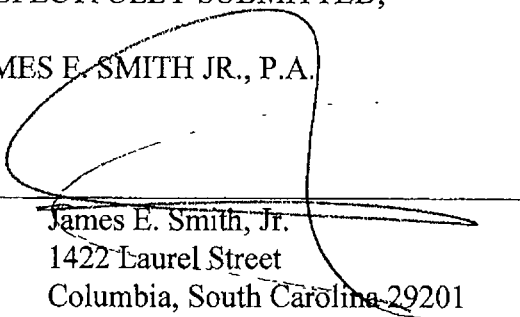
TO ATTORNEYS FOR THE ABOVE-NAMED DEFENDANTS:

PLEASE TAKE NOTICE that the Plaintiffs will move before the Presiding Judge of the Court of Common Pleas for McCormick County at the McCormick County Courthouse, McCormick, South Carolina within 10 days or as soon thereafter as may be convenient to Court and Counsel for an Order issuing a Temporary Injunction enjoining Defendants from assuming the office or taking any action in the office of Sheriff for McCormick County as described in the Verified Complaint and Temporary Restraining Order issued in this matter. Plaintiff's Motion is based upon the Summons and Verified Complaint, Application for Temporary Restraining Order filed and served with this Motion, such other pleadings and motions as have been filed with this court and served upon Defendants and applicable case and statutory law, Rule 65 of the South Carolina Rules of Civil Procedure, and such testimony as the Court accepts at the hearing of this Motion.

SIGNATURE BLOCK FOLLOWS.

RESPECTFULLY SUBMITTED,

JAMES E. SMITH JR., P.A.

By: 

James E. Smith, Jr.  
1422 Laurel Street  
Columbia, South Carolina 29201  
(803) 933-9800

Tommy L. Stafford, Esq.  
307 Main Street  
Greenwood, South Carolina 29646

Attorney for Plaintiffs

Columbia, South Carolina  
January 3, 2017



**law enforcement officer...**” [Emphasis Added].

3. S.C. Code Ann. 23-11-110 provides further that, “For the purposes of this section a **“certified law enforcement officer”** is a person **who has been issued a certificate** pursuant to Section 23-23-10.” [Emphasis Added]. Section 23-23-10 is the Law Enforcement Training Council and Criminal Justice Academy which **only issues a South Carolina certificate** creating a **certified law enforcement officer**.

4. Defendant Stearns admitted numerous times under oath that he has not been issued such a certificate pursuant to 23-23-10, that he has never been and is not certified in South Carolina as a certified law enforcement officer. (See Exhibit B to Verified Complaint).

5. Despite having sworn knowledge of all of the facts and law as stated above, Defendant Stearns intends to take the oath of Office for the Sheriff of McCormick County on January 3, 2017 and assume the duties of the office of Sheriff of McCormick County to which he **is not qualified**.

6. This Application for Temporary Restraining Order and Temporary Injunction is further supported by the Verified Complaint with exhibits and other pleadings filed concurrently herewith.

7. Plaintiffs assert that to allow Defendant Stearns to assume an office for which he is by law not qualified for will cause immediately and irreparable harm to the Plaintiffs and the citizens of McCormick County. The Sheriff’s very power to arrest and provide for public safety flows through his authority as a certified law enforcement officer to make arrest to the deputies that serve under him. Defendant Stearns has no power to arrest in South Carolina. He can no more arrest someone for jay walking in McCormick County much less for serious offenses and to allow

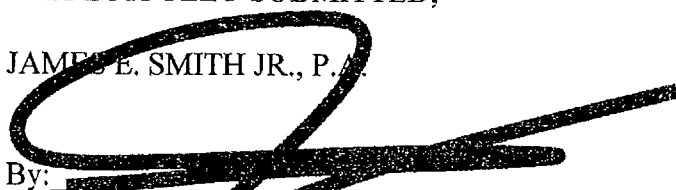
his to assume office will call into question the authority of every arrest attempted by his office.

8. The Plaintiffs have demonstrated a likelihood of success on the merits and there is no adequate remedy at law for the relief sought.

WHEREFORE, the Plaintiffs are informed and believe that they are entitled to and hereby respectfully request that the Court issue a Temporary Restraining Order to ENJOIN, RESTRAIN, and PROHIBIT, the Defendant Clarke Anderson Stearns ("Stearns") from serving as Sheriff of McCormick County. More specifically to ENJOIN, RESTRAIN, and PROHIBIT, Defendant Stearns from taking the oath of office for Sheriff of McCormick County, assuming control of the office of Sheriff for McCormick County and taking any official action as Sheriff of McCormick County. This Application is based upon the attached and aforementioned Verified Complaint, Rule 65 of the South Carolina Rules of Civil Procedure and case and statutory law of the State of South Carolina and upon such further and additional material as may be presented to the Court.

RESPECTFULLY SUBMITTED,

JAMES E. SMITH JR., P.A.

By: 

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1422 Laurel Street  
Columbia, South Carolina 29201  
(803) 933-9800

Tommy L. Stafford, Esq.  
307 Main Street  
Greenwood, South Carolina 29646

Attorney for Plaintiffs

George Town, CI  
January 2, 2017



|                                                                                                                                                 |   |                                   |
|-------------------------------------------------------------------------------------------------------------------------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA                                                                                                                         | ) | IN THE COURT OF COMMON PLEAS      |
|                                                                                                                                                 | ) |                                   |
| COUNTY OF MCCORMICK                                                                                                                             | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT |
| J.R. Jones, South Carolina Democratic Party, and McCormick County Democratic Party,                                                             | ) | Civil Action No.: 2016-CP-35-134  |
|                                                                                                                                                 | ) |                                   |
|                                                                                                                                                 | ) |                                   |
| Plaintiffs,                                                                                                                                     | ) |                                   |
|                                                                                                                                                 | ) |                                   |
| vs.                                                                                                                                             | ) |                                   |
|                                                                                                                                                 | ) |                                   |
| South Carolina Republican Party, McCormick County Republican Party, Clarke Anderson Stearns, State of South Carolina, and Governor Nikki Haley, | ) |                                   |
|                                                                                                                                                 | ) |                                   |
|                                                                                                                                                 | ) |                                   |
| Defendants.                                                                                                                                     | ) |                                   |
|                                                                                                                                                 | ) |                                   |

**CLARKE STEARNS'S**  
**MEMORANDUM IN OPPOSITION TO**  
**PLAINTIFFS' REQUEST FOR**  
**DECLARATORY JUDGMENT, WRIT**  
**OF MANDAMUS, TEMPORARY**  
**RESTRAINING ORDER, AND**  
**INJUNCTIVE RELIEF**

Defendant Clarke Stearns, by and through the undersigned counsel, submits the following Memorandum in Opposition to J.R. Jones, the South Carolina Democratic Party, and the McCormick County Democratic Party's (collectively, Plaintiffs) request for a declaratory judgment, writ of mandamus, temporary restraining order (TRO), and injunction pursuant to Rule 65 of the South Carolina Rules of Civil Procedure.

**BACKGROUND**

This matter is before the Court on Plaintiffs' motion requesting that the Court invoke its equitable powers and grant several forms of relief to a candidate, as well as the state and local party with which he is affiliated, who lost the November 8, 2016, election for Sheriff of McCormick County. J.R. Jones, the unsuccessful candidate for sheriff, filed a formal protest of the election with the McCormick County Voter Registration and Election Commission (the Commission) on November 16, 2016. A hearing on Plaintiffs' election challenge was held on November 21, 2016. The Commission denied Plaintiffs' protest. Plaintiffs did not appeal the

Commission's decision. Unhappy with the vote of the Commission, Plaintiffs subsequently filed the present action with this Court on December 7, 2016, seeking a declaratory judgment, writ of mandamus, TRO, and injunction. In seeking such relief, however, Plaintiffs are asking the Court to review the Commission's decision and set aside the results of an election in which Stearns, the prevailing candidate, won by a margin of seventeen percentage points. For the reasons set forth below, Stearns respectfully requests that the Court deny Plaintiffs' motion.

### ANALYSIS

#### **I. The Court lacks subject matter jurisdiction over the instant dispute.**

As a preliminary matter, the Court should dismiss this action because the Court lacks subject matter jurisdiction to review the Commission's decision.

"Subject matter jurisdiction is 'the power to hear and determine cases of the general class to which the proceedings in question belong.'" Dove v. Gold Kist, Inc., 314 S.C. 235, 237–38, 442 S.E.2d 598, 600 (1994) (citation omitted). "The jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental." Anderson v. Anderson, 299 S.C. 110, 115, 382 S.E.2d 897, 900 (1989). "The question of subject matter jurisdiction is a question of law for the court." Capital City Ins. Co. v. BP Staff, Inc., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009) (quoting Chew v. Newsome Chevrolet, Inc., 315 S.C. 519, 524, 642 S.E.2d 751, 753 (2007)).

Under South Carolina law, county election commissions—also referred to as county boards—are required to "decide all cases under protest or contest that arise in their respective counties in the case of county officers and less than county offices, except for primaries and municipal elections." S.C. Code Ann. § 7-17-30. As our Supreme Court clarified in In re November 4, 2008 Bluffton Town Council Election, "[a]ppeals from county election boards are to

be made to the South Carolina State Election Commission.” 385 S.C. 632, 638, 686 S.E.2d 683, 686 (2009); see also S.C. Code Ann. § 7-17-60 (“The decision of the county board may be appealed to the State Board of Canvassers by any candidate adversely affected thereby. Notices of such appeal and the grounds thereof shall be made not later than noon Monday next following such decision by serving such notices on the chairman of the State Board.”). Appeals from municipal election commissions, on the other hand, are to be filed in circuit court. Bluffton Town Council Election, 385 S.C. at 638, 686 S.E.2d at 686; see also S.C. Code Ann. § 5-15-140 (“Within ten days after notice of the decision of the municipal election commission, any party aggrieved thereby may appeal from such decision to the court of common pleas.”).

Turning to the instant case, Plaintiffs filed their challenge with the Commission, which ruled upon the underlying dispute on November 21, 2016. Accordingly, the only means by which Plaintiffs could seek appellate review of that decision was by filing notice with the South Carolina State Election Commission (the State Election Commission) prior to noon on Monday, November 28, 2016. See S.C. Code Ann. § 7-17-60. Plaintiffs, however, failed to do so. Instead, Plaintiffs waited until December 7, 2016, to dispute the Commission’s decision by filing their Verified Complaint in this Court. Although they admittedly styled the present action as a request for a declaratory judgment, writ of mandamus, TRO, and injunction, Plaintiffs are seeking a merits review of the Commission’s decision regarding Stearns’s qualifications. Because South Carolina law requires that an appeal from a county election commission’s decision be filed with the State Election Commission, the Court lacks subject matter jurisdiction over this case. See Bluffton Town Council Election, 385 S.C. at 638, 686 S.E.2d at 686; S.C. Code Ann. § 7-17-60.

Having the Court to step into the shoes of the State Election Commission by styling the action as one for equitable relief would not only create an end-run around the statute, but also

would go against the longstanding principle that a party may not invoke the Court's equitable powers when an adequate remedy at law exists. See Key Corporate Capital, Inc. v. Cty. of Beaufort, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) ("While equitable relief is generally available where there is no adequate remedy at law, an adequate legal remedy may be provided by statute."); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (asserting that a "court's equitable powers must yield in the face of an unambiguously worded statute"). Here, an adequate remedy at law does exist, and the General Assembly provided for it in section 7-17-60. Nothing is inadequate about the remedy of appealing the Commission's decision to the State Election Commission. Indeed, Plaintiffs still could have appealed the State Election Commission's decision to the Supreme Court. See, e.g., In re Bamberg Ehrhardt Sch. Bd. Election, 337 S.C. 561, 564, 524 S.E.2d 400, 402 (1999) (granting a petitioner-candidate's "writ of certiorari to review the decision of the South Carolina State Election Commission . . . regarding a local school board election"). But Plaintiffs chose to ignore the available legal remedy at their own peril, and they should not be permitted to receive another bite at the proverbial apple by attempting to invoke this Court's equitable powers.

Based upon the foregoing, the Court should dismiss this action for lack of subject matter jurisdiction because the appropriate forum for appellate review of the Commission's decision is the State Election Commission.<sup>1</sup>

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<sup>1</sup> To the extent Plaintiffs contend Stearns is judicially estopped from arguing the issue of subject matter jurisdiction, we respectfully disagree. Although Stearns did argue the Commission lacked jurisdiction over this matter at the hearing, the Commission disagreed with his position and agreed with Plaintiffs' argument as to jurisdiction, concluding it could decide issues of qualifications. Because the Commission asserted jurisdiction and ruled upon the matter, Plaintiffs were required to follow the appropriate appellate procedure as outlined in the statute. Plaintiffs cannot now skip the next level of review and file a motion in circuit court just because the Commission did not rule in their favor. Plaintiffs were required to pursue the adequate remedies available at law prior to seeking this Court's assistance. In any event, Stearns is not judicially estopped from taking a different legal position because he did not prevail on the issue of jurisdiction before the Commission. See Auto Owners Ins. Co. v. Rhodes, 385 S.C. 83, 99 n.6, 682 S.E.2d

## II. Plaintiffs failed to prove the necessary elements for an injunction to issue.

Additionally, should the court decide to exercise jurisdiction over this dispute, Stearns requests that it deny the petition for injunctive relief because Plaintiffs have failed to prove the essential facts and elements necessary to warrant such an extraordinary remedy.

“Actions for injunctive relief are equitable in nature.” Doe v. S.C. Med. Malpractice Liability Joint Underwriting Ass’n, 347 S.C. 642, 645, 557 S.E.2d 670, 671 (2001) (quoting Wiedemann v. Town of Hilton Head Island, 344 S.C. 233, 236, 542 S.E.2d 752, 753 (Ct. App. 2001)). “The remedy of an injunction is a drastic one and ought to be applied with caution.” Strategic Resources Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). The party seeking an injunction bears the burden of demonstrating the facts and circumstances warranting such a remedy. Calcutt v. Calcutt, 282 S.C. 565, 572, 320 S.E.2d 55, 59 (Ct. App. 1984). For the Court to grant a preliminary injunction, Plaintiffs must establish (1) they “would suffer irreparable harm if the injunction is not issued,” (2) they “will likely succeed in the litigation,” and (3) no adequate remedy exists at law. Id.

Although Plaintiffs allege that Jones’s “civil and political rights are directly affected by the statute at issue,” Stearns submits this is an insufficient showing of irreparable harm. What about the political and civil rights of the citizens of McCormick County who, by a margin of 57% to

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857, 866 n.6 (Ct. App. 2009) (noting “the party taking the position must have been successful in maintaining that position and have received some benefit” for a plaintiff to invoke the doctrine of judicial estoppel). Further, this is not a dispute about the facts; jurisdiction is a question of law. See Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) (“Judicial estoppel generally applies only to inconsistent statements of fact.”); Capital City Ins. Co., 382 S.C. at 99, 674 S.E.2d at 528 (“The question of subject matter jurisdiction is a question of law for the court.” (quoting Chew, 315 S.C. at 524, 642 S.E.2d at 753)). It is also well settled in South Carolina that subject matter jurisdiction may be raised at any point in a case. See, e.g., Bluffton Town Council Election, 385 S.C. at 637, 686 S.E.2d at 686 (“Issues related to subject matter jurisdiction may be raised at any time.”). This Court could even raise the issue sua sponte. See, e.g., Town of Hilton Head v. Godwin, 370 S.C. 221, 223, 634 S.E.2d 59, 60–61 (Ct. App. 2006) (noting “[t]he lack of subject matter jurisdiction . . . can be raised sua sponte by the court”). Therefore, because Stearns was not successful in arguing jurisdiction before the Commission, Plaintiffs’ judicial estoppel argument is without merit, and this Court should find it lacks jurisdiction over this dispute.

40%, decided they wanted Stearns to serve their community as sheriff? Respectfully, the irreparable harm to our citizens' trust in the electoral process, as well as the value of their vote, outweighs a losing candidate's alleged political right to an office he unsuccessfully sought just over one month ago. See, e.g., Anderson v. S.C. Election Comm'n, 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012) (per curiam) ("Integrity in elections is foundational."). Furthermore, Plaintiffs' bare assertion that deputies would not have the power to arrest is unsupported by the law. Contrary to Plaintiffs' contention, deputy sheriffs would have the power to arrest because their ability to perform that duty flows from the office of the Sheriff of McCormick County, not the individual sheriff. See S.C. Code Ann. § 23-13-50 ("When duly qualified a deputy sheriff may perform any and all of the duties appertaining to the office of his principal." (emphasis added)).

The Court also should decline to issue an injunction because Plaintiffs cannot prove their likelihood of success on the merits in this litigation. As explained in greater detail below, the statutes at issue are ambiguous, at best, and it is unclear at this juncture whether Plaintiffs would prevail on their statutory construction argument. Further, our supreme court has long noted, and for good reason, that "[e]very reasonable presumption will be indulged to sustain an election." Rawl v. McCown, 97 S.C. 1, \_\_\_, 81 S.E. 958, 961 (1914); see also Broadhurst v. City of Myrtle Beach Election Comm'n, 342 S.C. 373, 379, 537 S.E.2d 543, 546 (2000) (asserting that "[t]he [c]ourt will employ every reasonable presumption to sustain a contested election").

Finally, as noted in Part I, supra, Plaintiffs are unable to prove that no adequate remedy at law exists in the instant case. The General Assembly outlined the proper method for challenging the results of elections in this state in section 7-17-60, and Plaintiffs cannot sidestep this process by attempting to invoke the Court's equitable powers in this case.

Accordingly, should the Court reach the merits of this issue, the Court should deny Plaintiffs' request for an injunction because Plaintiffs have not met their burden of proving the requisite elements for an injunction to be ordered.<sup>2</sup>

### **III. The qualifications and certification statutes, when read together, are ambiguous.**

Should the Court decide to reach the merits of this case, Stearns contends that a reasonable construction of the ambiguous statutes at issue compels a finding that he meets the qualifications and, thus, should be allowed to serve as Sheriff of McCormick County. To hold otherwise would lead to the absurd result of not permitting any qualified law enforcement officer who was trained in another state from serving as sheriff in South Carolina. That simply is not the law in this state, nor should it be.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly]." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." Miller v. Doe, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994).

When a statute is ambiguous, however, a court must construe the terms of the statute according to settled rules of statutory construction. Lester v. S.C. Workers' Compensation Comm'n, 334 S.C. 557, 561, 514 S.E.2d 751, 752 (1999). "It is well settled that statutes dealing with the same subject matter are in para materia and must be construed together, if possible, to

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<sup>2</sup> Additionally, given that the Court declined to issue a TRO, and instead scheduled a hearing for an injunction, the question of whether a TRO would be appropriate is now moot. See Sloan v. Greenville Cty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009) ("The court does not concern itself with moot or speculative questions."); Rule 65(b), SCRPC ("No temporary restraining order shall be granted without notice of motion for the order to the adverse party unless it clearly appears from the specific facts shown by affidavit or by a verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and a hearing had thereon.").

produce a single, harmonious result.” Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). “However, regardless of how plain the ordinary meaning of the words in a statute, courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not have been intended by the General Assembly.” Duke Energy Corp. v. S.C. Dep’t of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). “If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.” Kiriakides v. United Artists Commc’ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

The statute outlining the qualifications for sheriff provides, in relevant part for Stearns, that all sheriffs must have “obtained a two-year associate degree and three years’ experience as a certified law enforcement officer.” S.C. Code Ann. § 23-11-110(A)(5)(b). Further, the statute indicates that, “[f]or purposes of this section, a ‘certified law enforcement officer’ is a person who has been issued a certificate as a law enforcement officer pursuant to [s]ection 23-23-10.” S.C. Code Ann. § 23-11-110(A)(5). In turning to section 23-23-10, however, the statute does not define the term “certified law enforcement officer” as section 23-11-110 promises. Instead, the statute states as follows:

“Law enforcement officer” means an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

S.C. Code Ann. § 23-23-10(E)(1) (emphasis added). Because section 23-23-10 does not define the term “certified law enforcement officer,” we must look to the relevant provisions in chapter 23 to determine what certification means in this context. See Rivas, 342 S.C. at 109, 536 S.E.2d at 375. Interestingly, when doing so, the General Assembly also provided that “nor, unless specifically stated, may anything in this chapter affect any sheriff, or other law enforcement officer



elected under the provisions of the Constitution of this State.” S.C. Code Ann. § 23-23-10(B) (emphasis added). In our view, the Court’s inquiry ends here because none of the provisions regarding certification requirements mention sheriffs and, thus, are inapplicable. This interpretation is also supported by the fact that sheriffs are not “appointed” or “hired” as the definition of law enforcement officer contemplates; rather, sheriffs are elected.

Assuming, arguendo, some certification is necessary, as section 23-11-110 indicates, it is instructive to look at section 23-23-40. According to the certification statute,

No law enforcement officer employed or appointed on or after July 1, 1989, by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the council, except that any public law enforcement agency in this State may appoint or employ as a law enforcement officer, a person who is not certified if, within one year after the date of employment or appointment, the person secures certification from the council . . . . Exceptions to the one-year rule may be granted by the director in these cases:

. . . .

(3) upon presentation of documentary evidence that the officer-candidate has successfully completed equivalent training in one of the other states which by law regulate and supervise the quality of police training and which require a minimum basic or recruit course of duration and content at least equivalent to that provided in this chapter or by standards set by the council . . . .

S.C. Code Ann. § 23-23-40(3). Thus, the statute vests discretion in the director of the South Carolina Criminal Justice Academy to determine whether another state’s training is equivalent to that which is offered in South Carolina for purposes of certification. See id.; see also S.C. Code Ann. Regs. § 37-006(A) (“All candidates who have received law enforcement training in other states shall submit satisfactory proof of successful completion and a verified copy of the courses taken. Clearly, Stearns’s Training History demonstrates satisfactory proof he is well qualified and has significant law enforcement training, in addition to his experience. **Attached as Exhibit 1**

Training will be reviewed on a case by case basis and each candidate will be given credit for any training deemed to be equivalent to training offered by the Academy. All candidates must successfully complete a training program approved by the Council.”).<sup>3</sup>

Because Mr. Stearns was a certified law enforcement officer in Virginia, he will be entitled to present evidence of his qualifications to the director of the South Carolina Criminal Justice Academy under the statute. At that point, the director will have the discretion as to whether to grant Mr. Stearns an exception pursuant to the statute. Regardless, the director would make that decision after the sheriff takes office and applies for the exception.

In sum, the qualifications and certification statutes, when read together, can only lead to one of two conclusions: (1) the certification requirements do not apply to sheriffs; or (2) even if they do apply, the sheriff is eligible for the exception to the one-year rule—just as any other law enforcement officer would be—because he received training in another state. Under either interpretation, Mr. Stearns is qualified to assume the office to which he was duly elected by the voters of McCormick County and, as such, should be sworn in as Sheriff. To the extent the latter interpretation applies, the statute contemplates Stearns taking office and then applying for the exception to the one-year rule with the director of the South Carolina Criminal Justice Academy. Therefore, the Court should decline Plaintiffs’ invitation to grant declaratory relief in this action.

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<sup>3</sup> Further, section 23-23-40 provides that, during the certification process, the law enforcement officer can “perform any of the duties of a law enforcement officer involving the control or direction of members of the public or exercising the power of arrest” once he successfully has completed a firearms qualification program approved by the council. The law enforcement officer must take this firearms program no later than six days after becoming employed—the statute requires notice to the council within the first three days of employment, and the firearms program must be provided within three days of receiving notice. S.C. Code Ann. § 23-23-40.

#### IV. Plaintiffs waived their right to challenge Stearns's qualifications.

Finally, if the Court chooses to exercise its equitable powers, Stearns submits that—under the peculiar facts of this case—the Court should find Plaintiffs waived their right to challenge his qualifications by waiting until after the election results were tabulated.

“Laches is an equitable doctrine which arises upon the failure to assert a known right.” Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007). As our supreme court has noted, “[t]he equitable doctrine of laches is equivalent to the legal doctrine of waiver.” Id. “Waiver is a voluntary and intentional abandonment or relinquishment of a known right.” Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994). “Both laches and waiver require a party to have known of a right, and known that the party was abandoning that right.” Strickland, 375 S.C. at 86, 650 S.E.2d at 471.

Our supreme court's decisions in three recent elections cases put Plaintiffs on notice of their right to pursue an action challenging Stearns's qualifications prior to the general election. See Anderson, 397 S.C. at 555–56, 725 S.E.2d at 706 (granting relief to the plaintiffs “to require compliance with the law and ensure that only legally qualified candidates are included on the ballots” based upon the court's recognition that finding the dispute ripe for judicial review “avoid[ed] the greater chaos and multiple challenges that would inevitably follow the party primary elections”); Florence Cty. Democratic Party v. Florence Cty. Republican Party, 398 S.C. 124, 129, 727 S.E.2d 418, 421 (2012) (per curiam) (reaffirming the court's Anderson decision and directing the party “to correct the ballots to remove all improperly certified candidates prior to the party primaries”); Tempel v. S.C. State Election Comm'n, 400 S.C. 374, 382, 735 S.E.2d 453, 457

(2012) (concluding “the circuit court properly ordered a special primary election” because the candidate was disqualified from the initial primary election).

Stearns filed his statement of intention of candidacy, along with the corresponding filing fee and other necessary documents, on March 17, 2016. Among the documents filed was the affidavit in which Stearns confirmed he was a certified law enforcement officer for the requisite period to be qualified to run for sheriff. **Attached as Exhibit 2.** The question regarding Stearns’s certification, of course, is the central issue in this election protest. Stearns won his primary on June 14, 2016, after which he became the Republican nominee for Sheriff of McCormick County. Almost five months later, on November 8, 2016, Stearns and Jones faced off in the general election for sheriff. Under these circumstances, Jones—at the very latest—knew of the qualifications issue in June of 2016 when Stearns became his official competitor for the general election. Plaintiffs, however, arguably knew of the qualifications issue as far back the date on which Stearns filed his affidavit. Regardless of when notice would be attributed, Plaintiffs should not be permitted to sleep on their rights to challenge Stearns’s qualifications until after Jones lost the election.

Furthermore, when following the Anderson line of cases to their logical extension, the remedy in this case would not be awarding the election to Jones. Rather, if the Court weighed in on this matter and granted the relief sought, then it would have to overturn the 57% to 40% result of the November 8, 2016, general election and order a new election, thereby creating the unnecessary chaos and expense our supreme court sought to avoid in Anderson. Given the amount of time that transpired from Stearns filing to run for sheriff and Plaintiffs challenging his qualifications, Stearns submits that affording this relief would be inequitable and create an absurd result. Instead, the Court should find Plaintiffs waived their right to challenge his qualifications.

**V. Plaintiffs cannot prove a positive legal duty to be performed for a writ of mandamus to issue in this case.**

Should the Court decide to exercise subject matter jurisdiction over the instant dispute, Stearns requests that it dismiss the petition for a writ of mandamus.

“Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy.” City of Rock Hill v. Thompson, 349 S.C. 197, 199, 563 S.E.2d 101, 102 (2002). “A writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty.” Id. at 200, 563 S.E.2d at 102. The court will only issue a writ of mandamus “to compel a public official to perform a mandatory legal duty.” Id. “The primary purpose of a writ of mandamus is to enforce an established right and a corresponding imperative duty created or imposed by law.” Ex parte Littlefield, 343 S.C. 212, 223, 540 S.E.2d 81, 86 (2000). “When the legal right is doubtful, or the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued.” In re Lyde, 284 S.C. 419, 421, 327 S.E.2d 70, 71 (1985).

In this case, a thorough review of Plaintiffs’ Verified Complaint reveals they have failed to allege a positive legal duty that any of the named Defendants owe in this case. See Thompson, 349 S.C. at 199, 563 S.E.2d at 102 (asserting that a writ of mandamus “is issued only when there is a specific right to be enforced[ or] a positive duty to be performed” (emphasis added)). Moreover, and perhaps more importantly, Plaintiffs cannot make this requisite showing because Stearns has not taken the oath of office and been sworn in as Sheriff of McCormick County. Simply put, Stearns cannot be removed from an office he has not assumed and, therefore, this issue is not ripe for the Court’s consideration. Thus, to the extent any equitable relief would be appropriate in this action, the Court should not issue a writ of mandamus—and dismiss Plaintiffs’ petition—because no legal duty exists for the Court to compel the Defendants, or Stearns in

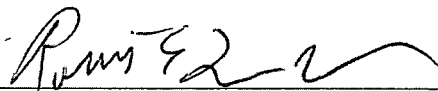
particular, to perform. As maintained above, however, the Court should not invoke its equitable powers because an adequate remedy at law exists.

### CONCLUSION

For the foregoing reasons, Stearns respectfully requests that the Court dismiss Plaintiffs' Verified Complaint for lack of subject matter jurisdiction. Alternatively, the Court should find the Plaintiffs waived their right to bring this action by waiting until after the election to challenge Stearns's qualifications. Likewise, the Court should deny Plaintiffs' request for relief because Plaintiffs have failed to prove the elements required for invoking its equitable powers. Even on the merits, the Court should find that Stearns meets the qualifications of the ambiguous statutes at issue in this case. See Rainey, 341 S.C. at 91, 533 S.E.2d at 584 (asserting "[t]he goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd"). At the end of the day, a comfortable majority of the citizens of McCormick County voted to elect Stearns as their sheriff and, although Plaintiffs wish the election turned out differently, the will of the people should be upheld.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, LLC

By: 

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(803) 929-1400

*Attorneys for Defendant Clarke Anderson Stearns*

Columbia, South Carolina  
January 5, 2017

# EXHIBIT 1

# TRAINING HISTORY

## Northern Va. Criminal Justice Training Academy

11/17/2016 10.51 54 AM

ROUTING:

ACE ID: 5408

Last Name: STEARNS First Name: CLARKE Middle Initial: A Date of Birth:

Appointing Agency/Department: Alexandria City Sheriff's Office Date Appointed: Rank: 0

OPERATOR'S LICENSE OR ALTERNATE DCJS ID License Number: License State:

Check the appropriate one:

☐ Full time

☐ Part time (Compensated more than 80 hours ann.)

☐ Part time (Compensated less than 80 hours ann.)

☐ Auxiliary

Badge:

Hire Date: 12/2/1983

Routing:

Employment Status: Resigned

### CAREER TOTALS

| Legal | CD     | Culture | ClassTotal |
|-------|--------|---------|------------|
| 110   | 1048 5 | 28      | 1193 5     |

### FUNCTIONS

Current hours that apply to each function

|                                      | Primary/Secondary | Due Date   | Legal | CD | Culture |
|--------------------------------------|-------------------|------------|-------|----|---------|
| Jail Officer/Inmate Security         | 1                 | 12/31/2016 |       |    |         |
| Court Security/Civil Process Officer | 2                 | 12/31/2016 |       |    |         |
| Law Enforcement Officer              | 2                 | 12/31/2016 |       |    |         |

### CLASSES

STEARNS, CLARKE A 5408



# TRAINING HISTORY

## Northern Va. Criminal Justice Training Academy

11/17/2016 10 51 56 AM

ROUTING:

|                                                                                                     | Class # | Comp. Date | Legal | CD | Culture | Class Total | Credited |                          |
|-----------------------------------------------------------------------------------------------------|---------|------------|-------|----|---------|-------------|----------|--------------------------|
| ON-LINE LEGAL for CORRECTIONS OFFICERS (Version 4/2/2014) Completed #2                              | 13433   | 6/5/2014   | 4     | 0  | 0       | 4           | Y        | Satisfactorily completed |
| ON-LINE TRAINING: CULTURAL DIVERSITY NVCJTA (Completed #5) - 2014                                   | 13402   | 6/4/2014   | 0     | 0  | 2       | 2           | Y        | Satisfactorily completed |
| OSHA & Fall Firearms Training - ASO                                                                 | 12911   | 10/30/2013 | 0     | 6  | 0       | 6           | Y        | Satisfactorily completed |
| LEADERSHIP LESSONS: BATTLE of ANTIETAM (Command Staff)                                              | 12167   | 9/6/2013   | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| LESSONS LEARNED in LEADERSHIP TRIP to GETTYSBURG (Command Staff)                                    | 12163   | 8/16/2013  | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| LEADERSHIP LESSONS FROM the BATTLE of SECOND MANASSAS (Command Staff)                               | 11986   | 7/19/2013  | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| Pepper Ball Training - ASO                                                                          | 12598   | 7/5/2013   | 0     | 3  | 0       | 3           | Y        | Satisfactorily completed |
| HATE CRIMES                                                                                         | 11862   | 4/10/2013  | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| VERBAL JUDO                                                                                         | 11949   | 3/13/2013  | 0     | 16 | 0       | 16          | Y        | Satisfactorily completed |
| CORRECTED FORM 41: Alexandria Sheriff Court & Jail Function Codes - 2012 to 2014 ENTERED 10/24/2013 | 12815   | 12/5/2012  | 4     | 18 | 2       | 24          | N        | Satisfactorily completed |
| 2012 Firearms Training - ASO                                                                        | 12088   | 11/16/2012 | 0     | 5  | 0       | 5           | Y        | Satisfactorily completed |
| Legal for Field Training Officers - ASO                                                             | 11977   | 11/12/2012 | 4     | 0  | 0       | 4           | Y        | Satisfactorily completed |
| LBGTQ TRAINING - ASO                                                                                | 12087   | 11/12/2012 | 0     | 0  | 2       | 2           | Y        | Satisfactorily completed |
| LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED (LEOKA)                                                 | 11546   | 10/31/2012 | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| MANAGING POLICE USE OF FORCE (Command Staff)                                                        | 11351   | 9/26/2012  | 4     | 4  | 0       | 8           | Y        | Satisfactorily completed |
| LEADERSHIP TRIP to ANTIETAM: LESSON LEARNED in LEADERSHIP                                           | 11367   | 9/13/2012  | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| TERRORIST TRENDS DOMESTIC & INTERNATIONAL TERRORISM                                                 | 10206   | 1/12/2012  | 0     | 24 | 0       | 24          | Y        | Satisfactorily completed |
| CIVIL RIGHTS SUMMIT                                                                                 | 11066   | 11/30/2011 | 4     | 4  | 0       | 8           | Y        | Satisfactorily completed |
| SOME THOUGHTS ON MANAGING HIGH RISK WORLD of LAW ENFORCEMENT                                        | 10526   | 10/20/2011 | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| Patrol Training Refresher (Phase 2 / 9 hrs) - ASO                                                   | 10802   | 6/27/2011  | 0     | 9  | 0       | 9           | Y        | Satisfactorily completed |
| CIT TRAINING - Amended (PIC)                                                                        | 10794   | 6/17/2011  | 4     | 34 | 2       | 40          | Y        | Satisfactorily completed |
| DIGNITARY PROTECTION                                                                                | 10166   | 4/22/2011  | 0     | 24 | 0       | 24          | Y        | Satisfactorily completed |
| Patrol Training Refresher (Phase 1 / 4 hrs) - ASO                                                   | 10452   | 3/25/2011  | 0     | 4  | 0       | 4           | Y        | Satisfactorily completed |
| CORRECTED FORM 41: Alexandria Sheriff Court & Jail Function Codes - 2010 to 2012 ENTERED 10/24/2013 | 12814   | 12/5/2010  | 4     | 18 | 2       | 24          | N        | Satisfactorily completed |
| LEGAL UPDATES for JAIL OPERATIONS                                                                   | 9978    | 11/11/2010 | 4     | 0  | 0       | 4           | Y        | Satisfactorily completed |

# TRAINING HISTORY

## Northern Va. Criminal Justice Training Academy

11/17/2016 10 51.56 AM

ROUTING:

|                                                                                                    |       |            |   |    |   |    |   |                          |
|----------------------------------------------------------------------------------------------------|-------|------------|---|----|---|----|---|--------------------------|
| ON-LINE TRAINING CULTURAL DIVERSITY - NVCJTA (Completed #4) 2010                                   | 10077 | 10/31/2010 | 0 | 0  | 2 | 2  | Y | Satisfactorily completed |
| 2010 Firearms Training- ASO                                                                        | 10092 | 9/23/2010  | 0 | 5  | 0 | 5  | Y | Satisfactorily completed |
| LESSONS IN LEADERSHIP TRIP TO GETTYSBURG - COMMAND STAFF                                           | 9660  | 7/16/2010  | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| EMERGING TECHNOLOGIES COURSE FOR COMMAND STAFF                                                     | 9582  | 4/6/2010   | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| VERBAL JUDO                                                                                        | 9240  | 3/31/2010  | 0 | 16 | 0 | 16 | Y | Satisfactorily completed |
| LEGAL UPDATES / CULTURAL DIVERSITY (Alexandria PD & SO)                                            | 9503  | 3/16/2010  | 4 | 0  | 4 | 8  | Y | Satisfactorily completed |
| CULTURAL DIVERSITY (Alexandria Sheriff)                                                            | 9227  | 10/13/2009 | 0 | 0  | 2 | 2  | Y | Satisfactorily completed |
| LEADERSHIP TRIP TO ANTIETAM                                                                        | 9057  | 9/25/2009  | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| NATIONAL BATTLEFIELD Command Staff Training                                                        |       |            |   |    |   |    |   |                          |
| Cultural Diversity On-Line Training - ASO                                                          | 9192  | 6/30/2009  | 0 | 0  | 4 | 4  | Y | Satisfactorily completed |
| LEGAL UPDATES / CULTURAL DIVERSITY                                                                 | 8755  | 6/4/2009   | 4 | 0  | 0 | 8  | Y | Satisfactorily completed |
| LESSONS IN LEADERSHIP FROM THE CIVIL WAR-(COMMAND STAFF)                                           | 8847  | 5/8/2009   | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| COMMUNICATION FOR SUPERVISORS                                                                      | 8741  | 4/2/2009   | 0 | 13 | 0 | 16 | Y | Satisfactorily completed |
| CRISIS MANAGEMENT FOR COMMAND STAFF - Command Staff Training                                       | 8440  | 2/20/2009  | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| TERRORISM AND FRAUDULENT DOCUMENTS SEMINAR                                                         | 8611  | 1/23/2009  | 0 | 0  | 0 | 8  | N | No Show                  |
| CORRECTED FORM 41: Alexandria Sheriff-Court & Jail Security Codes- 2008 to 2010 ENTERED 10/24/2013 | 12802 | 12/5/2008  | 4 | 18 | 2 | 24 | N | Satisfactorily completed |
| NEXT GENERATION EXECUTIVES - Command Staff Training                                                | 8438  | 10/9/2008  | 0 | 32 | 0 | 32 | Y | Satisfactorily completed |
| On- Line - Cultural Diversity in a Corrections Setting -ASO                                        | 8558  | 6/30/2008  | 0 | 0  | 4 | 4  | Y | Satisfactorily completed |
| VIRGINIA TECH MASS SHOOTING (PIC)                                                                  | 8078  | 12/11/2007 | 0 | 35 | 0 | 35 | Y | Satisfactorily completed |
| NIMS-ICS 400 COURSE - WETA                                                                         | 7193  | 9/28/2007  | 0 | 16 | 0 | 16 | Y | Satisfactorily completed |
| TRI ACADEMY COMMAND STAFF-MIR (PIC)                                                                | 7729  | 9/14/2007  | 4 | 4  | 0 | 8  | Y | Satisfactorily completed |
| 7 HABITS HIGHLY EFFECTIVE PEOPLE FOR LE                                                            | 7194  | 3/28/2007  | 0 | 24 | 0 | 24 | N | Satisfactorily completed |
| NIMS-ICS 300 COURSE - WETA                                                                         | 7078  | 2/23/2007  | 0 | 16 | 0 | 16 | N | Satisfactorily completed |
| JAIL EVACUATION CLASS - NSA                                                                        | 7059  | 2/13/2007  | 0 | 8  | 0 | 8  | N | Satisfactorily completed |
| LEGAL UPDATE                                                                                       | 6857  | 12/13/2006 | 4 | 4  | 0 | 8  | Y | Satisfactorily completed |
| TERRORISM INTERV/ INTERR DIFFER CULTURES                                                           | 6785  | 6/2/2006   | 0 | 16 | 0 | 16 | Y | Satisfactorily completed |
| MOTORCYCLE HATE GROUPS                                                                             | 6742  | 3/10/2006  | 0 | 16 | 0 | 16 | Y | Satisfactorily completed |
| CHALLENGING ORGANIZATIONAL CULTURE                                                                 | 6048  | 3/4/2004   | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| GANGS IN NORTHERN VIRGINIA                                                                         | 5743  | 9/18/2003  | 4 | 28 | 0 | 32 | Y | Satisfactorily completed |
| ASO - TERRORISM THREAT ASSESSMENT                                                                  | 5714  | 10/4/2002  | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |

STEARNS, CLARKE A 5408

# TRAINING HISTORY

## Northern Va. Criminal Justice Training Academy

11/17/2016 10:51:56 AM

ROUTING:

|                                                                               |      |            |   |    |   |    |   |                          |
|-------------------------------------------------------------------------------|------|------------|---|----|---|----|---|--------------------------|
| ASO-GANG IDENTIFICATION/INVESTIGATION                                         | 5385 | 8/17/2001  | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |
| LEGAL-LE                                                                      | 4828 | 11/12/1999 | 8 | 0  | 0 | 8  | Y | Satisfactorily completed |
| LE IN-SERVICE - A                                                             | 4823 | 11/5/1999  | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |
| LEGAL DAY                                                                     | 4444 | 10/24/1997 | 8 | 0  | 0 | 8  | Y | Satisfactorily completed |
| DEFENSIVE TACTICS RECERTIFICATION                                             | 4372 | 9/10/1997  | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| ASIAN CRIME GROUPS                                                            | 4292 | 4/22/1997  | 0 | 16 | 0 | 16 | Y | Satisfactorily completed |
| SPECIAL ENF PROBLEMS-GANGS                                                    | 4289 | 4/17/1997  | 0 | 16 | 0 | 16 | Y | Satisfactorily completed |
| HOSTAGE NEGOTIATIONS                                                          | 4262 | 3/13/1997  | 0 | 40 | 0 | 40 | Y | Satisfactorily completed |
| SUDDEN CUSTODY DEATH SYNDROME                                                 | 1680 | 10/18/1996 | 2 | 6  | 0 | 8  | Y | Satisfactorily completed |
| DEFENSIVE TACTICS RECERTIFICATION                                             | 1496 | 9/11/1996  | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| KINISIC INTERVIEWING TECHNIQUES                                               | 957  | 4/28/1995  | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |
| GANGS & CRIME                                                                 | 938  | 3/13/1995  | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| DEFENSIVE TACTICS INSTRUCTOR RECERT.                                          | 775  | 5/25/1994  | 0 | 24 | 0 | 24 | Y | Satisfactorily completed |
| CRIMINAL PATROL DRUG ENFORCEMENT                                              | 318  | 11/15/1993 | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |
| ASIAN CRIME SEMINAR                                                           | 3713 | 7/20/1992  | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |
| AMERICAN DISABILITY ACT SEMINAR                                               | 4195 | 2/27/1992  | 0 | 2  | 0 | 2  | Y | Satisfactorily completed |
| DEFENSIVE TACTICS INSTRUCTOR RECERT                                           | 4141 | 12/17/1991 | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| DEFENSIVE TACTICS INSTRUCTOR                                                  | 3935 | 4/26/1991  | 0 | 48 | 0 | 48 | Y | Satisfactorily completed |
| DEVELOPING EFFECTIVE SUPERVISORY SKILLS                                       | 3558 | 5/7/1990   | 8 | 32 | 0 | 40 | Y | Satisfactorily completed |
| FIELD TRAINING OFFICER SEMINAR                                                | 3513 | 10/20/1989 | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |
| PARTIAL IN-SERVICE CREDIT - 1988                                              | 3885 | 1/1/1988   | 0 | 0  | 0 | 0  | Y | Satisfactorily completed |
| DEFENSIVE TACTICS INSTRUCTOR                                                  | 3908 | 12/1/1987  | 0 | 40 | 0 | 40 | Y | Satisfactorily completed |
| LEGAL DAY                                                                     | 4013 | 10/24/1987 | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| INSTRUCTOR DEVELOPMENT WORKSHOP                                               | 3905 | 7/31/1987  | 0 | 40 | 0 | 40 | Y | Satisfactorily completed |
| SHERIFF'S IN-SERVICE - ALEXANDRIA S O                                         | 3375 | 9/29/1986  | 0 | 0  | 0 | 0  | Y | Satisfactorily completed |
| SHERIFF'S IN-SERVICE                                                          | 3372 | 9/26/1986  | 0 | 0  | 0 | 0  | Y | Satisfactorily completed |
| BASIC COMBINED SCHOOL                                                         | 1731 | 5/7/1984   | 0 | 0  | 0 | 0  | Y | Satisfactorily completed |
| SUDDEN CUSTODY DEATH SYNDROME                                                 | 1678 |            | 2 | 6  | 0 | 8  | Y | Cancelled                |
| CANCELLED - ORGANIZED CRIME, TERRORISM and the THEFT of INTELLECTUAL PROPERTY | 8492 |            | 0 | 0  | 0 | 0  | N | Currently enrolled       |
| INSTRUCTOR RECERTIFICATION                                                    | 196  |            | 2 | 16 | 0 | 8  | Y | Cancelled                |
| GANGS IN NORTHERN VIRGINIA                                                    | 5156 |            | 4 | 36 | 0 | 40 | Y | Cancelled                |
| CULTS AND SATANIC CRIMES                                                      | 1472 |            | 0 | 24 | 0 | 24 | Y | Cancelled                |
| DRIVER TRAINING REFRESHER                                                     | 4386 |            | 0 | 16 | 0 | 16 | Y | Cancelled                |
| LEGAL UPDATE                                                                  | 6847 |            | 4 | 4  | 0 | 8  | N | Cancelled                |
| ON KILLING UNDERSTANDING ACTS OF VIOLENCE                                     | 6775 |            | 0 | 8  | 0 | 8  | Y | Cancelled                |
| GANGS AND LAW ENFORCEMENT                                                     | 1438 |            | 0 | 16 | 0 | 16 | Y | Cancelled                |

STEARNS, CLARKE A 5408

Page 4

# TRAINING HISTORY

## Northern Va. Criminal Justice Training Academy

11/17/2016 10 51.56 AM

ROUTING

DEFENSIVE TACTICS INSTRUCTOR 691 0 40 0 40 Y Cancelled  
RECERT

### F41s

| F41# | F41 Date   | Class End Date | Class ID                                                                                                 |
|------|------------|----------------|----------------------------------------------------------------------------------------------------------|
| 2607 | 6/6/2014   | 6/4/2014       | ON-LINE TRAINING CULTURAL DIVERSITY - NVCJTA (Completed #5) - 2014 13402                                 |
| 2607 | 6/6/2014   | 6/4/2014       | ON-LINE TRAINING CULTURAL DIVERSITY - NVCJTA (Completed #5) - 2014 13402                                 |
| 2607 | 6/6/2014   | 6/4/2014       | ON-LINE TRAINING CULTURAL DIVERSITY - NVCJTA (Completed #5) - 2014 13402                                 |
| 2392 | 10/24/2013 | 12/5/2012      | CORRECTED FORM 41 Alexandria Sheriff-Court & Jail Function Codes - 2012 to 2014 ENTERED 10/24/2013 12815 |
| 2390 | 10/24/2013 | 12/5/2010      | CORRECTED FORM 41 Alexandria Sheriff-Court & Jail Function Codes - 2010 to 2012 ENTERED 10/24/2013 12814 |
| 2389 | 10/24/2013 | 12/5/2008      | CORRECTED FORM 41 Alexandria Sheriff-Court & Jail Security Codes - 2008 to 2010 ENTERED 10/24/2013 12802 |
| 2057 | 9/28/2012  | 9/26/2012      | MANAGING POLICE USE OF FORCE (Command Staff) 11351                                                       |
| 2057 | 9/28/2012  | 9/26/2012      | MANAGING POLICE USE OF FORCE (Command Staff) 11351                                                       |
| 2014 | 9/17/2012  | 9/13/2012      | LEADERSHIP TRIP to ANTIETAM LESSON LEARNED in LEADERSHIP 11367                                           |
| 2014 | 9/17/2012  | 9/13/2012      | LEADERSHIP TRIP to ANTIETAM LESSON LEARNED in LEADERSHIP 11367                                           |
| 1412 | 7/20/2011  | 6/17/2011      | CIT TRAINING - Amended (PIC) 10794                                                                       |
| 1412 | 7/20/2011  | 6/17/2011      | CIT TRAINING - Amended (PIC) 10794                                                                       |
| 1076 | 7/20/2010  | 7/16/2010      | LESSONS IN LEADERSHIP TRIP TO GETTYSBURG - COMMAND STAFF 9660                                            |
| 1009 | 4/20/2010  | 3/16/2010      | LEGAL UPDATES / CULTURAL DIVERSITY (Alexandria PD & SO) 9503                                             |
| 851  | 9/30/2009  | 9/25/2009      | LEADERSHIP TRIP TO ANTIETAM NATIONAL BATTLEFIELD-Command Staff Training 9057                             |
| 820  | 8/14/2009  | 6/30/2009      | Cultural Diversity On-Line Training - ASO 9192                                                           |
| 563  | 8/27/2008  | 6/30/2008      | On- Line - Cultural Diversity in a Corrections Setting -ASO 8558                                         |
| 563  | 8/27/2008  | 6/30/2008      | On- Line - Cultural Diversity in a Corrections Setting -ASO 8558                                         |

### CERTIFICATIONS

### FIREARMS SCORES

# EXHIBIT 2

## Filing Fee Receipt

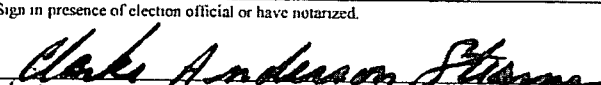
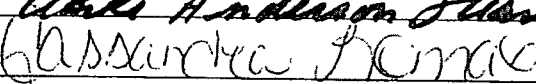
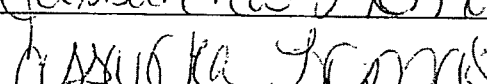
Checks for filing fees must be made payable to the appropriate political party. Checks received by election commissions will be delivered to the appropriate political party.  
 The candidate must sign the receipt. If the candidate is not present at the time the filing fee is submitted, the receipt may be delivered to the candidate electronically, the receipt signed by the candidate, and a copy of the signed receipt returned electronically to the appropriate election commission.

|                                    |                                               |          |         |
|------------------------------------|-----------------------------------------------|----------|---------|
| Candidate Name                     | CLARKE A STEARNS                              |          |         |
| Party                              | Republican                                    |          |         |
| Office                             | Sheriff                                       | District |         |
| Election                           | 11/8/2016, Statewide General Election (20026) |          |         |
| Amount of Filing Fee               | \$2,224.92                                    |          |         |
| Date Received                      | 03/17/2016                                    |          |         |
| Time Received                      | 3:05 PM                                       |          |         |
| Check Number                       | 100                                           |          |         |
| Receiving Official                 | Cassandra L Lomax                             |          |         |
| Election Commission (County/State) | MCCORMICK                                     |          |         |
| Signature                          | <i>Cassandra Lomax</i>                        | Date     | 3-17-16 |
| Candidate Signature                | <i>Clarke A Stearns</i>                       | Date     | 3/17/16 |

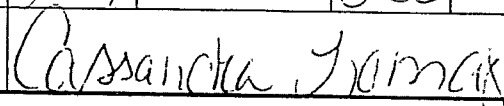
The Candidate Filing Receipt is issued pursuant to S.C. Code of Laws 7-11-15(E)

## Statement of Intention of Candidacy & Party Pledge

- The Statement of Intention of Candidacy & Party Pledge (SICPP) must be completed by any candidate seeking a political party's nomination and filed with the appropriate election commission.
- The "name as it is to appear on ballot" may be a given name or a derivative. The name may not contain quotations, parentheses, or other distinguishing marks. Nicknames are allowed if they are used in good faith for honest purposes and do not imply professional or social status, include an office or military rank, or exceed 15 letters
- The S.C. Constitution prohibits a person who has been convicted of a felony from filing for public office for 15 years after the completion of the sentence, including probation and parole time, unless previously pardoned.
- The candidate must sign in the presence of an election commission official or Notary Public.
- Candidates are also required to separately file a Statement of Economic Interests and a Campaign Disclosure online with the State Ethics Commission. Failure to file these reports may result in candidate fines. Candidates are not required to file copies of these documents with the election commission. Contact the State Ethics Commission for more information: <http://ethics.sc.gov>.

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                 |              |               |              |              |      |         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|---------------|--------------|--------------|------|---------|
| Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Clarke Anderson Stearns                                                                                                                                         |              |               | Party        | Republican   |      |         |
| Office                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Sheriff                                                                                                                                                         |              |               | District     | 33-McCormick |      |         |
| Voter Reg. Number                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 470303154                                                                                                                                                       |              | Election Date | 11-08-2016   |              |      |         |
| Address                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 613 Heritage Cove                                                                                                                                               |              | City          | McCormick    |              | Zip  | 29835   |
| Email Address                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | clarke.stearns@gmail.com                                                                                                                                        |              |               |              |              |      |         |
| Telephone                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Cell                                                                                                                                                            | 703-927-3113 | Home          | 864-391-2414 | Work         |      |         |
| Name as it is to appear on ballot                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Clarke A. Stearns                                                                                                                                               |              |               |              |              |      |         |
| Phonetically spell name, if necessary, for audio ballot. (e.g., Jackson Gervais: jur-VAY)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Clarke A. STERNS                                                                                                                                                |              |               |              |              |      |         |
| <b>Candidate's Oath &amp; Pledge</b><br>I affirm that I meet, or will meet by the time of the general or special election, the qualifications for this office. I hereby file my notice as a candidate for the nomination as <u>Sheriff 33-McCormick</u> in the primary election or convention to be held on <u>11-08-2016</u> . I affiliate with the <u>Republican</u> Party, and I hereby pledge myself to abide by the results of the primary or convention. I shall not authorize my name to be placed on the general election ballot by petition and will not offer or campaign as a write-in candidate for this office or any other office for which the party has a nominee. I authorize the issuance of an injunction upon ex parte application by the party chairman, as provided by law, should I violate this pledge by offering or campaigning in the ensuing general election for election to this office or any other office for which a nominee has been elected in the party primary election, unless the nominee for the office has become deceased or otherwise disqualified for election in the ensuing general election. I hereby affirm that I meet, or will meet by the time of the general or special election, or as otherwise required by law, the qualifications for this office. |                                                                                                                                                                 |              |               |              |              |      |         |
| Candidate Signature                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <small>Sign in presence of election official or have notarized.</small><br> |              |               |              |              |      |         |
| Name of Witness                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                              |              |               |              |              |      |         |
| Signature of Witness                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                              |              |               |              |              | Date | 3-17-16 |

To be completed by election commission:

|                        |                                                                                     |               |         |                                                                               |                            |
|------------------------|-------------------------------------------------------------------------------------|---------------|---------|-------------------------------------------------------------------------------|----------------------------|
| Date Received          | 3-17-16                                                                             | Time Received | 3:05 PM | <input type="checkbox"/> SEC <input checked="" type="checkbox"/> J. McCormick | County Election Commission |
| Signature of Recipient |  |               |         |                                                                               |                            |

# Filing Affidavit- Sheriff

State of South Carolina

County of MCCORMICK

I, CLARKE ANDERSON STEARNS being duly sworn, make this affidavit to meet the requirements of law set forth in S.C. Code of Laws §23-11-110.

1. I am a candidate for the REPUBLICAN Party for nomination for Sheriff.
2. My date of birth is \_\_\_\_\_ and my place of birth is MUNICH GERMANY.
3. I am a resident of MCCORMICK County and have been a resident for 2 years.
4. I am a registered voter in MCCORMICK County.
5. I am a citizen of the United States.
6. I have, or will have, attained the age of at least twenty-one years prior to the date of election for this office.
7. I have not been convicted of or plead guilty to a violation of Section 56-1-460 or 56-5-2930, or both, within the past ten years or a felony in this State or another state.
8. I received a high school diploma or its recognized equivalent in educational training as established by the State Department of Education on the following date: JUNE 16, 1979.
9. I have 31 year(s) experience as a certified law enforcement officer. (if none, enter zero)
10. I received a two-year associate degree on the following date: MAY 1982. (if not, leave blank)
11. I received a four-year baccalaureate degree on the following date: \_\_\_\_\_. (if not, leave blank)
12. I have served as a summary court judge for: 0 year(s). (if none, enter zero)
13. I have been fingerprinted and had the State Law Enforcement Division search local, state, and federal fingerprint files for any criminal record, and the results have been filed with the appropriate filing officer; or I will submit the fingerprints necessary to conduct this search to SLED no later than 130 days prior to the General Election.
14. I meet one of the following education and experience requirements:
  - a. obtained a high school diploma or its recognized equivalent in educational training as established by the State Department of Education **and** have at least five years experience as a certified law enforcement officer; or
  - b. obtained a two-year associate degree **and** have three years experience as a certified law enforcement officer; or
  - c. obtained a four-year baccalaureate degree **and** one year experience as a certified law enforcement officer or
  - d. served as a summary court judge for at least ten years.

| Completed by Notary Public for South Carolina |                       | Completed by Candidate |                                                  |
|-----------------------------------------------|-----------------------|------------------------|--------------------------------------------------|
| Signature                                     | <u>Tonyac Edmunds</u> | Signature              | <u>Clarke A Stearns</u>                          |
| Sworn before me on this date                  | <u>March 16, 2016</u> | Address                | <u>613 HERITAGE COVE<br/>MCCORMICK, SC 29835</u> |
| Commission expiration date                    | <u>March 12, 2018</u> |                        |                                                  |



**CERTIFICATE OF SERVICE**

I, the undersigned, paralegal of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for *Defendant Clarke Anderson Stearns*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by electronically mailing a copy of the same and mailing by United States Mail, postage prepaid, to the following address(es):

Pleadings:

**CLARKE STEARNS'S MEMORANDUM IN OPPOSITION  
TO PLAINTIFFS' REQUEST FOR DECLARATORY  
JUDGMENT, WRIT OF MANDAMUS, TEMPORARY  
RESTRAINING ORDER, AND INJUNCTIVE RELIEF**

Counsel Served:

James E. Smith, Jr., Esquire  
James E. Smith, Jr., PA  
1422 Laurel Street  
Columbia, SC 29201  
Email: [james@jamesmithpa.com](mailto:james@jamesmithpa.com)

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*Attorneys for Plaintiffs*

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Bowers Law Office  
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Columbia, SC 29250  
Email: [butch@butchbowers.com](mailto:butch@butchbowers.com)  
*Attorney for South Carolina Republican Party, McCormick  
County Republican Party, and Governor Nikki Haley*



Traci M. Clark

January 5, 2017

|                                         |   |                                            |
|-----------------------------------------|---|--------------------------------------------|
| STATE OF SOUTH CAROLINA                 | ) | IN THE COURT OF COMMON PLEAS               |
|                                         | ) |                                            |
| COUNTY OF MCCORMICK                     | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT          |
| J.R. Jones, South Carolina Democratic   | ) | Civil Action No.: 2016-CP-35-134           |
| Party, and McCormick County             | ) |                                            |
| Democratic Party,                       | ) |                                            |
|                                         | ) |                                            |
| Plaintiffs,                             | ) |                                            |
|                                         | ) |                                            |
| vs.                                     | ) | <b><u>AFFIDAVIT OF CLARKE ANDERSON</u></b> |
|                                         | ) | <b><u>STEARNS</u></b>                      |
| South Carolina Republican Party,        | ) |                                            |
| McCormick County Republican Party,      | ) |                                            |
| Clarke Anderson Stearns, State of South | ) |                                            |
| Carolina, and Governor Nikki Haley,     | ) |                                            |
|                                         | ) |                                            |
| Defendants.                             | ) |                                            |

---

Personally appeared before me, Clarke Anderson Stearns, who first being duly sworn,  
testifies as follows:

1. My name is Clarke Anderson Stearns.
2. I am a resident of South Carolina. I am over 18 years old.
3. I have personal knowledge of the truth of the facts stated herein.
4. I currently am the Sheriff-elect for McCormick County.
5. I meet the qualifications to serve as a sheriff in South Carolina.
6. I won the Republican Primary.
7. I won the General Election by a vote of 57% to 40% over the Plaintiff.
8. South Carolina law requires a Sheriff to meet certain qualifications. Generally,  
these requirements are education and law enforcement experience.
9. I have the requisite law enforcement officer experience and education background  
described in SC Code Ann. Sec. 23-11-110(A)(5)(a) and (b).

10. I have a high school diploma and a two-year associate degree and over 31 years of law enforcement experience.

11. I served in every rank as a Deputy Sheriff for the City of Alexandria, Virginia from 1983 through 2014 and retired as the Chief Deputy, second in command to the Sheriff.

12. Upon my election, I have taken the required New Sheriffs School offered by the South Carolina Sheriff's Association.

13. Once I am sworn in, I will submit my materials for certification to the South Carolina Criminal Justice Academy.

14. A protest was filed by the Plaintiff to the McCormick County Board of Voter Registration and Elections. The Board held a hearing on November 21. After deliberating, the Board denied the Plaintiff's protest.

15. The Plaintiff did not appeal the McCormick County Board of Voter Registration and Elections' decision to the South Carolina Election Commission.

16. The South Carolina State Election Commission has certified me as the winner of the election.

FURTHER AFFIANT SAYETH NOT.

Clarke A Stearns  
Clarke Anderson Stearns

SWORN to and subscribed before me

this 4 day of January 2017

Tonya C Edmunds

Notary Public for South Carolina

My Commission Expires: March 12, 2018



|                                         |   |                                         |
|-----------------------------------------|---|-----------------------------------------|
| STATE OF SOUTH CAROLINA                 | ) | IN THE COURT OF COMMON PLEAS            |
|                                         | ) |                                         |
| COUNTY OF MCCORMICK                     | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT       |
|                                         | ) |                                         |
| J.R. Jones, South Carolina Democratic   | ) | Civil Action No.: 2016-CP-35-134        |
| Party, and McCormick County             | ) |                                         |
| Democratic Party,                       | ) |                                         |
|                                         | ) |                                         |
| Plaintiffs,                             | ) | <b><u>DEFENDANT CLARKE STEARNS'</u></b> |
|                                         | ) | <b><u>ANSWER TO FIRST AMENDED</u></b>   |
| vs.                                     | ) | <b><u>COMPLAINT</u></b>                 |
|                                         | ) |                                         |
| South Carolina Republican Party,        | ) |                                         |
| McCormick County Republican Party,      | ) |                                         |
| Clarke Anderson Stearns, State of South | ) |                                         |
| Carolina, and Governor Nikki Haley,     | ) |                                         |
|                                         | ) |                                         |
| Defendants.                             | ) |                                         |

---

Defendant, Clarke Stearns ("Stearns"), responding to the First Amended Complaint, hereby alleges and answers as follows:

Except as specifically admitted below, each allegation of the Complaint is denied.

**FOR A FIRST DEFENSE**

1. Responding to the allegations contained in Paragraph 1, Stearns lacks information sufficient to form a belief and, therefore, denies the allegations and demands strict proof thereof.
2. Responding to the allegations contained in Paragraph 2 of the Complaint, Stearns admits the allegations.
3. Responding to the allegations contained in Paragraph 3 of the Complaint, Stearns admits the allegations.
4. Responding to the allegations contained in Paragraph 4 of the Complaint, Stearns admits the allegations.

5. Responding to the allegations contained in Paragraph 5 of the Complaint, Stearns admits the allegations pertaining to the identity of the McCormick County Republican Party. As to the remaining allegations of the Paragraph pertaining to certification, these allegations call for a legal conclusion and, therefore, no response is warranted.

6. Responding to the allegations contained in Paragraph 6 of the Complaint, Stearns admits the allegations.

7. Responding to the allegations contained in Paragraph 7 of the Complaint, these allegations call for a legal conclusion and, therefore, no response is warranted.

8. Responding to the allegations contained in Paragraph 8 of the Complaint, Stearns denies the allegations.

9. Responding to the allegations contained in Paragraph 9 of the Complaint, Stearns denies the allegations.

10. The allegations contained in Paragraph 10 call for a legal conclusion and, therefore, no response is warranted.

11. The allegations contained in Paragraph 11 call for a legal conclusion and, therefore, no response is warranted.

12. The allegations contained in Paragraph 12 call for a legal conclusion and, therefore, no response is warranted.

13. The allegations contained in Paragraph 13 call for a legal conclusion and, therefore, no response is warranted.

14. Responding to the allegations contained in Paragraph 14, Stearns denies the allegations.

15. The allegations contained in Paragraph 15 call for a legal conclusion and, therefore, no response is warranted.

16. The allegations contained in Paragraph 16 call for a legal conclusion and, therefore, no response is warranted.

17. Responding to the allegations contained in Paragraph 17, Stearns denies the allegations.

18. Responding to the allegations contained in Paragraph 18, Stearns admits the allegations.

19. Responding to the allegations contained in Paragraph 19, Stearns craves reference to the specific language of the documents and demands strict proof thereof.

20. Responding to the allegations contained in Paragraph 20, Stearns craves reference to the specific language of the documents and the referenced transcript and demands strict proof thereof.

21. Responding to the allegations contained in Paragraph 21, Stearns craves reference to the specific language of the documents and the referenced transcript and demands strict proof thereof.

22. The allegations contained in Paragraph 22 call for a legal conclusion and, therefore, no response is warranted.

23. The allegations contained in Paragraph 23 call for a legal conclusion and, therefore, no response is warranted.

24. The allegations contained in Paragraph 24 call for a legal conclusion and, therefore, no response is warranted.

25. The allegations contained in Paragraph 25 call for a legal conclusion and, therefore, no response is warranted.

26. Responding to the allegations contained in Paragraph 26, Stearns denies the allegations.

27. Responding to the allegations contained in Paragraph 27, Stearns denies the allegations.

28. Responding to the allegations contained in Paragraph 28, Stearns denies the allegations.

29. Responding to the allegations contained in Paragraph 29, Stearns denies the allegations.

30. Responding to the allegations contained in Paragraph 30, Stearns denies the allegations.

31. Responding to the allegations contained in Paragraph 31, Stearns lacks information sufficient to form a belief and, therefore, denies the allegations and demands strict proof thereof.

**FOR A SECOND DEFENSE**

(Estoppel, Waiver, Laches, and Unclean Hands)

32. The allegations and responses to Paragraphs 1 through 31 above are realleged and incorporated herein by reference.

33. Defendant Stearns asserts that the Plaintiff's claims may be barred by the doctrines of estoppel, waiver, laches, and/or unclean hands, which operates as a complete defense to the claims asserted in the Complaint.

**FOR A THIRD DEFENSE**

(Mootness)

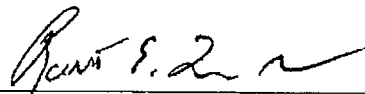
34. The allegations and responses to Paragraphs 1 through 33 above are realleged and incorporated herein by reference.

35. Defendant Stearns asserts that some or all of the Plaintiff's claims in the Complaint raise questions that are now moot, which operates as a complete defense to those claims.

WHEREFORE, having fully answered, the defendant, Clarke Stearns, prays that the plaintiff's Complaint be dismissed, with costs, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

SOWELL GRAY STEPP & LAFFITTE, LLC

By: 

Robert E. Tyson, Jr., SC Bar No. 10820  
Vordman Carlisle Traywick, III, SC Bar No. 102123  
1310 Gadsden Street (29201)  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400

*Attorneys for Defendant Clarke Anderson Stearns*

Columbia, South Carolina  
February 8, 2017



**CERTIFICATE OF SERVICE**

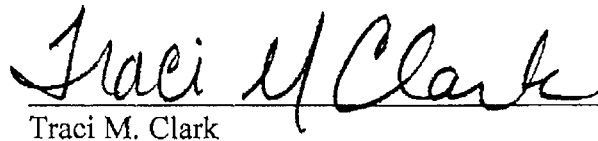
I, the undersigned paralegal of the law offices of Sowell Gray Stepp & Laffitte, L.L.C., attorneys for *Defendant Clarke Anderson Stearns*, do hereby certify that I have served all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Pleadings: Defendant Clarke Stearns' Answer to First Amended Complaint

Counsel Served: James E. Smith, Jr., Esquire  
James E. Smith, Jr., PA  
1422 Laurel Street  
Columbia, SC 29201

Tommy L. Stanford, Esquire  
Stanford & Assoc., PC  
307 Main Street  
Greenwood, SC 29646  
*Attorneys for Plaintiffs*

Butch Bowers, Esquire  
Bowers Law Office  
PO Box 50549  
Columbia, SC 29250  
*Attorney for South Carolina Republican Party, McCormick  
County Republican Party, and Governor Nikki Haley*

  
Traci M. Clark

February 8, 2017

STATE OF SOUTH CAROLINA  
COUNTY OF MCCORMICK

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL  
CIRCUIT  
CASE NO: 2016-CP-35-134

J.R. Jones, South Carolina Democratic  
Party, and McCormick County  
Democratic Party,

Plaintiffs,

v.

South Carolina Republican Party,  
McCormick County Republican Party,  
Clarke-Anderson Stearns, State of South  
Carolina, and Governor Nikki Haley,

Defendants.

**DEFENDANTS SOUTH CAROLINA  
REUBLICAN PARTY AND MCCORMICK  
COUNTY REPUBLICAN PARTY'S  
ANSWER TO FIRST AMENDED  
COMPLAINT**

Defendants<sup>1</sup>, South Carolina Republican Party and McCormick County Republican Party (collectively "Defendants"), by and through counsel, deny each and every allegation of the First Amended Complaint except as admitted herein, and responds to the allegations as follows:

**FOR A FIRST DEFENSE**

1. Responding to the allegations contained in Paragraph 1, Defendants lack information sufficient to form a belief and, therefore, deny the allegations and demands strict proof thereof.

2. Responding to the allegations contained in Paragraph 2 of the Complaint, Defendants admit the allegations.

3. Responding to the allegations contained in Paragraph 3 of the Complaint, Defendants admit the allegations.

4. Responding to the allegations contained in Paragraph 4 of the Complaint, Defendants admit the allegations.

---

<sup>1</sup> Governor Nikki Haley has been dismissed as a party in this action.

5. Responding to the allegations contained in Paragraph 5 of the Complaint, Defendants admit the allegations pertaining to the identity of the McCormick County Republican Party. As to the remaining allegations of the Paragraph pertaining to certification, these allegations call for a legal conclusion and, therefore, no response is warranted.

6. Responding to the allegations contained in Paragraph 6 of the Complaint, Defendants admit the allegations.

7. Responding to the allegations contained in Paragraph 7 of the Complaint, these allegations call for a legal conclusion and, therefore, no response is warranted.

8. Responding to the allegations contained in Paragraph 8 of the Complaint, Defendants deny the allegations.

9. Responding to the allegations contained in Paragraph 9 of the Complaint, Defendants deny the allegations.

10. The allegations contained in Paragraph 10 call for a legal conclusion and, therefore, no response is warranted.

11. The allegations contained in Paragraph 11 call for a legal conclusion and, therefore, no response is warranted.

12. The allegations contained in Paragraph 12 call for a legal conclusion and, therefore, no response is warranted.

13. The allegations contained in Paragraph 13 call for a legal conclusion and, therefore, no response is warranted.

14. Responding to the allegations contained in Paragraph 14, Defendants deny the allegations.

15. The allegations contained in Paragraph 15 call for a legal conclusion and,

therefore, no response is warranted.

16. The allegations contained in Paragraph 16 call for a legal conclusion and, therefore, no response is warranted.

17. Responding to the allegations contained in Paragraph 17, the Defendants deny the allegations.

18. Responding to the allegations contained in Paragraph 18, Defendants admit the allegations.

19. Responding to the allegations contained in Paragraph 19, Defendants crave reference to the specific language of the documents and demand strict proof thereof.

20. Responding to the allegations contained in Paragraph 20, Defendants crave reference to the specific language of the documents and the referenced transcript and demands strict proof thereof.

21. Responding to the allegations contained in Paragraph 21, Defendants crave reference to the specific language of the documents and the referenced transcript and demands strict proof thereof.

22. The allegations contained in Paragraph 22 call for a legal conclusion and, therefore, no response is warranted.

23. The allegations contained in Paragraph 23 call for a legal conclusion and, therefore, no response is warranted.

24. The allegations contained in Paragraph 24 call for a legal conclusion and, therefore, no response is warranted.

25. The allegations contained in Paragraph 25 call for a legal conclusion and, therefore, no response is warranted.

26. Responding to the allegations contained in Paragraph 26, Defendants deny the allegations.

27. Responding to the allegations contained in Paragraph 27, Defendants deny the allegations.

28. Responding to the allegations contained in Paragraph 28, Defendants deny the allegations.

29. Responding to the allegations contained in Paragraph 29, Defendants deny the allegations.

30. Responding to the allegations contained in Paragraph 30, Defendants deny the allegations.

31. Responding to the allegations contained in Paragraph 31, Defendants lack information sufficient to form a belief and, therefore, deny the allegations and demand strict proof thereof.

#### **FOR A SECOND DEFENSE**

(Estoppel, Waiver, Laches, and Unclean Hands)

32. The allegations and responses to Paragraphs 1 through 31 above are realleged and incorporated herein by reference.

33. Defendants assert that the Plaintiffs' claims may be barred by the doctrines of estoppel, waiver, laches, and/or unclean hands, which operates as a complete defense to the claims.

#### **FOR A THIRD DEFENSE**

(Mootness)

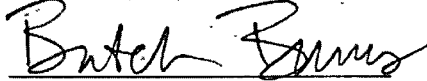
34. The allegations and response to the Paragraphs 1 through 33 above are realleged and incorporated herein by reference.

35. Defendants assert that some or all of the Plaintiffs' claims in the Complaint raise questions that are now moot, which operates as a complete defense to those claims.

WHEREFORE, having fully answered, the Defendants pray that the Plaintiffs' Complaint be dismissed, with costs, and for such other and further relief as the Court may deem just and proper.

Respectfully submitted,

BOWERS LAW OFFICE LLC



Karl S. Bowers, Jr.

SC Bar No. 16141

butch@butchbowers.com

P.O. Box 50549

Columbia, South Carolina 29250

(803) 753-1099

Attorney for Defendants South Carolina  
Republican Party and McCormick County  
Republican Party

Columbia, South Carolina  
February 9, 2017

STATE OF SOUTH CAROLINA

COUNTY OF MCCORMICK

IN THE COURT OF COMMON PLEAS  
FOR THE ELEVENTH JUDICIAL  
CIRCUIT

CASE NO: 2016-CP-135-134

J.R. Jones, South Carolina Democratic  
Party, and McCormick County  
Democratic Party,

Plaintiffs,

v.

South Carolina Republican Party,  
McCormick County Republican Party,  
Clarke Anderson Stearns, State of South  
Carolina, and Governor Nikki Haley,

Defendants.

**CERTIFICATE OF SERVICE**

The undersigned certifies to this Court that Defendants South Carolina Republican Party and McCormick County Republican Party's Answer to Plaintiffs' First Amended Complaint and Notice of Appearance of Counsel were this day served upon the other party to this action by First Class U.S. Mail, properly addressed to the attorney of record, pursuant to Rule 5 of the South Carolina Rules of Civil Procedure as follows:

James E. Smith, Jr., Esquire  
James E. Smith, Jr., PA  
1422 Laurel Street  
Columbia, SC 29201

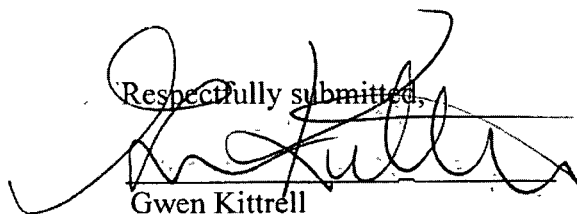
Tommy L. Stanford, Esquire  
Stanford & Associates, PC  
307 Main Street  
Greenwood, SC 29646

G.P. Callison, Jr.  
Callison Dorn Law Firm, PA  
P.O. Box 3208  
Greenwood, SC 29648

Robert E. Tyson, Esquire  
Sowell, Gray, Steppe & Laffitte, LLC  
1310 Gadsden Street  
Columbia, SC 29201

This the 9<sup>th</sup> day of February, 2017:

Respectfully submitted,



Gwen Kittrell  
Bowers Law Office LLC  
P.O. Box 50549  
Columbia, South Carolina 29250  
Telephone: (803) 753-1099

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF McCORMICK )

IN THE COURT OF COMMON PLEAS  
 ELEVENTH JUDICIAL CIRCUIT

J.R. Jones, South Carolina )  
 Democratic Party and McCormick )  
 County Democratic Party, )  
 )  
 Plaintiffs, )

vs. )

South Carolina Republican )  
 Party, McCormick County )  
 Republican Party, Clarke )  
 Anderson Stearns, State of South )  
 Carolina and County of )  
 McCormick, )  
 )  
 Defendants. )

ANSWER OF MCCORMICK COUNTY

C.A. No.: 2016-CP-35-00135  
 (Non-Jury Roster)

Defendant, County of McCormick (County), answers Plaintiffs' Amended Complaint as follows:

**FIRST DEFENSE**

1. Each allegation of Plaintiffs' Amended Complaint not specifically admitted is denied.

**SECOND DEFENSE**

2. County re-alleges its previous answers and allegations as if fully stated here.
3. County takes no position concerning the qualifications of Defendant Stearns to run for, be elected to, take the oath of office of and/or serve as the Sheriff of McCormick County. County relies on the certification provided by the State Election Commission to the Secretary of State confirming the election of Defendant Stearns as Sheriff of McCormick County. County awaits the Court's final decision in this matter and will act in accordance therewith.



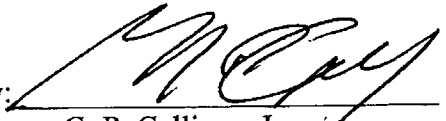
**THIRD DEFENSE**

4. County re-alleges its previous answers and allegations as if fully stated here.
5. County alleges that in the event Defendant Stearns is found not to have the required qualifications and is removed from office; then, in that event, if a special election is necessary, County alleges it should not be responsible for the expenses of such special election. County relied on the representations and certifications provided by Defendants Stearns, South Carolina Republican Party, and McCormick County Republican Party in placing Defendant Stearns on the 2016 primary and general election ballots and is informed and believes that these Defendants should be responsible for any expenses resulting from having a special election.

**WHEREFORE**, County prays for an Order of this Court:

1. Determining the issues in this matter.
2. Providing that if a special election is necessary, Defendants Stearns, South Carolina Republican Party and/or McCormick County Republican Party be responsible for any expenses resulting from having a special election.
3. Granting it such other relief as is just and equitable.

**CALLISON DORN LAW FIRM, PA**

By:   
 G. P. Callison, Jr.  
 McCormick County Attorney  
 SC Bar # 0001084  
 P. O. Box 3208  
 Greenwood, SC 29648  
 (864) 223-8111  
 (864) 223-4468 (fax)

February 2, 2017  
 Greenwood, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF MCCORMICK )

IN THE COURT OF COMMON PLEAS  
 ELEVENTH JUDICIAL CIRCUIT

J.R. Jones, South Carolina )  
 Democratic Party and McCormick )  
 County Democratic Party, )  
 )  
 Plaintiffs, )

**CERTIFICATE OF SERVICE**  
**Case No. 2016-CP-35-00135**  
 (Non-Jury Roster)

vs. )

South Carolina Republican )  
 Party, McCormick County )  
 Republican Party, Clarke )  
 Anderson Stearns, State of South )  
 Carolina and County of )  
 McCormick, )  
 )  
 Defendants. )

The undersigned employee of the law firm of CALLISON DORN LAW FIRM, Attorney for the Defendant County of McCormick, hereby certifies that on **February 15, 2017**, she served a copy of the

- 1. Answer of McCormick County; and**
- 2. Certificate of Service by Mail.**

on the Plaintiffs' and Defendants attorneys by regular mail, with sufficient postage affixed thereto as follows:

James E. Smith, Jr., P.A.  
 1422 Laurel Street  
 Columbia, SC 29201

Tommy L. Stanford, Esq.  
 Standford & Assoc., PC  
 307 Main Street  
 Greenwood, SC 29646

Robert E. Tyson, Jr.  
 Sowell Gray Stepp & Laffitte, LLC  
 1310 Gadsden Street  
 Columbia, SC 29201

**RECEIVED**

FEB 21 2017

JAMES E. SMITH, JR., P.A.

Butch Bowers  
Bowers Law Firm  
1419 Pendleton St  
Columbia, SC 29201

**CallisonDornLawFirm**

A handwritten signature in black ink, appearing to read "Patricia McManus", written over a horizontal line.

Patricia McManus

Legal Assistant to G.P. Callison, Jr.  
P.O. Box 3208  
Greenwood, SC 29648864-223-8111

Greenwood, South Carolina  
February 15, 2017

J.R. JONES, SOUTH CAROLINA )  
DEMOCRATIC PARTY, AND )  
MCCORMICH COUNTY DEMOCRATIC )  
PARTY, )

Civil Action No. 2016-CP-35-134

PLAINTIFFS, )

VS.

SOUTH CAROLINA REPUBLICAN )  
PARTY, MCCORMICK COUNTY )  
REPUBLICAN PARTY, CLARKE )  
ANDERSON STEARNS, STATE OF )  
SOUTH CAROLINA, AND GOVERNOR )  
NIKKI HALEY, )

DEFENDANTS. )

**PLAINTIFF J.R. JONES' RESPONSES**  
**TO DEFENDANT CLARKE**  
**ANDERSON STEARNS' FIRST SET**  
**OF REQUESTS TO ADMIT**

**TO: ROBERT E. TYSON, JR. AND VORDMAN CARLISLE TRAYWICK, III,  
ATTORNEYS FOR DEFENDANTS:**

Pursuant to and in accordance with the provisions of Rule 36 of the SCRCPP, Plaintiff J.R. Jones hereby responds to Defendant Clarke Anderson Stearns' First Set of Requests to Admit dated May 3, 2017.

## GENERAL QUALIFICATIONS AND OBJECTIONS

The following responses are given without prejudice to responding party's right to produce evidence of any subsequently discovered fact or facts, which this responding party may later recall. Responding party accordingly reserves the right to change any and all answers herein as additional facts are ascertained, analyses are made, legal research is completed, and contentions are made. The responses contained herein are made in a good faith effort to supply as much factual information and as much specification of legal contentions as are presently known, but in no way should be to the

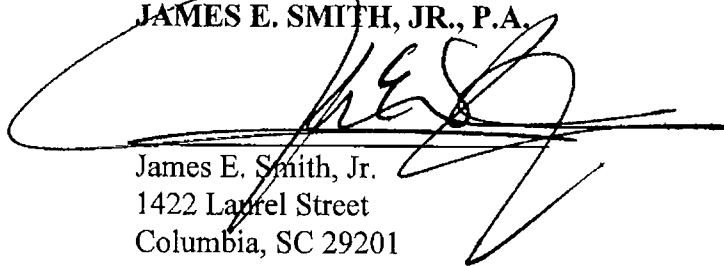
prejudice of Plaintiff in relation to further discovery research or analysis. The aforementioned statement pertains to and should be incorporated by reference in each and every response following.

**PLAINTIFF'S RESPONSES TO REQUESTS TO ADMIT**

1. Admit you had knowledge of the alleged certification issue of Clarke Stearns prior to the general election held on November 8, 2016.

**RESPONSE: Denied. What certification issue? Certified for the ballot? Certified to be a law enforcement officer in South Carolina. The question in this action is whether Mr. Sterns was qualified at the time of his election to hold the office of Sheriff. Mr. Jones learned that Mr. Sterns was not qualified to be Sheriff after the general election held on November 8, 2016.**

**RESPECTFULLY SUBMITTED  
JAMES E. SMITH, JR., P.A.**

A large, stylized handwritten signature in black ink, appearing to read 'JES', is written over a horizontal line.

James E. Smith, Jr.  
1422 Laurel Street  
Columbia, SC 29201  
(803) 933-9800

**ATTORNEY FOR PLAINTIFFS**

June 5, 2017  
Columbia, South Carolina

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
COUNTY OF MCCORMICK ) IN THE ELEVENTH JUDICIAL CIRCUIT  
)

J.R. JONES, SOUTH CAROLINA ) Civil Action No. 2016-CP-35-134  
DEMOCRATIC PARTY, AND )  
MCCORMICK COUNTY DEMOCRATIC )  
PARTY, )

PLAINTIFFS, ) PLAINTIFF MCCORMICK COUNTY  
) DEMOCRATIC PARTY'S  
) RESPONSES TO DEFENDANT  
VS. ) CLARKE ANDERSON STEARNS'  
) FIRST SET OF REQUESTS TO  
) ADMIT

SOUTH CAROLINA REPUBLICAN )  
PARTY, MCCORMICK COUNTY )  
REPUBLICAN PARTY, CLARKE )  
ANDERSON STEARNS, STATE OF )  
SOUTH CAROLINA, AND GOVERNOR )  
NIKKI HALEY, )  
) DEFENDANTS.

**TO: ROBERT E. TYSON, JR. AND VORDMAN CARLISLE TRAYWICK, III,  
ATTORNEYS FOR DEFENDANTS:**

Pursuant to and in accordance with the provisions of Rule 36 of the SCRCF, Plaintiff  
McCormick County Republican Party hereby responds to Defendant Clarke Anderson Stearns'  
First Set of Requests to Admit dated May 3, 2017.

### **GENERAL QUALIFICATIONS AND OBJECTIONS**

The following responses are given without prejudice to responding party's right to produce  
evidence of any subsequently discovered fact or facts, which this responding party may later recall.  
Responding party accordingly reserves the right to change any and all answers herein as additional facts  
are ascertained, analyses are made, legal research is completed, and contentions are made. The  
responses contained herein are made in a good faith effort to supply as much factual information and as  
much specification of legal contentions as are presently known, but in no way should be to the

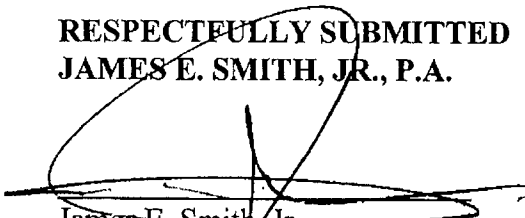
prejudice of Plaintiff in relation to further discovery research or analysis. The aforementioned statement pertains to and should be incorporated by reference in each and every response following.

**PLAINTIFF'S RESPONSES TO REQUESTS TO ADMIT**

1. Admit you had knowledge of the alleged certification issue of Clarke Stearns prior to the general election held on November 8, 2016.

**RESPONSE: Denied. What certification issue? Certified for the ballot? Certified to be a law enforcement officer in South Carolina. The question in this action is whether Mr. Sterns was qualified at the time of his election to hold the office of Sheriff. The McCormick County Democratic Party first heard about any question regarding Mr. Sterns qualifications or certification for the office of McCormick County Sheriff after the general election held on November 8, 2016.**

**RESPECTFULLY SUBMITTED  
JAMES E. SMITH, JR., P.A.**



James E. Smith, Jr.  
1422 Laurel Street  
Columbia, SC 29201  
(803) 933-9800

**ATTORNEY FOR PLAINTIFFS**

June 5, 2017  
Columbia, South Carolina

STATE OF SOUTH CAROLINA        ) IN THE COURT OF COMMON PLEAS  
                                               ) IN THE ELEVENTH JUDICIAL CIRCUIT  
 COUNTY OF MCCORMICK            )

J.R. JONES, SOUTH CAROLINA        ) Civil Action No. 2016-CP-35-134  
 DEMOCRATIC PARTY, AND            )  
 MCCORMICK COUNTY DEMOCRATIC    )  
 PARTY,                                 )

                                              ) **PLAINTIFF SOUTH CAROLINA**  
                                               ) **DEMOCRATIC PARTY'S**  
                                               ) **RESPONSES TO DEFENDANT**  
                                               ) **CLARKE ANDERSON STEARNS'**  
                                               ) **FIRST SET OF REQUESTS TO**  
                                               ) **ADMIT**

VS.                                        )

SOUTH CAROLINA REPUBLICAN        )  
 PARTY, MCCORMICK COUNTY        )  
 REPUBLICAN PARTY, CLARKE        )  
 ANDERSON STEARNS, STATE OF    )  
 SOUTH CAROLINA, AND GOVERNOR   )  
 NIKKI HALEY,                        )  
                                               )  
                                               )  
                                               ) **DEFENDANTS.**

**TO: ROBERT E. TYSON, JR. AND VORDMAN CARLISLE TRAYWICK, III,  
 ATTORNEYS FOR DEFENDANTS:**

Pursuant to and in accordance with the provisions of Rule 36 of the SCRCP, Plaintiff  
 South Carolina Republican Party hereby responds to Defendant Clarke Anderson Stearns' First  
 Set of Requests to Admit dated May 3, 2017.

### **GENERAL QUALIFICATIONS AND OBJECTIONS**

The following responses are given without prejudice to responding party's right to produce evidence of any subsequently discovered fact or facts, which this responding party may later recall. Responding party accordingly reserves the right to change any and all answers herein as additional facts are ascertained, analyses are made, legal research is completed, and contentions are made. The responses contained herein are made in a good faith effort to supply as much factual information and as much specification of legal contentions as are presently known, but in no way should be to the



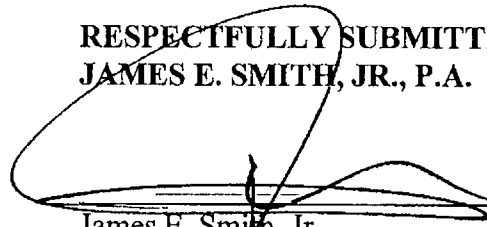
prejudice of Plaintiff in relation to further discovery research or analysis. The aforementioned statement pertains to and should be incorporated by reference in each and every response following.

**PLAINTIFF'S RESPONSES TO REQUESTS TO ADMIT**

1. Admit you had knowledge of the alleged certification issue of Clarke Stearns prior to the general election held on November 8, 2016.

**RESPONSE: Denied. What certification issue? Certified for the ballot? Certified to be a law enforcement officer in South Carolina. The question in this action is whether Mr. Sterns was qualified at the time of his election to hold the office of Sheriff. The South Carolina Democratic Party first heard about any question regarding Mr. Sterns qualifications or certification for the office of McCormick County Sheriff after the general election held on November 8, 2016.**

**RESPECTFULLY SUBMITTED  
JAMES E. SMITH, JR., P.A.**



James E. Smith, Jr.  
1422 Laurel Street  
Columbia, SC 29201  
(803) 933-9800

ATTORNEY FOR PLAINTIFFS

June 5, 2017  
Columbia, South Carolina

|                                         |   |                                     |
|-----------------------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA                 | ) | IN THE COURT OF COMMON PLEAS        |
|                                         | ) |                                     |
| COUNTY OF MCCORMICK                     | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT   |
| J.R. Jones, South Carolina Democratic   | ) | Civil Action No.: 2016-CP-35-134    |
| Party, and McCormick County             | ) |                                     |
| Democratic Party,                       | ) |                                     |
|                                         | ) |                                     |
| Plaintiffs,                             | ) |                                     |
|                                         | ) | <b>NOTICE OF MOTIONS AND MOTION</b> |
| vs.                                     | ) | <b>TO DISMISS AND MOTION FOR</b>    |
|                                         | ) | <b>SUMMARY JUDGMENT</b>             |
| South Carolina Republican Party,        | ) |                                     |
| McCormick County Republican Party,      | ) |                                     |
| Clarke Anderson Stearns, State of South | ) |                                     |
| Carolina, and Governor Nikki Haley,     | ) |                                     |
|                                         | ) |                                     |
| Defendants.                             | ) |                                     |
|                                         | ) |                                     |

TO: JAMES E. SMITH, JR., ESQUIRE, COUNSEL FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the undersigned counsel for the defendant, Clarke Anderson Stearns, will move before the Presiding Judge of the Court of Common Pleas for McCormick County at such time and place as may be set by the Court to (1) dismiss the plaintiffs' Amended Complaint, with prejudice, for failure to prosecute pursuant to Rule 41(b), SCRCP; or (2) grant summary judgment in favor of Mr. Stearns based upon the mootness doctrine pursuant to Rule 56(c), SCRCP. For the reasons set forth below, the Court should grant Mr. Stearns's motion on one or both of these grounds.

### **I. Failure to Prosecute**

Rule 41(b), SCRCP, authorizes a court to dismiss an action based upon a plaintiff's failure to prosecute. In *Small v. Mungo*, the Supreme Court of South Carolina held that "it is within the inherent power of the court to dismiss an action for failure to prosecute." 254 S.C. 438, 442, 175 S.E.2d 802, 803 (1970). Our supreme court has further held that "[t]he plaintiff has the burden of

prosecuting his action, and the trial court may properly dismiss an action for plaintiff's unreasonable neglect in proceeding with his cause. This authority is necessary if the courts are to control and efficiently manage an ever-expanding docket." *Don Shevey & Spires, Inc. v. Am. Motors Realty Corp.*, 279 S.C. 58, 60, 301 S.E.2d 757, 758 (1983) (internal citation omitted); *see also Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 211, 493 S.E.2d 826, 832 (1997).

In this case, the Court issued an Order on January 19, 2017, denying the plaintiffs' Motion for a Temporary Injunction. As our courts have long held, "[a]n order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction is immediately appealable." *Curtis v. State*, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001). The plaintiffs did not appeal the Court's Order denying their Motion for a Temporary Injunction. Since that time, the plaintiffs have taken no action to prosecute their claims in circuit court. To the contrary, the plaintiffs have requested continuances several times when the case was scheduled for trial. The plaintiffs have served no written discovery and made no attempt to schedule depositions. In short, the lack of any activity in prosecuting this action on the part of the plaintiffs compels the dismissal of this action under Rule 41(b), SCRCP, and the inherent authority of the Court. *See Mungo*, 254 S.C. at 442, 175 S.E.2d at 803; *Don Shevey & Spires, Inc.*, 279 S.C. at 60, 301 S.E.2d at 758; *Crestwood Golf Club, Inc.*, 328 S.C. at 211, 493 S.E.2d at 832.

Because election contests have the potential to disenfranchise voters, they should be prosecuted and decided in an expeditious manner. The Court should not sanction the plaintiffs sitting on this matter for over ten months and taking no action, all the while leaving the elected sheriff and voters of McCormick County wondering when and whether the case will ever come to a close. To that end, Mr. Stearns respectfully requests that the Court dismiss the plaintiffs' Amended Complaint, with prejudice, for failure to prosecute this action.

## II. Mootness

In the alternative, Mr. Stearns moves that the Court grant summary judgment in his favor because, to the extent he was not certified at the time of the election, a fact he will not concede, he has since become certified in South Carolina. Because any ruling from this Court would have no practical effect upon the existing controversy, the plaintiffs' action is now moot and summary judgment is appropriate.

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a factfinder." S. Glass & Plastics Co. v. Duke, 367 S.C. 421, 427, 626 S.E.2d 19, 22 (Ct. App. 2005). Summary judgment is proper when no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. Ellis v. Davidson, 358 S.C. 509, 517, 595 S.E.2d 817, 821 (Ct. App. 2004). "In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." Hancock v. Mid-South Mgmt. Co., Inc., 381 S.C. 326, 329–30, 673 S.E.2d 801, 802 (2009). "However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." BPS, Inc. v. Worthy, 362 S.C. 319, 326, 608 S.E.2d 155, 159 (Ct. App. 2005).

Our courts have long observed that a justiciable controversy must exist before any action may be maintained. Byrd v. Irmo High Sch., 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). "The court does not concern itself with moot or speculative questions." Sloan v. Greenville Cty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy." Mathis v. S.C. State Highway Dep't, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). "Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief." Sloan, 380

S.C. at 535, 670 S.E.2d at 667.

In the instant case, no genuine issues of material fact exist and Mr. Stearns is entitled to judgment as a matter of law because the case is now moot. The plaintiffs' Amended Complaint alleges that Mr. Stearns was not qualified to serve as Sheriff of McCormick County because he is not a certified law enforcement officer pursuant to section 23-11-110 of the South Carolina Code. Mr. Stearns disputed this notion in his Answer, stating that he did not have to be certified in South Carolina at the time of the election and was eligible to apply for an exemption within one year of assuming office pursuant to the qualifications and certification statutes. See S.C. Code Ann. § 23-11-110; S.C. Code Ann. § 23-23-40. Regardless, Mr. Stearns is now certified in South Carolina. On September 6, 2017, the South Carolina Criminal Justice Academy issued a letter certifying him as a South Carolina Class One Law Enforcement Officer. The certification letter is attached hereto as **Exhibit A**. Given that Mr. Stearns has met any and all statutory requirements to serve as a sheriff in South Carolina, this action is now moot because a judgment, if rendered, would have no practical effect upon the existing controversy. *See Mathis*, 260 S.C. at 346, 195 S.E.2d at 715; *Sloan*, 380 S.C. at 535, 670 S.E.2d at 667.

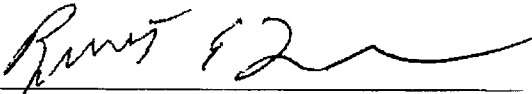
Accordingly, Mr. Stearns respectfully requests that the Court grant summary judgment in his favor because no genuine issue of material fact exists and he is entitled to judgment as a matter of law based upon the mootness doctrine.

### CONCLUSION

Based upon the foregoing, Mr. Stearns respectfully requests that the Court issue an Order dismissing the Amended Complaint, with prejudice, due to the plaintiff's failure to prosecute this action or granting summary judgment in his favor given that the case is now moot.

Respectfully submitted,

SOWELL GRAY ROBINSON STEPP & LAFFITTE, LLC

By: 

Robert E. Tyson, Jr.

SC Bar No. 10820

Vordman Carlisle Traywick, III

SC Bar No. 102123

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Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

*Attorneys for Defendant Clarke Anderson Stearns*

Columbia, South Carolina

October 4, 2017

**CERTIFICATE OF SERVICE**

I, the undersigned of the law offices of Sowell Gray Robinson Stepp & Laffitte, LLC, attorneys for *Defendant Clarke Anderson Stearns*, do hereby certify that I have served all counsel in this action with a copy of the Motion to Dismiss and/or Motion for Summary Judgment by mailing a copy of the same by United States Mail, postage prepaid, to the following addresses:

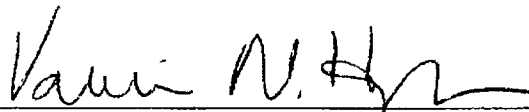
Counsel Served:

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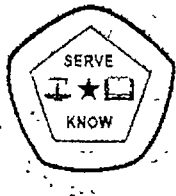
Butch Bowers, Esquire  
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***Attorney for South Carolina Republican Party, McCormick County Republican Party, and Governor Nikki Haley***

  
\_\_\_\_\_  
Valerie N. Hampton  
Legal Assistant

October 4, 2017

# EXHIBIT A





# South Carolina Criminal Justice Academy

September 6, 2017

Sheriff Clarke Stearns  
McCormick County Sheriff's Office  
PO Box 1236  
McCormick, SC 29835

RE: Class One Law Enforcement Officer Certification

Sheriff Stearns:

I am pleased to inform you that you have successfully completed all requirements to achieve South Carolina Class One Law Enforcement Officer Certification status. For record keeping purposes, the official date of certification will be entered into the Academy database as September 6, 2017.

Please note that your Academy Identification number is 2941-5150. This number should be used for future registration and record keeping purposes in lieu of a social security number. I applaud your accomplishment and look forward to working with you for many years to come. Should you ever need assistance from any member of my staff or from me, please do not hesitate to contact us.

Sincerely,

A handwritten signature in cursive script that reads 'Jackie Swindler'.

Jackie Swindler, Chief  
LJS/JDT

CC: SCCJA Certification & Compliance Section

|                                         |   |                                   |
|-----------------------------------------|---|-----------------------------------|
| THE STATE OF SOUTH CAROLINA             | ) | IN THE COURT OF COMMON PLEAS      |
|                                         | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT |
| COUNTY OF MCCORMICK                     | ) |                                   |
|                                         | ) | Case No. 2016-CP-35-00135         |
| J.R. Jones, South Carolina Democratic   | ) |                                   |
| Party, and McCormick County Democratic  | ) |                                   |
| Party,                                  | ) | <b>Stipulations</b>               |
|                                         | ) |                                   |
| Plaintiffs,                             | ) |                                   |
|                                         | ) |                                   |
| vs.                                     | ) |                                   |
|                                         | ) |                                   |
| South Carolina Republican Party,        | ) |                                   |
| McCormick County Republican Party,      | ) |                                   |
| Clarke Anderson Stearns, State of South | ) |                                   |
| Carolina, and McCormick County,         | ) |                                   |
|                                         | ) |                                   |
| Defendants.                             | ) |                                   |
|                                         | ) |                                   |

The parties stipulate as follows:

- 1) On March 16, 2016, when he signed the filing affidavit to run for Sheriff of McCormick County, the defendant, Clark Anderson Stearns, had never been certified as a law enforcement officer in the State of South Carolina.
- 2) After Mr. Stearns's affidavit was filed with the South Carolina Election Commission, it was publicly available on the website of the South Carolina Election Commission.
- 3) The Plaintiff, J.R. Jones, was not aware of any issue pertaining to Mr. Stearns's statutory qualifications to be a sheriff in the State of South Carolina until after the 2016 General Election.
- 4) Alonzo Harrison, Chair of the McCormick County Democratic Party, was not aware of any issue pertaining to Mr. Stearns's statutory qualifications to be a sheriff in the State of South Carolina until after the 2016 General Election.
- 5) Mr. Stearns obtained his certification as a law enforcement officer in South

Carolina from the South Carolina Criminal Justice Academy on September 6, 2017.

We so stipulate.

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***Attorney for Defendants South Carolina  
Republican Party and McCormick County  
Democratic Party***

|                                         |   |                                                |
|-----------------------------------------|---|------------------------------------------------|
| THE STATE OF SOUTH CAROLINA             | ) | IN THE COURT OF COMMON PLEAS                   |
|                                         | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT              |
| COUNTY OF MCCORMICK                     | ) |                                                |
|                                         | ) | Case No. 2016-CP-35-00135                      |
| J.R. Jones, South Carolina Democratic   | ) |                                                |
| Party, and McCormick County Democratic  | ) |                                                |
| Party,                                  | ) |                                                |
|                                         | ) | <b>Plaintiffs' Memorandum in Support of</b>    |
| Plaintiffs,                             | ) | <b>Granting Relief Sought in First Amended</b> |
|                                         | ) | <b>Complaint</b>                               |
| vs.                                     | ) |                                                |
|                                         | ) |                                                |
| South Carolina Republican Party,        | ) |                                                |
| McCormick County Republican Party,      | ) |                                                |
| Clarke Anderson Stearns, State of South | ) |                                                |
| Carolina, and McCormick County,         | ) |                                                |
|                                         | ) |                                                |
| Defendants.                             | ) |                                                |
|                                         | ) |                                                |

**To: The Honorable R. Lawton McIntosh, Presiding Judge, Eleventh Judicial Circuit**

This matter is before the Court on the first amended complaint of J.R. Jones, the South Carolina Democratic Party, and the McCormick County Democratic Party seeking a declaration that Clarke Anderson Stearns does not meet the qualifications for Sheriff as set forth in S.C. Code Ann. § 23-11-110, an order enjoining Mr. Stearns from serving as Sheriff of McCormick County, and a writ of mandamus directing the appropriate officials of the State of South Carolina to remove Mr. Stearns from the office of Sheriff of McCormick County.

### **I. INTRODUCTION.**

The plaintiffs allege Mr. Stearns does not meet the statutory qualifications to be elected Sheriff of McCormick County. Specifically, based on Mr. Stearns having obtained a two-year associate degree,<sup>1</sup> S.C. Code Ann. § 23-11-110(A)(5) mandates Mr. Stearns have “three years’ experience as a certified law enforcement officer” in South Carolina. Section 23-11-110(A)

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<sup>1</sup> Ex. 1 at ¶ 10 (Affidavit of Clarke Stearns dated March 16, 2016). A copy of this affidavit is also Exhibit A to Exhibits to Plaintiffs’ Complaint.

defines a “certified law enforcement officer” as “a person who has been issued a certificate as a law enforcement officer pursuant to Section 23-23-10,” *et. seq* , meaning Mr. Stearns must have three years’ experience as a law enforcement officer after being certified by the South Carolina Criminal Justice Academy. By stipulation, on March 16, 2016, when he signed the filing affidavit to run for Sheriff of McCormick County, Mr. Stearns had never been certified as a law enforcement officer by the State of South Carolina. By stipulation, Mr. Stearns first obtained his certification as a law enforcement officer in South Carolina on September 6, 2017. (Ex. 2)

The plaintiffs’ interpretation of § 23-11-110 is supported by opinion letters from the South Carolina Attorney General dated January 29, 2004, (Ex. 3), and the South Carolina Sheriffs’ Association dated January 4, 2017, (Ex. 4).

## **II. FACTUAL AND PROCEDURAL BACKGR OUND.**

On March 16, 2016, Mr. Stearns signed the filing affidavit to run for Sheriff of McCormick County. The affidavit represented Mr. Stearns “received a two-year associate degree [in] May 1982.” The affidavit also represented Mr. Stearns had “31 years’ experience as a certified law enforcement officer.” (Ex. 1 at ¶¶ 9 and 10). Exercising ministerial responsibilities, the McCormick County Republican Party and the South Carolina Republican Party certified Mr. Stearns was qualified to run for Sheriff of McCormick County. (Ex. 5 at 42, lines 4-6).

On June 14, 2016, Mr. Stearns won the Republican Primary for Sheriff of McCormick County. On November 8, 2016, Mr. Stearns won the General Election for Sheriff of McCormick County.

Plaintiff J.R. Jones filed an election protest. The McCormick County Registration and Elections Commission convened an election protest hearing on November 21, 2016. (Ex. 5).<sup>2</sup> During the hearing, Mr. Stearns testified he had never been certified as a law enforcement in South Carolina. (Ex. 5 at 22, lines 18-21; 24, line 25 – 25, line 3). Mr. Stearns further testified he intended to seek certification as a law enforcement officer in South Carolina because he had been elected Sheriff. (Ex. 5 at 24, lines 18-21).

On January 4, 2017, Mr. Stearns completed another affidavit. This affidavit represented Mr. Stearns had thirty-one years of law enforcement experience in the Commonwealth of Virginia. This affidavit also represented that Mr. Stearns planned to seek certification as a law enforcement officer in South Carolina *after he was sworn in as Sheriff*. (Ex. 6 at ¶¶ 10, 11 and 13).

By written order dated January 19, 2017, the Honorable William P. Keesley denied the plaintiffs' motion for a temporary injunction, although he noted "there is a substantial possibility that the plaintiffs will prevail" on the merits.

On October 4, 2017, the defendants served a motion to dismiss and motion for summary judgment. On October 16, 2017, this Court convened a hearing on these motions. By written order dated October 18, 2017, this Court denied these motions.

On October 18, 2017, this Court convened a hearing on the plaintiffs' first amended complaint. The parties stipulated to the facts, and the Court requested briefs. This memorandum of law follows.

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<sup>2</sup> Pages 22, 24, 25, and 42 of the hearing are Exhibit B to the Exhibits to Plaintiffs' Complaint.

### III. ARGUMENT.

#### A. The Circuit Court—not the McCormick County Board of Canvassers—is the appropriate venue to resolve this controversy.<sup>3</sup>

Title VII of the South Carolina Code establishes procedures for elections. As will be seen below, nothing in Title VII grants the McCormick Board of Canvassers the authority to determine the qualifications of candidates for county office.

S.C. Code Ann. § 7-17-10 governs the meeting and organization of the McCormick County Board of Canvassers. Section 7-17-20 establishes the authority of the County Board of Canvassers:

The county board of canvassers, respectively, shall then proceed to canvass the votes of the county and make such statements of such votes as the nature of the election shall require no later than noon on the Saturday next following the election and at such time shall transmit to the State Board of Canvassers the results of their findings.

The authority of the McCormick County Board of Canvassers, therefore, is limited to counting the votes (including absentee votes), examining the provisional ballots, considering challenges and protests to specific votes, and certifying the results of the election. As outlined above, the question here is whether Mr. Stearns lacks the qualifications to serve as Sheriff of McCormick County as set forth in S.C. Code Ann. § 23-11-110. The matter brought before this Court is outside the scope of authority granted the McCormick County Board of Canvassers. Here, the results of the election are not in dispute. Rather, the plaintiffs ask this Court to interpret a

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<sup>3</sup> Indeed, at the McCormick County Board of Canvassers hearing, Mr. Stearns moved to dismiss the election protest because the Commission did not have “the authority to determine a candidate’s qualifications.” (Ex. 5 at 7, lines 2-14). He argued that authority of the Board of Canvassers is limited counting the vote (including absentee votes), examining the provisional ballots, considering challenges and protests to specific votes, and certifying the results of the election. He also argues that the county political party—not the McCormick County Board of Canvassers—determines the eligibility of candidates to run for county office. (Ex. 5 at 10-16).

statute. “The construction of a statute is a judicial function and responsibility.” *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 596, 614 S.E.2d 629. *And see Anderson v. S.C. Election Comm’n*, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012) (“[W]e are not asked to judge a disputed legislative election but rather to interpret a statute.”). Thus, the Circuit Court—not the McCormick County Board of Canvassers—is the appropriate venue to resolve this controversy.

**B. The Plaintiffs right to challenge Mr. Stearns qualifications is not waivable. Further, if the Court finds the right to challenge is waivable, the Plaintiffs did not waive their right to challenge Mr. Stearns qualifications.**

The Plaintiffs right to challenge Mr. Stearns qualifications is not waivable. As outlined above, the issue before this Court is whether Mr. Stearns lacks the statutory qualification to be elected and serve as Sheriff of McCormick County. As outlined below, any registered voter or Citizen of McCormick County could bring this same claim at any time.

The defendants incorrectly suggest that *Anderson, supra*, and subsequent cases, require a challenge to a candidate’s qualifications be made before the general election. *Anderson* addressed a “systemic failure of the political parties to follow the law” by “ignoring their statutory gatekeeping role is the prospect of the inclusion of many candidates on the ballot who did not comply with the statutory requirements.” 397 S.C. at 556, 725 S.E.2d at 706. *Anderson* expressly recognized the statute contemplated a post-election remedy, but our Supreme Court found “no legislative intent that such remedy is exclusive.” *Id Anderson*, accordingly, “direct[ed] the appropriate official of the political parties to file with the State Election Commission or the appropriate county election commission” information identifying properly qualified candidates. *Id* 397 S.C. at 558, 725 S.E.2d at 708. In *Florence Cty. Democratic Party v. Florence Cty Republican Party*, 398 S.C. 124, 130, 727 S.E.2d 418, 421 (2012), our Supreme Court warned, “To the extent other county political parties have improperly certified candidates, those parties



ignore the decisions of this Court at their own peril.” Despite this warning, in *Tempel v. S.C. State Election Comm’n*, 400 S.C. 374, 735 S.E.2d 453 (2012), the Circuit Court, and later our Supreme Court, had to invalidate the results of a primary won by candidate that was not properly qualified.

The McCormick County Republican Party and the South Carolina Republican Party qualified Mr. Stearns as a candidate for Sheriff “at their own peril.” The current challenge is appropriately filed. *See, e g , Tempel*

Even if the Court deems this claim waivable, the Plaintiffs have not waived their right to prosecute this matter. As stipulated, neither Mr. Jones nor Mr. Harris were aware of Mr. Stearns’s qualification issues until after the general election on November 8, 2016. Although Mr. Stearns’s affidavit was available on the South Carolina Election Commission website, the Plaintiffs were not on notice of Mr. Stearns lack of statutory qualification. In his affidavit, Mr. Stearns stated he had “received a two-year associate degree [in] May 1982.” The affidavit also represented Mr. Stearns had “31 years’ experience as a certified law enforcement officer.” (Ex. 1 at ¶¶ 9 and 10).

Even if Mr. Jones and Mr. Harris were on constructive notice of Mr. Stearns affidavit, they did not have notice he was not qualified to serve as Sheriff. Nowhere online or in the affidavit does Mr. Stearns show or mention his lack of South Carolina certification, the fundamental issue in this case. Because of this, neither Mr. Jones, Mr. Harris, or anyone with access to the South Carolina Election Commission website would have been on notice of Mr. Stearns lack of qualification to run as Sheriff until after the election. Following the logic of the *Anderson* line of cases the qualification issue is ripe for determination by this Court.

**C. This matter is not moot.**

S.C. Code Ann. 23-11-110 (A)(5)(b) requires all Sheriffs in this State must *inter alia* “have obtained a two-year associates degree and three years’ experience as “certified law enforcement

officer....” As stipulated, Mr. Stearns first obtained his certification as a law enforcement officer in South Carolina on September 6, 2017. Mr. Stearns receiving this certification has no impact on the ripeness of this litigation.

The question before this Court is whether Mr. Stearns lacks qualification to serve as Sheriff because he does not have three years’ experience as a certified law enforcement officer in South Carolina. Mr. Stearns becoming a certified law enforcement officer—less than two months ago—does not render the Plaintiffs’ litigation moot. Mr. Stearns still lacks the necessary three years’ experience as a certified law enforcement officer required by S.C. Code Ann. § 23-11-110. Thus, Mr. Stearns is still unqualified to serve as McCormick County Sheriff.

**D. This Court has the authority to grant relief.**

“The primary purpose of a writ of mandamus is to enforce an established right and to enforce a corresponding imperative duty created or imposed by law.” *Porter v. Jedziniak*, 334 S.C. 16, 18, 512 S.E.2d 497, 497-98 (1999). “To obtain a writ of mandamus requiring the performance of an act, the petitioner must show (1) a duty of respondent to perform the act, (2) the ministerial nature of the act, (3) the petitioner's specific legal right for which discharge of the duty is necessary, and (4) a lack of any other legal remedy.” *Id.*

Mr. Stearns had a duty to complete his filing affidavit accurately. The McCormick County Republican Party and South Carolina Republican Party had duties to certify only a candidate that met the statutory qualifications. These acts are ministerial in nature. The plaintiffs have a right for the Sheriff of McCormick County to meet the statutory qualifications for that office. No other legal remedy exists. As seen in Section B, *supra*, the courts of our State—not the McCormick County Board of Canvassers—is the proper venue to interpret statutes and determine the qualifications for elected office.

#### IV. CONCLUSION.

For the foregoing reasons, this Court should:

- 1) Declare that Clarke Anderson Stearns does not meet the qualifications for Sheriff as set forth in S.C. Code Ann. § 23-11-110;
- 2) Issue an order enjoining Mr. Stearns from serving as Sheriff of McCormick County;
- 3) Issue a writ of mandamus requiring Mr. Stearns to correct his filing affidavit to reflect that he did not have any experience as a law enforcement officer certified by the State of South Carolina at the time he filed his affidavit;
- 4) Issue a writ of mandamus requiring the McCormick County Republican Party and the South Carolina Republican Party to withdraw their certifications of Mr. Stearns as a candidate for Sheriff;
- 5) Issue a writ of mandamus directing the appropriate officials of the State of South Carolina to remove Mr. Stearns from the office of Sheriff of McCormick County;
- 6) Award court costs and attorney fees to the plaintiffs; and
- 7) Grant such other relief as this Court deems just and proper.

Respectfully submitted,

By E. Charles Grose, Jr.

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***Attorneys for the Plaintiffs J.R. Jones,  
South Carolina Democratic Party, and  
McCormick County Democratic Party***

September 30, 2017

|                                         |   |                                   |
|-----------------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA                 | ) | IN THE COURT OF COMMON PLEAS      |
|                                         | ) |                                   |
| COUNTY OF MCCORMICK                     | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT |
| J.R. Jones, South Carolina Democratic   | ) | Civil Action No.: 2016-CP-35-134  |
| Party, and McCormick County             | ) |                                   |
| Democratic Party,                       | ) |                                   |
|                                         | ) |                                   |
| Plaintiffs,                             | ) |                                   |
|                                         | ) | <b>DEFENDANT CLARKE ANDERSON</b>  |
| vs.                                     | ) | <b>STEARNS'S POST-TRIAL BRIEF</b> |
|                                         | ) |                                   |
| South Carolina Republican Party,        | ) |                                   |
| McCormick County Republican Party,      | ) |                                   |
| Clarke Anderson Stearns, State of South | ) |                                   |
| Carolina, and Governor Nikki Haley,     | ) |                                   |
|                                         | ) |                                   |
| Defendants.                             | ) |                                   |

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The defendant, Clarke Anderson Stearns, by and through the undersigned counsel, submits the following post-trial brief in support of this Court denying the plaintiffs' request for a writ of mandamus and entering a judgment in favor of the defendants in this matter.

### **BACKGROUND**

This matter is before the Court on the plaintiffs' Verified Complaint requesting that the Court invoke its equitable powers and grant several forms of relief to a candidate, as well as the state and local party with which he is affiliated. J.R. Jones, the candidate for Sheriff of McCormick County who lost by a margin of seventeen percentage points, filed a formal protest of the election with the McCormick County Election Commission (the Commission) in a letter dated November 16, 2016, challenging Stearns's qualifications for sheriff. The Commission held a hearing on Jones's election protest on November 21, 2016. At the hearing, Jones's counsel stated he also was there on behalf of the McCormick County Democratic Party and the South Carolina Democratic Party. After hearing arguments from both parties, the Commission denied the protest. The

plaintiffs did not appeal the Commission's ruling to the State Election Commission. Instead, on December 7, 2016, the plaintiffs filed the present action with this Court, seeking, inter alia, an injunction and a writ of mandamus.

Following a hearing on January 3, 2017, the Honorable William P. Keesley issued an Order on January 19, 2017, denying the plaintiffs' motion for a temporary injunction. The plaintiffs did not appeal this order and took no further action to litigate the case in circuit court. Indeed, the plaintiffs served no discovery and only filed responses denying Stearns's requests for admission. On October 6, 2017, Stearns filed a motion to dismiss for failure to prosecute and, in the alternative, a motion for summary judgment based upon the mootness doctrine. The Court held a hearing on the motions on October 16, 2017. The Court denied the motion to dismiss in a Form 4 Order dated October 18, 2017, and took the motion for summary judgment under advisement.

The parties appeared for a bench trial before the Honorable R. Lawton McIntosh on October 18, 2017. After agreeing the only issue before the Court was a question of law, the parties entered into a stipulation of facts and the Court determined an evidentiary hearing was not necessary. The Court requested that the parties submit a joint stipulation of facts as well as briefs in support of their respective positions within ten days. Accordingly, the case is now ripe for the Court's disposition.

### **ARGUMENT**

The Court should enter judgment in favor of the defendants in this matter because (1) the plaintiffs waived their right to challenge Stearns's qualifications; and (2) even on the merits, Stearns received certification in South Carolina pursuant to the one-year exemption under the statute and, therefore, the case is now moot. Stearns will address each issue in turn.

#### **I. The plaintiffs waived their right to challenge Stearns's qualifications.**

At the hearing before the Court, the plaintiffs conceded that the relief they are seeking at

this stage of the litigation is a writ of mandamus. The Court should deny the plaintiffs' request for a writ of mandamus and enter a judgment in favor of the defendants because the plaintiffs waived the right to challenge Stearns's qualifications by (1) failing to appeal the Commission's decision, which is now the law of the case; (2) waiting until after losing the general election to bring a challenge; and (3) delaying this election protest for almost a year following the election.

**A. A writ of mandamus cannot issue because an adequate remedy at law exists and the Commission's decision is the law of the case.**

The Court should deny the plaintiffs' request for a writ of mandamus because an adequate remedy at law exists in this case. Because the plaintiffs did not appeal the Commission's decision and avail themselves of the adequate legal remedy provided by statute, that decision is the law of the case and they cannot invoke this Court's equitable powers to issue a writ of mandamus.

"Mandamus is the highest judicial writ and is issued only when there is a specific right to be enforced, a positive duty to be performed, and no other specific remedy. City of Rock Hill v. Thompson, 349 S.C. 197, 199, 563 S.E.2d 101, 102 (2002). "A writ of mandamus is a coercive writ that orders a public official to perform a ministerial duty." Id. at 200, 563 S.E.2d at 102. The Court will only issue a writ of mandamus "to compel a public official to perform a mandatory legal duty." Id. "The primary purpose of a writ of mandamus is to enforce an established right and a corresponding imperative duty created or imposed by law." Ex parte Littlefield, 343 S.C. 212, 223, 540 S.E.2d 81, 86 (2000). "When the legal right is doubtful, or the performance of duty rests in discretion, or when there is another adequate remedy, a writ of mandamus cannot rightfully be issued." In re Lyde, 284 S.C. 419, 421, 327 S.E.2d 70, 71 (1985).

The General Assembly has vested county election commissions with the authority to "decide all cases under protest or contest that arise in their respective counties in the case of county officers and less than county offices, except for primaries and municipal elections." S.C. Code

Ann. § 7-17-30 (Supp. 2016) (emphasis added). The “all cases under protest” language of the statute is sufficiently broad to encompass qualifications issues, and the plaintiffs are unable to cite any authority indicating a county election commission is without the authority to decide those issues.<sup>1</sup> Further, as our supreme court clarified in In re November 4, 2008 Bluffton Town Council Election, “[a]ppeals from county election boards are to be made to the South Carolina State Election Commission.” 385 S.C. 632, 638, 686 S.E.2d 683, 686 (2009); see also S.C. Code Ann. § 7-17-60 (1976) (“The decision of the county board may be appealed to the State Board of Canvassers by any candidate adversely affected thereby. Notices of such appeal and the grounds thereof shall be made not later than noon Monday next following such decision by serving such notices on the chairman of the State Board.” (emphasis added)). In this case, the Commission denied the plaintiffs’ protest challenging Stearns’s qualifications on November 21, 2016. Accordingly, the only means by which the plaintiffs could seek review of that decision was by filing notice of appeal with the State Election Commission prior to noon on Monday, November 28, 2016. See S.C. Code Ann. § 7-17-60. The plaintiffs, however, failed to appeal the Commission’s decision. Instead, the plaintiffs filed a Verified Complaint, seeking equitable relief from this Court on December 7, 2016.

The law of the case doctrine “applies to an order or ruling which finally determines a substantial right.” Shirley’s Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (quoting Weil v. Weil, 299 S.C. 84, 89, 382 S.E.2d 471, 473 (Ct. App. 1989)). It is axiomatic that “[a]n unappealed ruling is the law of the case.” Id. Here, the Commission’s denial

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<sup>1</sup> In any event, the plaintiffs were the ones who chose to file this action with the Commission. Counsel for Stearns moved to dismiss, arguing the Commission did not have jurisdiction. However, Jones and the Democratic parties argued the Commission did have jurisdiction and prevailed on this issue. It is ironic the plaintiffs now argue the Commission was the wrong forum to decide their challenge.



of the plaintiffs' protest constituted a filing ruling on the merits that determined a substantial right. See id. Because the plaintiffs failed to appeal that final ruling to the State Election Commission,<sup>2</sup> it is now the law of the case and they are without authority to challenge it in a different forum. Moreover, having the Court to step into the shoes of the State Election Commission by styling the action as one for equitable relief not only would create an end-run around the statute, but also would go against the longstanding principle that a party may not invoke the Court's equitable powers when an adequate remedy at law exists. See Key Corporate Capital, Inc. v. Cty. of Beaufort, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) ("While equitable relief is generally available where there is no adequate remedy at law, an adequate legal remedy may be provided by statute."); Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (asserting that a "court's equitable powers must yield in the face of an unambiguously worded statute").

Here, an adequate remedy at law does exist, and the General Assembly provided for it in

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<sup>2</sup> To the extent the plaintiffs contend Stearns is judicially estopped from arguing the Commission was the appropriate forum in which to challenge a candidate's qualifications, this respectfully represents a misunderstanding of the judicial estoppel doctrine. Although Stearns did argue the Commission lacked jurisdiction over this matter at the hearing, the Commission disagreed with his position and, instead, agreed with the plaintiffs' argument that it could decide issues of qualifications. Because the Commission asserted jurisdiction and ruled upon the matter, the plaintiffs were required to follow the appropriate appellate procedures outlined in the statute. The plaintiffs cannot skip the next level of review and file a complaint in circuit court just because the Commission did not rule in their favor. The plaintiffs must pursue all adequate remedies available at law prior to seeking this Court's assistance in equity. Further, the question of waiver is distinct from the question of subject matter jurisdiction. Indeed, the Court treated these issues as separate. In its Order, Judge Keesley concluded the court had subject matter jurisdiction to hear cases of this kind but declined to rule upon the issue of waiver at the injunction stage. In any event, Stearns would not be judicially estopped from taking a different legal position because he did not prevail on the issue of jurisdiction before the Commission. See Auto Owners Ins. Co. v. Rhodes, 385 S.C. 83, 99 n.6, 682 S.E.2d 857, 866 n.6 (Ct. App. 2009) (noting "the party taking the position must have been successful in maintaining that position and have received some benefit" for a plaintiff to invoke the doctrine of judicial estoppel). Moreover, this is not a dispute about the facts. See Hayne Fed. Credit Union v. Bailey, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) ("Judicial estoppel generally applies only to inconsistent statements of fact."). The issue of waiver presents a question of law for the Court. Therefore, any argument by the plaintiffs' asserting judicial estoppel is without merit.

sections 7-17-30, -50, -60 and -70 of the South Carolina Code. Nothing is inadequate about the remedy of appealing the Commission's decision to the State Election Commission. Indeed, the plaintiffs still could have appealed the State Election Commission's decision to our supreme court. See, e.g., In re Bamberg Ehrhardt Sch. Bd. Election, 337 S.C. 561, 564, 524 S.E.2d 400, 402 (1999) (granting a petitioner-candidate's "writ of certiorari to review the decision of the South Carolina State Election Commission . . . regarding a local school board election"). But the plaintiffs chose to ignore the available legal remedy at their own peril, and they should not be permitted to receive another bite at the proverbial apple by attempting to invoke this Court's equitable powers. Because the plaintiffs circumvented the statutory appellate process outlined in section 7-17-60, which afforded an adequate remedy at law, the Court cannot invoke its equitable powers and issue a writ of mandamus in this case.

Accordingly, the Court should find that the plaintiffs waived their right to challenge Stearns's qualifications by failing to appeal the Commission's decision and enter a judgment in favor of the defendants. See Shirley's Iron Works, Inc., 403 S.C. at 573, 743 S.E.2d at 785 (asserting that "[a]n unappealed ruling is the law of the case"); In re Lyde, 284 S.C. at 421, 327 S.E.2d at 71 (stating that, "when there is another adequate remedy, a writ of mandamus cannot rightfully be issued").

**B. The plaintiffs waived their right to challenge Stearns's qualifications by waiting until after Jones lost the election.**

The Court also should deny the plaintiffs' request for a writ of mandamus and find in favor of the defendants because the plaintiffs failed to challenge Stearns's qualifications in a timely manner and, therefore, waived their right to do so.

"Laches is an equitable doctrine which arises upon the failure to assert a known right." Strickland v. Strickland, 375 S.C. 76, 85, 650 S.E.2d 465, 470 (2007). As our supreme court has

noted, “[t]he equitable doctrine of laches is equivalent to the legal doctrine of waiver.” Id. “Waiver is a voluntary and intentional abandonment or relinquishment of a known right.” Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994). “Both laches and waiver require a party to have known of a right, and known that the party was abandoning that right.” Strickland, 375 S.C. at 86, 650 S.E.2d at 471.

Our supreme court’s decisions in three recent elections cases put the plaintiffs on notice of their right to pursue an action challenging Stearns’s qualifications prior to the general election. See Anderson, 397 S.C. at 555–56, 725 S.E.2d at 706 (granting relief to the plaintiffs “to require compliance with the law and ensure that only legally qualified candidates are included on the ballots” based upon the court’s recognition that finding the dispute ripe for judicial review “avoid[ed] the greater chaos and multiple challenges that would inevitably follow the party primary elections”); Florence Cty. Democratic Party v. Florence Cty. Republican Party, 398 S.C. 124, 129, 727 S.E.2d 418, 421 (2012) (per curiam) (reaffirming the court’s Anderson decision and directing the party “to correct the ballots to remove all improperly certified candidates prior to the party primaries”); Tempel v. S.C. State Election Comm’n, 400 S.C. 374, 382, 735 S.E.2d 453, 457 (2012) (concluding “the circuit court properly ordered a special primary election” because the candidate was disqualified from the initial primary election).

Stearns filed his statement of intention of candidacy, along with the corresponding filing fee and other necessary documents, on March 17, 2016. Among the documents filed was the affidavit in which Stearns confirmed he was a certified law enforcement officer for the requisite period to be qualified to run for sheriff. Stearns won his primary on June 14, 2016, after which he became the Republican nominee for Sheriff of McCormick County. Almost five months later, on November 8, 2016, Stearns and Jones faced off in the general election for sheriff. Under these

circumstances, Jones—at the very latest—knew or should have known of the qualifications issue in June of 2016 when Stearns became his official competitor for the general election. The plaintiffs arguably knew of the qualifications issue as far back the date on which Stearns filed his affidavit. Although the plaintiffs, in the parties’ stipulation of facts filed with the Court, stated they were not aware of the qualifications issue until after the general election, they also conceded that Mr. Stearns’s affidavit was publicly available on the State Election Commission’s website. Accordingly, the plaintiffs should be charged with constructive notice of the issue. See generally Moseley v. All Things Possible, Inc., 395 S.C. 492, 498, 719 S.E.2d 656, 659 (2011) (acknowledging “the benefits flowing from the constructive notice doctrine in which one is charged with knowledge of matters in the public record”).

Regardless of when notice would be attributed, the plaintiffs failed to challenge Stearns’s qualifications until after Jones lost the election. Smith v. Scioto Cty. Bd. of Elections, 918 N.E.2d 131, 133 (Ohio 2009) (“Laches may bar an action for relief in an election-related matter if the persons seeking this relief fail to act with the requisite diligence.”); id. at 134 (holding that “[t]he alleged irregularity . . . [was] not so substantial that relators should be permitted to sleep on their rights until after an adverse election result,” and “they should have raised their claims in a pre-election protest or proceeding rather than in a postelection contest”). Our courts have long recognized that “[t]he law requires more than ordinary diligence on the part of those who . . . contest an election.” State ex rel. Howell v. State Bd. of Canvassers, 101 S.C. 513, 515, 86 S.E. 81, 81 (1915). Frankly, if the plaintiffs did not review Stearns’s filing with the State Election Commission until after the general election, then they committed political malpractice by failing to conduct opposition research on an opposing candidate. Either way, the Court should not permit the plaintiffs to sleep on their rights and potentially disenfranchise a comfortable majority of the

voters who wanted Stearns to serve as sheriff of McCormick County by waiting until after the election to address the issue.

Based upon the foregoing, the Court should deny the plaintiffs' request for a writ of mandamus because they had constructive notice of any qualifications issue prior to the general election and waived their right to challenge Stearns's qualifications based upon the equitable doctrine of laches.

**C. The plaintiffs waived their right to challenge Stearns's qualifications by failing to act with the requisite diligence in this election protest.**

Next, the Court should decline to issue a writ of mandamus and find in favor of the defendants because the plaintiffs waived their right to challenge Stearns's qualifications by failing to act with the requisite diligence in this election protest matter.

As noted above, our courts have long held that "[t]he law requires more than ordinary diligence on the part of those who . . . contest an election." State ex rel. Howell, 101 S.C. at 515, 86 S.E. at 81. In this case, the Commission ruled upon the plaintiffs' protest on November 21, 2016. Instead of appealing that decision to the State Election Commission, the plaintiffs waited until December 7, 2016, to file a Verified Complaint in this Court seeking equitable relief. The plaintiffs did not even request a hearing on the request for an injunction until almost a month later January 3, 2017. After holding a hearing on the matter, the Court issued an Order on January 19, 2017, denying the plaintiffs' motion for a temporary injunction. The plaintiffs, however, did not appeal that order. Cf. Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001) (holding that "[a]n order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction is immediately appealable"). Since that time, the plaintiffs have taken no action to prosecute their claims in circuit court. The plaintiffs have served no written discovery and made

no attempt to schedule depositions. Considering the plaintiffs' failure to take any action in this election matter, the defendants filed a motion to dismiss for failure to prosecute and, in the alternative, a motion for summary judgment based upon the mootness doctrine. At the hearing on these motions, the plaintiffs expressed that they were ready to proceed to a trial of this matter. The hearing on the defendants' dispositive motions was held on October 16, 2017—almost a year after the general election at issue in this case.

Because election contests have the potential to disenfranchise voters, they should be prosecuted and decided in an expeditious manner. The Court should not sanction the plaintiffs sitting on this matter for over ten months and taking no action, all the while leaving the elected sheriff and voters of McCormick County wondering when and whether the case will ever end. The plaintiffs did not act with "more than ordinary diligence" in this case. State ex rel. Howell, 101 S.C. at 515, 86 S.E. at 81. Rather, the plaintiffs acted with zero diligence to litigate this matter in any forum. The general election was held on November 8, 2016, and for the first time, almost a year later, the plaintiffs decided they were finally ready to try this case. Frankly, the law does not allow them to sleep on their rights for that long of a period in the context of an election case.

Therefore, the Court should deny the plaintiffs' request for a writ of mandamus and enter a judgment in favor of the defendants because the plaintiffs waived their right to challenge Mr. Stearns's qualifications to serve as sheriff of McCormick County.

**II. The case is now moot because Stearns received certification in South Carolina pursuant to the one-year exemption in the statute.**

As a preliminary matter, the Court should decline to reach the merits of the plaintiffs' argument regarding the certification statutes because resolution of the waiver issue is dispositive in this case. See Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (declining to address the remaining issues because resolution of a prior issue was

dispositive). However, if the Court decides to rule on the merits, then the Court should find in favor of the defendants because Stearns received certification in South Carolina pursuant to the one-year exemption under the statute and, therefore, the case is now moot.

As our appellate courts have observed, a justiciable controversy must exist before any action may be maintained. Byrd v. Irmo High Sch., 321 S.C. 426, 430, 468 S.E.2d 861, 864 (1996). “The court does not concern itself with moot or speculative questions.” Sloan v. Greenville Cty., 380 S.C. 528, 535, 670 S.E.2d 663, 667 (Ct. App. 2009). “A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy.” Mathis v. S.C. State Highway Dep’t, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). “Mootness also arises when some event occurs making it impossible for the reviewing court to grant effectual relief.” Sloan, 380 S.C. at 535, 670 S.E.2d at 667.

On September 6, 2017, the South Carolina Criminal Justice Academy issued a letter certifying him as a South Carolina Class One Law Enforcement Officer. Thus, Mr. Stearns is now certified in South Carolina. Given that Mr. Stearns has met any and all statutory requirements to serve as a sheriff in South Carolina, this action is now moot because a judgment, if rendered, would have no practical effect upon the existing controversy. See Mathis, 260 S.C. at 346, 195 S.E.2d at 715; Sloan, 380 S.C. at 535, 670 S.E.2d at 667.

The plaintiffs contend that a justiciable controversy still exists because Mr. Stearns allegedly was not qualified at the time he filed for sheriff of McCormick County. Stearns disputes this notion and directs the Court to the statute which outlines the qualifications for the office of sheriff. It does not say “all candidates for sheriff,” and the Court cannot read that language into the statute. Interestingly, the General Assembly did use language in two subsections of section 23-11-110 specifically providing when a qualification must be obtained. Subsection 23-11-

110(A)(2) states that the sheriff must “be a resident of the county in which he seeks the office of sheriff for at least one year immediately preceding the date of the election for sheriff.” Similarly, subsection 23-11-110(A)(4) provides he must “have obtained the age of at least twenty-one years prior to the date of qualifying for election to the office.” These subsections demonstrate the General Assembly knew how to specify the relevant timing for qualifications. The subsection at issue here contains no such requirement. Rather, the relevant subsection at issue requires that a sheriff have “three years experience as a certified law enforcement officer.” S.C. Code Ann. § 23-11-110(A)(5)(b). Stearns had more than three years of experience as a certified law enforcement officer in Virginia and was eligible for an exemption under the ambiguous statute as will be explained in greater detail below.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly].” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “If a statute’s language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.” Miller v. Doe, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994). When a statute is ambiguous, however, a court must construe the terms of the statute according to settled rules of statutory construction. Lester v. S.C. Workers’ Compensation Comm’n, 334 S.C. 557, 561, 514 S.E.2d 751, 752 (1999).

“It is well settled that statutes dealing with the same subject matter are in para materia and must be construed together, if possible, to produce a single, harmonious result.” Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000). “However, regardless of how plain the ordinary meaning of the words in a statute, courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not have been intended by the General



Assembly.” Duke Energy Corp. v. S.C. Dep’t of Revenue, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). “If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect.” Kiriakides v. United Artists Commc’ns, Inc., 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994).

A reasonable construction of the ambiguous statutes at issue compels a finding that Stearns meets the qualifications and, thus, should be allowed to serve as Sheriff of McCormick County. To hold otherwise would lead to an illogical result of not permitting any qualified law enforcement officer who was trained in another state from serving as sheriff in South Carolina.

The statute outlining the qualifications for sheriff provides, in relevant part for Stearns, that all sheriffs must have “obtained a two-year associate degree and three years’ experience as a certified law enforcement officer.” S.C. Code Ann. § 23-11-110(A)(5)(b). Further, the statute indicates that, “[f]or purposes of this section, a ‘certified law enforcement officer’ is a person who has been issued a certificate as a law enforcement officer pursuant to [s]ection 23-23-10.” S.C. Code Ann. § 23-11-110(A)(5). When one reviews section 23-23-10, one will see that it does not define “certified law enforcement officer” as promised in section 23-23-110(A)(5)(b).

Unlike the prior version of the statute cited in the Attorney General’s opinion, attached to plaintiff’s brief as Exhibit 3, the current version of section 23-11-110 does not direct the reader to the specific provision defining a law enforcement officer. Rather, it cites to the entire section outlining the purpose for adopting standards for law enforcement officers. The statute provides as follows:

“Law enforcement officer” means an appointed officer or employee hired by and regularly on the payroll of the State or any of its political subdivisions, who is granted statutory authority to enforce all or some of the criminal, traffic, and penal laws of the State and who possesses, with respect to those laws, the power to effect arrests for offenses committed or alleged to have been committed.

S.C. Code Ann. § 23-23-10(E)(1) (emphasis added). Because subsection 23-23-10(E)(1) does not define certification, the Court must look to the relevant provisions in chapter 23 to determine what certification means in this context. See Rivas, 342 S.C. at 109, 536 S.E.2d at 375. Interestingly, when doing so, the General Assembly also provided that, “nor, unless specifically stated, may anything in this chapter affect any sheriff, or other law enforcement officer elected under the provisions of the Constitution of this State.” S.C. Code Ann. § 23-23-10(B) (emphasis added). In Stearns’s view, the Court’s inquiry ends here because none of the provisions regarding certification requirements mention sheriffs and, thus, are inapplicable. This interpretation also is supported by the fact that sheriffs are not “appointed” or “hired” as the definition of law enforcement officer contemplates. Sheriffs are elected in South Carolina.

Assuming, arguendo, some certification is necessary, as section 23-11-110 indicates, it is instructive to look at section 23-23-40. According to the certification statute,

No law enforcement officer employed or appointed on or after July 1, 1989, by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the council, except that any public law enforcement agency in this State may appoint or employ as a law enforcement officer, a person who is not certified if, within one year after the date of employment or appointment, the person secures certification from the council . . . . Exceptions to the one-year rule may be granted by the director in these cases:

. . . .

(3) upon presentation of documentary evidence that the officer-candidate has successfully completed equivalent training in one of the other states which by law regulate and supervise the quality of police training and which require a minimum basic or recruit course of duration and content at least equivalent to that provided in this chapter or by standards set by the council . . . .

S.C. Code Ann. § 23-23-40(3). Thus, the statute vests discretion in the director of the South

Carolina Criminal Justice Academy to determine whether another state's training is equivalent to that which is offered in South Carolina for purposes of certification. See id.; see also S.C. Code Ann. Regs. § 37-006(A) ("All candidates who have received law enforcement training in other states shall submit satisfactory proof of successful completion and a verified copy of the courses taken. Training will be reviewed on a case by case basis and each candidate will be given credit for any training deemed to be equivalent to training offered by the Academy. All candidates must successfully complete a training program approved by the Council.").

In sum, the qualifications and certification statutes, when read together, can only lead to one of two conclusions: (1) the certification requirements do not apply to sheriffs; or (2) even if they do apply, the sheriff is eligible for the exception to the one-year rule—just as any other law enforcement officer would be—because he received training in another state. Under either interpretation, Mr. Stearns is qualified to stay in the office to which he was duly elected by a large majority of the voters of McCormick County. To the extent the latter interpretation applies, the statute contemplates Stearns taking office and then applying for the exception to the one-year rule with the director of the South Carolina Criminal Justice Academy. Stearns's training history demonstrates satisfactory proof he is well qualified and has significant law enforcement training. Because Stearns was a certified law enforcement officer in Virginia for 31 years, he was entitled to present evidence of his qualifications to the director of the South Carolina Criminal Justice Academy under the statute. He did that and is now certified in South Carolina. On September 6, 2017, the South Carolina Criminal Justice Academy issued a letter certifying him as a South Carolina Class One Law Enforcement Officer.

Therefore, Stearns is qualified to serve as sheriff because he received certification in South Carolina within the one-year requirement and the plaintiffs' challenge to his statutory

qualifications is now moot.

**CONCLUSION**

Based upon the foregoing, the Court should enter judgment in favor of the defendants in this matter because the plaintiffs waived their right to contest Stearns's qualifications to serve as sheriff of McCormick County. The court need not rule on the merits of the plaintiffs' complaint. If, however, the Court reaches the merits, then it should find in favor of Stearns because he either is exempt from the statute or he meets the exception criteria because he received certification from the South Carolina Criminal Justice Academy within one year of taking office. Thus, any challenge to his qualifications is rendered moot.

Respectfully submitted,

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Columbia, South Carolina

October 30, 2017

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|-----------------------------------------|---|-------------------------------------------------|
| THE STATE OF SOUTH CAROLINA             | ) | IN THE COURT OF COMMON PLEAS                    |
|                                         | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT               |
| COUNTY OF MCCORMICK                     | ) |                                                 |
|                                         | ) | Case No. 2016-CP-35-00135                       |
| J.R. Jones, South Carolina Democratic   | ) |                                                 |
| Party, and McCormick County Democratic  | ) |                                                 |
| Party,                                  | ) | <b>Plaintiffs' Response to Defendant Clarke</b> |
|                                         | ) | <b>Anderson Stearns Post-Trial Brief</b>        |
| Plaintiffs,                             | ) |                                                 |
|                                         | ) |                                                 |
| vs.                                     | ) |                                                 |
|                                         | ) |                                                 |
| South Carolina Republican Party,        | ) |                                                 |
| McCormick County Republican Party,      | ) |                                                 |
| Clarke Anderson Stearns, State of South | ) |                                                 |
| Carolina, and McCormick County,         | ) |                                                 |
|                                         | ) |                                                 |
| Defendants.                             | ) |                                                 |
|                                         | ) |                                                 |

**To: The Honorable R. Lawton McIntosh, Presiding Judge, Eleventh Judicial Circuit**

The Plaintiffs respond to the Defendant, Clarke Anderson Stearns', post-trial brief. As a threshold matter, the question before this Court involves an on-going violation of S.C. Code Ann. § 23-11-110, which is Mr. Stearns continued failure to meet the qualifications for Sheriff of McCormick County because he does not have three-years-experience as a law enforcement officer certified by the State of South Carolina. Once this Court recognizes this matter concerns an on-going lack of qualifications and not an election protest, it is apparent why Mr. Stearns' defenses must fail.

**I. The Plaintiffs *did not* waive their right to challenge Mr. Stearns qualification.**

Mr. Stearns asserts, "At the hearing before the Court, the Plaintiffs conceded that the relief they are seeking at this stage of the litigation is a writ of mandamus." Both the Plaintiffs' Amended Complaint and Plaintiffs' Memorandum in Support of Granting Relief Sought in First Amended Complaint (hereinafter "Plaintiffs' Memorandum") prayed for this relief. At the hearing and in the Plaintiffs Memorandum, the Plaintiffs maintained resolution of this case requires this Court

interpret S.C. Code Ann. § 23-11-110 and the relief requested will have the effect of removing Mr. Stearns from the office of Sheriff of McCormick County. As discussed in more detail below, the Plaintiffs did not waive their right challenge Mr. Stearns qualifications to be Sheriff.

**A. The McCormick County Board of Canvassers *does not* provide a remedy at law.**

Mr. Stearns argues, the McCormick Board of Canvassers provides an adequate remedy at law. As set forth in Plaintiffs Memorandum, Section III(A), the Circuit Court—not the McCormick County Board of Canvassers—is the appropriate venue to resolve this controversy. Simply stated, the Plaintiffs are not protesting the results of an election but rather whether Mr. Stearns meets the statutory qualifications to serve as Sheriff. The McCormick County Board of Canvassers does not have subject matter jurisdiction to construe a statute. Resolving questions about the qualifications of a candidate are not included in S.C. Code Ann. § 7-17-10, *et. seq.* It is well settled that an elections commission's authority to hear an election protest is limited by statute. *See, e.g., Butler v. Town of Edgefield*, 328 S.C. 238, 493 S.E.2d 838 (1997).

Mr. Stearns also claims the decision of the McCormick County Board of Canvassers is the law of the case. This confuses the grounds for the filing of the current lawsuit. As mentioned above, the question before this Court involves an on-going violation of S.C. Code Ann. § 23-11-110, which is Mr. Stearns continued failure to meet the qualifications for Sheriff of McCormick County because he does not have three-years-experience as a law enforcement officer certified by the State of South Carolina. The decision handed down by the Board of Canvassers dealt with Mr. Stearns qualifications *to run* for the office of Sheriff. The question currently before the Court deals with Mr. Stearns ongoing lack of qualification *to serve* as Sheriff of McCormick County. These questions of law are distinct; thus, the Board of Canvassers election protest decision should not be

viewed as the law of this case. Here, the Plaintiffs are not protesting the results of an election but rather whether Mr. Stearns meets the statutory qualifications to serve as Sheriff.

**B. The Plaintiffs *did not* waive their right to challenge Mr. Stearns qualifications by waiting until after the general election.**

Mr. Stearns misstates the holdings in *Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 725 S.E.2d 704 (2012), *Florence Cty. Democratic Party v. Florence Cty. Republican Party*, 398 S.C. 124, 727 S.E.2d 418 (2012), and *Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 735 S.E.2d 453 (2012). As set forth in Plaintiffs' Memorandum, Section III(A) and (B), these cases support the Plaintiffs' request for relief. This Court has subject matter jurisdiction to interpret S.C. Code Ann. § 23-11-110. A pre-election request to interpret the statute is not the exclusive remedy. *Anderson*, 397 S.C. at 556, 725 S.E.2d at 706.

The essence of Mr. Stearns' argument is, "I got away with it, and there is nothing anyone can do about it." Our Supreme Court, however, has warned candidates and political parties that do not comply with the election laws proceed at their own "peril." *Florence Cty. Democratic Party*, 398 S.C. at 130, 727 S.E.2d at 421. Our Supreme Court has also invalidated the results of an election when party officials ignored their ministerial obligation to ensure candidate are properly qualified. *See, e.g., Tempel*.

**C. The Plaintiffs *did not* waive their right to challenge Mr. Stearns qualifications by failing to act with the requisite diligence in this lawsuit.**

The Plaintiffs acted diligently. This lawsuit was filed before Mr. Stearns took the oath of office. The Plaintiffs sought but the Circuit Court denied their request for a temporary injunction. There was no requirement for the Plaintiffs to appeal the order of the Honorable William P. Keesley dated January 19, 2017.

This Court already rejected the remainder of Mr. Stearns arguments when it denied Mr. Stearns motion to dismiss by order dated October 18, 2017. This Court properly recognized Plaintiffs' counsel service in the General Assembly and the National Guard. S.C. Code Ann. §§ 2-1-150 and 25-1-2260; S.C. Ct. Orders 2017-5-19-1, 2013-06-21-01, and 2010-04-21-01.

**II. The case is *not* moot because Mr. Stearns still does not meet the qualifications to be Sheriff of McCormick County.**

Mr. Stearns argues his September 6, 2017 certification as a South Carolina Class One Law Enforcement Officer renders this lawsuit moot because he now meets all the statutory requirements to serve as Sheriff of McCormick County. This argument ignores the plain meaning of S.C. Code Ann. § 23-11-110, which requires three years experience as a law enforcement officer certified by the South Carolina Criminal Justice Academy *before* being qualified to serve as a sheriff in our state.

In his post-trial brief, at p. 11, Mr. Stearns suggests there is a distinction between “candidates for sheriff” and the requirement that “[a]ll sheriffs in this State must have [specified statutory] qualifications.” S.C. Code Ann. § 23-11-110(A). The provision applying to Mr. Stearns mandates he must “have obtained a two-year associate degree and three years experience as a certified law enforcement officer.” S.C. Code Ann. § 23-11-110(A)(5)(b). Any distinction between “candidate for sheriff” and actually serving as sheriff notwithstanding, there is no interpretation of the statute under which Mr. Stearns meets the statutory qualifications. He didn’t meet the qualifications when he signed his affidavit to run for sheriff. He didn’t meet the qualifications when he won the Republican primary. He didn’t meet the qualifications when he won the general election. He didn’t meet the qualifications when he took the oath of office. He didn’t meet the qualifications when the Criminal Justice Academy certified him as a law enforcement officer in South Carolina for the first time on September 6, 2017. He didn’t meet the



qualifications when this case was called for trial. He doesn't meet the qualifications to be sheriff to this day.

To the extent Mr. Stearns argues the Plaintiffs' interpretation of the statute causes an "absurd result," this Court must reject that contention. It is reasonable for our General Assembly to require the sheriffs of this state to have experience working within our state's unique law enforcement structure and enforcing our state's unique laws. In fact, our General Assembly sought to avoid exactly what happened in McCormick County—someone moving to South Carolina and running for sheriff without any understanding of our state's institutions, procedures, and substantive criminal laws.

In fact, Mr. Stearns devotes much of his post-trial brief urging this Court to apply the rules of statutory construction. The statute, however, is plain and unambiguous. "Where the statute's language is plain, unambiguous, and conveys a clear, definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011).

### **III. Conclusion.**

This Court should grant the relief requested in the Plaintiffs first amended complaint and Memorandum in Support of Granting Relief Sought in First Amended Complaint.

Respectfully submitted,

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November 16, 2017

|                                         |   |                                   |
|-----------------------------------------|---|-----------------------------------|
| STATE OF SOUTH CAROLINA                 | ) | IN THE COURT OF COMMON PLEAS      |
|                                         | ) |                                   |
| COUNTY OF MCCORMICK                     | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT |
|                                         | ) |                                   |
| J.R. Jones, South Carolina Democratic   | ) | Civil Action No.: 2016-CP-35-134  |
| Party, and McCormick County             | ) |                                   |
| Democratic Party,                       | ) |                                   |
|                                         | ) |                                   |
|                                         | ) |                                   |
| Plaintiffs,                             | ) |                                   |
|                                         | ) | <b>DEFENDANT CLARKE STEARNS'S</b> |
| vs.                                     | ) | <b>RESPONSE TO PLAINTIFFS'</b>    |
|                                         | ) | <b>POST-TRIAL BRIEF</b>           |
|                                         | ) |                                   |
| South Carolina Republican Party,        | ) |                                   |
| McCormick County Republican Party,      | ) |                                   |
| Clarke Anderson Stearns, State of South | ) |                                   |
| Carolina, and County of McCormick,      | ) |                                   |
|                                         | ) |                                   |
| Defendants.                             | ) |                                   |
|                                         | ) |                                   |

The defendant, Clarke Stearns, by and through the undersigned counsel, submits the following response to the plaintiffs' post-trial brief. For the reasons set forth below, as well as those raised in Stearns's post-trial brief, the Court should deny the plaintiffs' request for a writ of mandamus and enter a judgment in favor of the defendants.

First, the plaintiffs now take the position that the "McCormick County Board of Canvassers"<sup>1</sup> (the Commission) was not "the appropriate venue to resolve this controversy." Pls.' Br. at 4. The plaintiffs' argument to this Court is the exact opposite of the argument they articulated at the hearing before the Commission. With all due respect, the plaintiffs are the ones who filed their protest in that forum and asked the Commission to resolve the present controversy.

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<sup>1</sup> The relevant statutes refer to a county election commission as a "county board of canvassers" and the State Election Commission as the "State Board of Canvassers." In McCormick County, the county election commission is called the Department of Voter Registration and Elections for McCormick County. Regardless of which moniker is assigned to these entities, they are both election commissions for all intents and purposes. *See, e.g.*, S.C. Code Ann. § 7-17-10 (Supp. 2016) ("The commissioners of election . . . shall proceed to organize as the county board of canvassers."); S.C. Code Ann. § 7-17-210 (1976) ("The State Election Commission shall, ex officio, constitute the State Board of Canvassers").

It makes little sense for the plaintiffs to criticize the choice of forum when the decision of where to file this action rested solely with the plaintiffs. Further, this issue already was raised to and ruled upon by the Commission. See Comm’n Transcr. at 49. In response to Stearns’s motion to dismiss, the plaintiffs defended their decision to file the protest with the Commission, arguing the Commission had jurisdiction to decide issues of qualifications. The Commission agreed with the plaintiffs, denied Stearns’s motion to dismiss, and reached the merits of the protest.

In the notice of election protest addressed to the “McCormick County Election Commission,” attached hereto as **Exhibit 1**, J.R. Jones advised that he was “submitting this letter in formal protest of the November 8, 2016 McCormick County Sheriff’s Race. Mr. Stearns does not meet the qualifications set forth by the State of South Carolina.” During the hearing before the Commission, the plaintiffs<sup>2</sup> argued that “nothing in the statute . . . says it is limited to voting irregularities. These are the protests of an election and we have an election in which a timely protest was filed [, and] there’s nothing that says that [the Commission does not] have the power to look at the qualifications of Mr. Stearns.” Comm’n Transcr. at 17. The Commission agreed with the plaintiffs’ argument and denied Stearns’s motion to dismiss the protest for lack of subject matter jurisdiction.

Stearns, of course, acknowledges that he argued the Commission did not have jurisdiction to decide this case. At this stage, however, that is beside the point. The Commission disagreed with this argument and ruled upon the merits of the plaintiffs’ protest. That ruling is now the law of the case, and the plaintiffs are barred from litigating it again in this Court under the law-of-the-case doctrine and collateral estoppel. See Shirley Iron Works, Inc. v. City of Union, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) (“An unappealed ruling is the law of the case.”); Carolina

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<sup>2</sup> All plaintiffs in the current lawsuit were represented by counsel at the hearing before the Commission. See Comm’n Transcr. at 5.

Renewal, Inc. v. S.C. Dep't of Transp., 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009) (“Collateral estoppel, also known as issue preclusion, prevents a party from relitigating an issue that was decided in a previous action, regardless of whether the claims in the first and subsequent lawsuits are the same.”); Bennett v. S.C. Dep't of Corr., 305 S.C. 310, 312, 408 S.E.2d 230, 231 (1991) (noting our appellate courts have “repeatedly held that, under the doctrine of . . . collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action” (emphasis omitted)).

The plaintiffs chose this path for contesting Stearns’s qualifications, and they were required to follow it through to the end. They cannot skip the appeal and then come to this Court to raise the same issue. The Commission even informed the plaintiffs of their right to appeal this matter to the State Election Commission after their protest was denied. Comm’n Transcr. at 49. By statute, the plaintiffs had to appeal the decision by no later than noon on Monday, November 28, 2016. S.C. Code Ann. § 7-17-60 (1976) (providing a candidate adversely affected by the decision of the county board shall file a notice of appeal “not later than noon Monday next following such decision by serving such notice[] on the chairman of the State Board”). If the plaintiffs lost again in the State Election Commission, then the statute directed them to appeal that decision directly to our supreme court. S.C. Code Ann. § 7-17-270 (Supp. 2016) (“Appeals from decisions of the State Board shall be taken directly to the Supreme Court on petition for a writ of certiorari only based on the record of the State Board hearing and shall be granted first priority of consideration by the Court.”). But the plaintiffs ignored this adequate remedy at law provided for by statute and failed to file a timely appeal of the Commission’s decision. Instead, they filed a Verified Complaint in circuit court on December 7, 2016, asking this Court to invoke its equitable powers to grant it various forms of relief.

At the end of the day, the plaintiffs had complete control over the choice of forum, and their failure to avail themselves of a known legal remedy precludes them from litigating these issues again in this Court under any number of theories. See, e.g., Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989) (asserting that a “court’s equitable powers must yield in the face of an unambiguously worded statute”); Shirley Iron Works, Inc., 403 S.C. at 573, 743 S.E.2d at 785 (“An unappealed ruling is the law of the case.”); Bennett, 305 S.C. at 312, 408 S.E.2d at 231 (noting our appellate courts have “repeatedly held that, under the doctrine of . . . collateral estoppel, the decision of an administrative tribunal precludes the relitigation of the issues addressed by that tribunal in a collateral action”).

Second, as this Court seemed to recognize at the trial hearing, the Commission’s argument that “any registered voter or [c]itizen of McCormick County could bring the same claim at any time” is manifestly without merit. It is well-settled that, to bring a legal challenge, a party must have standing either (1) via statute, (2) through the rubric of constitutional standing, or (3) under the public importance exception. ATC South, Inc. v. Charleston Cty., 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). The plaintiffs cannot point to a statute that would afford “any registered voter or [c]itizen” standing, nor would any such person automatically satisfy constitutional standing. As noted in previous filings, the plaintiffs’ contention that deputies would not have the power to arrest is unsupported by the law. All deputy sheriffs currently have the power to arrest because their ability to perform that duty flows from the office of the Sheriff of McCormick County, not the individual sheriff. See S.C. Code Ann. § 23-13-50 (1989) (“When duly qualified a deputy sheriff may perform any and all of the duties appertaining to the office of his principal.” (emphasis added)). In other words, the likelihood of proving a concrete and particularized injury for purposes of constitutional standing is questionable at best. Moreover, “standing cannot be

granted to every individual who has a grievance against a public official” under the public importance exception. ATC South, Inc., 380 S.C. at 199, 669 S.E.2d at 341. Likewise, “any registered voter or [c]itizen” could not contest this matter “at any time” because “the mutuality [of parties] requirement is not necessary for the application of collateral estoppel where the party against whom estoppel is asserted had a full and fair opportunity to previously litigate the issues.” Carolina Renewal, Inc., 385 S.C. at 554, 684 S.E.2d at 782. Courts have applied collateral estoppel even when one of the parties “was not a party to the initial . . . lawsuit.” Id. at 555, 684 S.E.2d at 782. Thus, contrary to the plaintiffs’ argument, several legal principles prevent “any registered voter or [c]itizen” from bringing the same challenge to Stearns’s qualifications “at any time.”

Third, the plaintiffs misunderstand part of Stearns’s waiver argument and have cited no authority in support of their bold assertion that the right to contest his qualifications “is not waivable.” In his initial post-trial brief, Stearns argued that the Anderson line of cases<sup>3</sup> put the plaintiffs on notice of their right to challenge his qualifications prior to the election. Stearns did not argue this was the exclusive remedy. Under Anderson, however, a pre-election challenge is certainly preferred for a number of policy reasons. Further, the Anderson court did not address whether a plaintiff who knows of qualifications issues prior to the election, yet waits until after losing the election to bring a challenge, has waived the right to do so. Under the facts and circumstances of this case, Stearns contends the plaintiffs waived their right to protest his qualifications because they slept on their rights by waiting until after they lost the election to challenge a known issue. See, e.g., Smith v. Scioto Cty. Bd. of Elections, 918 N.E.2d 131, 133 (Ohio 2009) (“Laches may bar an action for relief in an election-related matter if the persons

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<sup>3</sup> See Anderson v. S.C. Election Comm’n, 397 S.C. 551, 725 S.E.2d 704 (2012) (per curiam); Florence Cty. Democratic Party v. Florence Cty. Republican Party, 398 S.C. 124, 727 S.E.2d 418 (2012) (per curiam); Tempel v. S.C. State Election Comm’n, 400 S.C. 374, 735 S.E.2d 453 (2012).

seeking this relief<sup>6</sup> fail to act with the requisite diligence.”); *id.* at 134 (holding the relators should not “be permitted to sleep on their rights until after an adverse election result” and “should have raised their claims in a pre-election protest or proceeding rather than in a postelection contest”).

Fourth, the plaintiffs’ constructive notice argument amounts to a distinction without a difference. The plaintiffs concede they had constructive notice of Stearns’s affidavit because it was publicly available on the State Election Commission’s website. Nevertheless, the plaintiffs argue they were not on notice of any qualifications issues. Interestingly, while the plaintiffs have declined to offer how they did become aware of this issue, they contend it did not come to their attention until after the election. Given the speed with which the notice of protest was filed, which specifically challenged Stearns’s qualifications, this argument is questionable at best. To be sure, Stearns touted his thirty-one years of experience as a law enforcement officer in Virginia throughout the campaign, and this information was in the affidavit posted on the State Election Commission’s website. The plaintiffs knew Stearns had obtained his law enforcement experience in Virginia and had recently moved to South Carolina. Therefore, the argument that reviewing the affidavit would not have put them on notice of his lack of certification in South Carolina at the time he filed for office is without merit. The plaintiffs should have known—and most likely did know—about the qualifications issue prior to the election and, therefore, should not be permitted to sleep on their rights by waiting until after Jones lost the election to bring a challenge. For these reasons, at the very least, the plaintiffs should be charged with constructive notice of the qualifications issue prior to the election.

Fifth, the plaintiffs’ contention that “no adequate remedy at law exists” is a bit disingenuous. As noted above, the Commission agreed with the plaintiffs’ argument at the hearing and ruled it had the authority to decide the qualifications issue raised in the notice of protest. The



relevant statutes provided a roadmap for seeking appellate review of the Commission's decision. The final level of review, of course, was in the Supreme Court of South Carolina. See S.C. Code Ann. §§ 7-17-60 & -270. Nothing is inadequate about appealing the decision of the forum chosen by the plaintiffs to the State Election Commission and then, if necessary, to our supreme court. The statutes in Title 7 gave the plaintiffs a remedy, they pursued that remedy, and the Commission ruled on the merits of their protest. The plaintiffs failed to appeal the decision to the State Election Commission, and they cannot now come to this Court in equity and argue the legal remedy they knowingly abandoned is inadequate. See Parker v. Parker, 313 S.C. 482, 487, 443 S.E.2d 388, 391 (1994) ("Waiver is a voluntary and intentional abandonment or relinquishment of a known right.").

Sixth, and finally, to the extent the plaintiffs also seek a declaratory judgment and an injunction, these remedies are unavailable for the same reasons a writ of mandamus cannot issue. The plaintiffs had an adequate remedy at law, failed to avail themselves of that remedy, and cannot ask this Court to grant the drastic relief they now seek after having a change of heart about their choice of venue. See, e.g., Smith v. S.C. Ret. Sys., 336 S.C. 505, 527, 520 S.E.2d 339, 351 (Ct. App. 1999) ("[I]t is well settled a court ordinarily will refuse to grant a declaratory judgment where a special statutory remedy has been provided."); Hampton v. Haley, 403 S.C. 395, 409, 743 S.E.2d 258, 265 (2013) ("Due to its drastic and extraordinary nature, courts should issue injunctions with caution and only where no adequate remedy exists at law.").

Based upon the foregoing, the Court should decline the plaintiffs' invitation to invoke its equitable powers and grant extraordinary relief in this matter because the plaintiffs waived their right to challenge the decision of the Commission by failing to appeal it to the State Election Commission. Simply put, the plaintiffs' failure to avail themselves of the adequate legal remedy

provided in the statutory scheme is fatal to the present case. For these reasons, Stearns respectfully opposes the arguments raised in the plaintiffs' post-trial brief filed with this Court. As pointed out in Stearns's post-trial brief, even if the Court does reach the merits, this case is moot because Stearns obtained South Carolina certification pursuant to the one-year exemption provided for in the statute. Under either scenario, the Court should enter a verdict in favor of the defendants.

Respectfully submitted,

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November 13, 2017

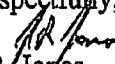
# EXHIBIT 1

November 16, 2016

Dear McCormick County Election Commission

I am submitting this letter in formal protest of the November 8, 2016 McCormick County Sheriff's Race. Mr. Stearns does not meet the qualification sets forth by the State of South Carolina.

Respectfully,

  
J.R. Jones

NOV 16 2016  
10:52am  
JCG

|                                         |   |                                   |
|-----------------------------------------|---|-----------------------------------|
| THE STATE OF SOUTH CAROLINA             | ) | IN THE COURT OF COMMON PLEAS      |
|                                         | ) | FOR THE ELEVENTH JUDICIAL CIRCUIT |
| COUNTY OF MCCORMICK                     | ) |                                   |
|                                         | ) | Case No. 2016-CP-35-00135         |
| J.R. Jones, South Carolina Democratic   | ) |                                   |
| Party, and McCormick County Democratic  | ) |                                   |
| Party,                                  | ) | <b>Rule 59(e), SCRCP Motion</b>   |
|                                         | ) |                                   |
| Plaintiffs,                             | ) |                                   |
|                                         | ) |                                   |
| vs.                                     | ) |                                   |
|                                         | ) |                                   |
| South Carolina Republican Party,        | ) |                                   |
| McCormick County Republican Party,      | ) |                                   |
| Clarke Anderson Stearns, State of South | ) |                                   |
| Carolina, and McCormick County,         | ) |                                   |
|                                         | ) |                                   |
| Defendants.                             | ) |                                   |
|                                         | ) |                                   |

**To: The Honorable R. Lawton McIntosh, Presiding Judge, Eleventh Judicial Circuit**

Pursuant to Rule 59(e), SCRCP, the plaintiffs move the Court for an order altering or amending its written order dated November 6, 2017.<sup>1</sup> This motion is based on the following grounds:

1) The plaintiffs' first amended complaint requested this Court issue an order "declaring that Defendant [Clarke Anderson] Stearns does not meet the qualifications set forth in S.C. Code Ann. § 23-11-110" to be a sheriff in South Carolina. During the hearing on October 18, 2017, the plaintiffs made this same request. Plaintiffs' Memorandum in Support of Granting Relief Sought in First Amended Complaint (Plaintiffs' Memorandum") requested this same relief. This Court's order does not address this issue. For the reasons set forth in the amended complaint, argued at the hearing, and reasserted in Plaintiffs' Memorandum, this Court should withdraw the

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<sup>1</sup> By email dated October 31, 2017, the parties informed the Court that "all parties would like the opportunity to respond to each other's briefs" and requested an opportunity "to file response briefs by no later than Monday, November 6." This Court issued its order before the parties had a chance to file those briefs.

order dated November 6, 2017 and enter an order declaring Mr. Stearns does not meet the qualifications of sheriff set forth in S.C. Code Ann. § 23-11-110.

2) This Court's order misunderstands the statutory authority of the McCormick County Board of Canvassers. As set forth in Plaintiff's Memorandum, Section III(A), the authority of the McCormick County Board of Canvassers is limited to counting the votes (including absentee votes), examining the provisional ballots, considering challenges and protests to specific votes, and certifying the results of the election. The matter before this Court involves an interpretation of a statute. "The construction of a statute is a judicial function and responsibility." *JRS Builders, Inc. v. Neunsinger*, 364 S.C. 596, 614 S.E.2d 629. And see *Anderson v S C. Election Comm'n*, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012) ("[W]e are not asked to judge a disputed legislative election but rather to interpret a statute."). Simply stated, this matter is not an election protest, but rather an action for this Court to declare the meaning of a statute. Thus, the Circuit Court—not the McCormick County Board of Canvassers—is the appropriate venue to resolve this controversy.

3) This Court's order "questions whether the certification of a Candidate as being 'qualified' to run for the office being sought Constitutes a ministerial duty." As set forth in Plaintiffs' Memorandum, Section III(D), the acts of completing the affidavit to run for office and determining whether a meets the statutory qualifications are ministerial and not discretionary. Additionally, this Court overlooks that amended complaint which requests the issue an order "to the extend necessary, directing the appropriate officials of the State of South Carolina to remove Defendant Stearns from the Office of Sheriff." Plaintiffs' Memorandum, likewise, requested this Court "[i]ssue a writ of mandamus directing the appropriate officials of the State of South Carolina to remove Mr. Stearns from the office of Sheriff of McCormick County." Once this Court declares

Mr. Stearns does not meet the statutory qualifications to be sheriff, he is no longer sheriff as a matter of law. Any action to remove him from office, thus, would be ministerial.

For the reasons set forth in the amended complaint, argued at the hearing, and reasserted in Plaintiffs' Memorandum, this Court should withdraw the order dated November 6, 2017 and enter an order declaring Mr. Stearns does not meet the qualifications of sheriff set forth in S.C. Code Ann. § 23-11-110.

Respectfully submitted,

By E. Charles Grose, Jr.

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South Carolina Democratic Party, and  
McCormick County Democratic Party***

November 9, 2017.

VOTER REGISTRATION AND ELECTIONS  
FOR MCCORMICK COUNTY

## ELECTION PROTEST HEARING

\*\*\*\*\*

**Monday, November 21, 2016**  
11:05 a.m. - 12:20 p.m.

The Election Protest Hearing was held at the McCormick Administration Building, 610 South Mine Street, Multipurpose Room, McCormick South Carolina, on the 21st day of November, 2016 before Barbara S. Ham, Court Reporter and Notary Public in and for the State of South Carolina.



**CREEL COURT REPORTING, INC.**  
1230 Richland Street / Columbia, SC 29201  
(803) 252-3445 / (800) 822-0896



**APPEARANCES****BOARD MEMBERS:**

Martha Brown, Chairman  
 Suffie Jennings  
 Larry Baker  
 Laverne Moss  
 Rita Smith  
 Pete Shumway

**ADVISING THE BOARD:**

G. P. Callison, Jr., Esquire

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Intention of Candidacy & Party Pledge and  
Filing Affidavit - Sheriff)**Exhibit Number Two . . . . . 37**(Training History from the Northern  
Virginia Criminal Justice Training Academy)**STIPULATIONS**

It is stipulated and agreed that this hearing  
is being taken pursuant to the Administrative  
Procedures Act, the Practice Act and Regulations of  
the Board.



## ELECTION PROTEST HEARING - MCCORMICK

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1 **CHAIRMAN:** Well we all know why we are here this  
2 morning so we are going to open up as usual.  
3 And we will the invocation at this time and  
4 after that we will have the pledge of  
5 allegiance to the flag.

6 (INVOCATION)

7 (PLEDGE OF ALLEGIANCE)

8 **CHAIRMAN:** Thank you. At this time we are here to  
9 hear a protest and our lawyer is going to  
10 assist us in this proceeding. So at this  
11 time we will turn it over to him.

12 **MR. CALLISON:** All right. Thank you, Madam  
13 Chairman, I appreciate that. I want to --  
14 let's get some ground rules who's involved,  
15 who are the two parties and do they have  
16 counsel?

17 **MR. SMITH:** Yes, sir.

18 **MR. TYSON:** Yes, sir.

19 **MR. CALLISON:** All right. My understanding is and  
20 I wanted to know if everybody agreed with  
21 this that the protest was filed timely,  
22 November 16th, and that the protest stated  
23 that Mr. Stearns lacked the qualifications to  
24 run for sheriff. Is that correct?

25 **MR. SMITH:** That's correct.



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## ELECTION PROTEST HEARING - MCCORMICK

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1 **MR. CALLISON:** From Mr. Jones' standpoint I would  
2 like to know specifically and the Board would  
3 like to know, what the particular  
4 qualification that is being objected because  
5 the note just says qualification. It doesn't  
6 say exactly what it is.

7 **MR. SMITH:** Sure. And I will answer if I might on  
8 behalf of myself and Mr. Stafford. I  
9 represent -- my name is James Smith and I  
10 represent the McCormick County Democratic  
11 Party and the State Democratic Party and I am  
12 pleased to be amongst y'all's presence today  
13 and then with me, I'll let you introduce  
14 yourself, sir.

15 **MR. STAFFORD:** I'm Thomas Stafford and I also  
16 represent Mr. Jones.

17 **MR. CALLISON:** Well at this point, you know, really  
18 just to tie down the issues.

19 **MR. SMITH:** Right.

20 **MR. CALLISON:** What I am trying to do is to make  
21 sure we just have the issues tied down. The  
22 point that the protestors timely filed, that  
23 is not an issue.

24 **MR. SMITH:** Right.

25 **MR. CALLISON:** Is that correct?



## ELECTION PROTEST HEARING - MCCORMICK

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1 MR. TYSON: Yes, sir. Good morning, Mr. Callison.

2 MR. CALLISON: Yes.

3 MR. TYSON: My name is Rob Tyson and I represent  
4 Mr. Stearns and he would definitely agree to  
5 that. The protest was timely filed.

6 MR. CALLISON: Okay. It was timely filed and I'm  
7 going out there -- is the issue that's to be  
8 determined by this Board, is that related to  
9 the definition of certifiable law enforcement  
10 officer?

11 MR. SMITH: Right. That is correct.

12 MR. CALLISON: Is that the gist of the case?

13 MR. SMITH: I would say that is at issue.

14 MR. STAFFORD: That's correct.

15 MR. CALLISON: All right. So we know that that is  
16 what this hearing is limited to is that  
17 issue. That we do have a stipulation that it  
18 was filed appropriately so Ms. Chairman I  
19 would recommend that the -- Mr. Jones'  
20 attorney and then Mr. Stearns' attorney give  
21 us a brief overview of the positions on this  
22 matter and we will start with Mr. Jones.

23 MR. TYSON: Mr. Callison?

24 MR. CALLISON: Yes.

25 MR. TYSON: Can I make a comment?



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1     **MR. CALLISON:** Absolutely.

2     **MR. TYSON:** I'd like to file a motion to dismiss  
3           because I don't think this issue now that you  
4           have heard from the protestant and he has  
5           told you what is about. It is about  
6           qualifications and, you know, we don't believe  
7           that this Commission has the authority to  
8           determine a candidate's qualifications. So  
9           I'd like to argue that motion to dismiss. I  
10          don't know if you want me to do that now or  
11          if you want to let James do his talking or  
12          however but we would like to move to dismiss  
13          this before we get into the merits on  
14          discussion.

15    **MR. CALLISON:** Okay. Let's go ahead and hear from  
16          -- I'd recommend that we hear first so that  
17          we tie down exactly what we are talking  
18          about. We are talking about qualifications  
19          if that's okay and you can argue the motion.

20    **MR. TYSON:** Okay.

21    **MR. CALLISON:** That's kind of going in that same  
22          direction.

23    **MR. SMITH:** Thank you. Good morning.

24    **CHAIRMAN:** Good morning.

25                    **MR. SMITH'S STATEMENT:**



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## ELECTION PROTEST HEARING - MCCORMICK

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1 **MR. SMITH:** Members of the Commission it is a  
2 privilege to be with you today. This  
3 complaint has been brought about  
4 qualifications and what we have here is the  
5 election of a constitutional officer for  
6 McCormick County and those qualifications were  
7 set by statute and set by the constitution.  
8 And they also will have tremendous  
9 implications on whether or not this  
10 individual, Mr. Stearns, even have arrest  
11 authority given what we believe are  
12 irregularities not just some of the  
13 qualifications but the irregularities in the  
14 election and so I know what my good colleague  
15 on who we've been in many cases together with  
16 who will argue that this is a case of purely  
17 qualifications. But you also are responsible  
18 to consider election, you know, irregularities  
19 and we would say ...

20 **(Objection in the audience)**

21 **MR. CALLISON:** You don't have the right to speak or  
22 object to this hearing. This is a hearing  
23 that has come before this Board and this  
24 Board will determine that. He is making  
25 statement and that's fine but we have tied



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## ELECTION PROTEST HEARING - MCCORMICK

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1 the issues down and they don't have anything  
2 to do with -- the hearing has to do with  
3 qualifications.

4 **MR. SMITH:** Yes, sir.

5 **MR. CALLISON:** That's what was filed and that's  
6 what it's limited to so let's address that.

7 **MR. SMITH:** Yes, sir. So what I think we would  
8 like to proceed with today and I think will  
9 be important for this Commission to hear,  
10 really from Mr. Stearns himself under oath.  
11 We have an oath that he took when he swore  
12 and signed an affidavit and he said he met  
13 those qualifications. He represented to all  
14 of you and he represented to all the people  
15 of McCormick County that he was qualified and  
16 met those obligations, he swore to that. I  
17 think we need to hear from him again to make  
18 clear once and for all if that is in fact the  
19 case or not and certainly for the citizens of  
20 McCormick County to know whether or not he in  
21 fact does meet the legal qualifications to be  
22 this county sheriff. Because there's huge  
23 implications, huge implications for the  
24 citizens of the county because if he doesn't  
25 have the constitutional authority and power to





## ELECTION PROTEST HEARING - MCCORMICK

10

1           arrest then none of his deputies do. And so  
2           for the citizens of this great county who are  
3           in need of services of their sheriff this  
4           needs to be resolved and I believe y'all have  
5           the power to resolve that and to begin the  
6           resolution of that today. Thank you.

7       **MR. CALLISON:** Yes, sir.

8       **MR. TYSON:** Thank you.

9       **MR. CALLISON:** Rob, go ahead and I think the Board  
10          will be good to hear your motion to dismiss  
11          and then we will proceed and we will take  
12          that up at the appropriate time.

13                           **MR. TYSON'S STATEMENT:**

14       **MR. TYSON:** Where would y'all like me? Are y'all  
15          okay over here I just feel like I'm off to  
16          the side over here. If this is okay I am  
17          just going to put this here. Again, my name  
18          is Rob Tyson and I represent Mr. Stearns. As  
19          you know he won the election two weeks ago  
20          with nearly 57 percent of the votes.  
21          Pursuant to the statute this Commission is  
22          tasked with you the Board of canvassers and  
23          canvassers means you canvas the votes, you  
24          certify the results. You heard Mr. Smith  
25          just say this doesn't have anything to do



## ELECTION PROTEST HEARING - MCCORMICK

11

1 with voting this has to do about  
2 qualifications. You know, he respectfully  
3 suggests that you don't have the authority to  
4 determine what qualifications are and thus we  
5 believe this protest is inappropriate and  
6 should be dismissed. And you don't need to  
7 hear testimony from Mr. Stearns about his  
8 qualifications or whatever else Mr. Smith --  
9 he's got the burden to demonstrate that he is  
10 not qualified and we don't believe that you  
11 should even go that far.. Under the statute  
12 and y'all know this but let me just quickly  
13 just reference it for the record I mean under  
14 the statute that is section 17-17-10, that's  
15 your authority. That's your authority. It  
16 tells how y'all are comprised. It tells how  
17 y'all are elected. And then at 7-17-20 it  
18 tells you what you are to do. It says you  
19 are to canvas the votes. The County Board of  
20 Canvassers respectfully shall then proceed to  
21 canvas the votes of the county and make such  
22 statements of such votes as the nature of the  
23 election shall require no later than noon on  
24 the Saturday following the election. And at  
25 such time shall transmit to the State Board



## ELECTION PROTEST HEARING - MCCORMICK

12

1 of Canvassers the results of the findings.  
2 And y'all have done that. That is your  
3 responsibility. You counted the votes, you  
4 looked at the provisional, you looked at the  
5 absentees, you looked to see whether any of  
6 these votes in McCormick County had any  
7 challenges or any protests about specific  
8 votes. You've done that. And then the next  
9 section says you are to -- you have the  
10 authority to hear protests. And then it  
11 tells you when it's got to be filed, it's to  
12 be filed in writing and as Mr. Callison just  
13 said the only thing that you have before you  
14 is the one line protest that says Mr. Stearns  
15 does not meet the qualifications set forth by  
16 the State of South Carolina. It doesn't say  
17 anything about the votes. Mr. Smith just  
18 said voting irregularities. We appreciate the  
19 lawyer back here in the back of the room and  
20 its clear you don't have the authority to --  
21 Mr. Smith has not raised that so that's how  
22 you interpret that today. If you go to the  
23 next section of the code where it talks about  
24 7-17-40 and it says with a protest it says  
25 the poll list of each polling place in a



## ELECTION PROTEST HEARING - MCCORMICK

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1       general, special or primary election shall  
2       accompany the ballots, printouts or other  
3       forms of voter tabulation in each protest.  
4       In each proceeding in which the votes are  
5       cast are involved in protest. So it's kind  
6       of logical, y'all are counting the votes.  
7       That's what the statute says and then you  
8       have the protest period and the challenge is  
9       to somebody's vote and then it says, the  
10      statute says that when Mr. Smith or anybody  
11      would have any kind of protest they would  
12      file those challenges at the specific place.  
13      It doesn't say anything about qualifications.  
14      And then it goes on to determine -- it tells  
15      you how you appeal the protest. That's all  
16      in Title 7 and y'all understand Title 7,  
17      that's the election part of laws. That is  
18      where you get your authority. It is dealing  
19      with elections. The qualification of a  
20      sheriff candidate is over in Title 23. So  
21      you've got in the law -- you've got Title 7  
22      which deals with the election which gives you  
23      the authority to count votes and to hear  
24      protests and then make a decision but now  
25      they want you to go over here to Title 23 to



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1 make some sort of decision about the law. As  
2 Mr. Callison referenced it, a legal  
3 interpretation under Title 23. I respectfully  
4 submit you don't have the authority to go  
5 into Title 23 and make a determination of  
6 whether Mr. Stearns or anyone would be  
7 challenged under that. The responsibility and  
8 qualifications needs to be looked at but it's  
9 got to be looked by the county political  
10 party. Okay. That's what the law says. The  
11 county political party. So now we're going  
12 to jump back. I just told you don't have  
13 authority to look at qualifications because  
14 that's Title 23, that's somebody else. So  
15 who does? The statute is very  
16 straightforward. It is in Title 7 so now  
17 we're back in the election code and it's 7-  
18 13-40. Let me just back through this real  
19 quick, you know, y'all understand the process  
20 better than I do. Candidates file back in  
21 March and they've got the two week window,  
22 they file their papers, they bring them to  
23 the Election Commission and then once you  
24 have their voter registration and the Election  
25 Commission -- once you have them then you



## ELECTION PROTEST HEARING - MCCORMICK

15

1 give them to the political parties. Mr.  
2 Smith is the Democratic Party and Mr. Stearns  
3 is for the McCormick County Republican Party.  
4 They take a look at the materials that are  
5 filed and then they make the determination of  
6 whether the candidate meets the qualifications  
7 or not. I'm not just saying that, that's  
8 what the statute says. The statute says,  
9 again it's 7-13, political parties nominating  
10 candidates by party primary must verify the  
11 qualifications of those candidates prior to  
12 certification to the appropriate election  
13 commission. So the political party that's  
14 nominating the committee, the candidate, has  
15 done that. They've got to have authority to  
16 look at it and as the statute goes on further  
17 it says, the written verification must contain  
18 a statement that each candidate certified  
19 meets, or will meet these qualifications.  
20 And the county Republican Party did that.  
21 They did it for the primary. They put Mr.  
22 Stearns on the ballot for the republican  
23 primary and they did it again also as their  
24 nominee once he won the primary and then for  
25 the general election. So the county



## ELECTION PROTEST HEARING - MCCORMICK

16

1 Republican Party is the entity in the statute  
2 that determines whether qualifications --  
3 whether a candidate for sheriff meets the  
4 qualifications. So the issue there has  
5 already been decided and if we get into a  
6 hearing we will have the State Election  
7 Commission and with this email correspondence  
8 and they have read it and Mr. Smith and I  
9 have been, we've argued this before. The  
10 State Election Commission will say that.  
11 They will flat out say that the political  
12 parties are the ones who make the  
13 determination of whether a candidate is  
14 qualified or not. So with that I  
15 respectfully request that you dismiss the  
16 protest since you don't have jurisdiction over  
17 the matter. Thank you, Mr. Callison, and  
18 members of the Board.

19 **MR. SMITH:** I would like to ---

20 **MR. CALLISON:** Do you want to hear a response on  
21 that motion to dismiss?

22 **CHAIRMAN:** That's fine. Yes.

23 **MR. SMITH:** Just briefly. I think there's a couple  
24 of important points. In looking at the  
25 statute Mr. Tyson, you know, there's nothing



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1 in the statute that says it is limited to  
2 voting irregularities, right. These are the  
3 protests of an election and we have an  
4 election in which a timely protest was filed  
5 there's nothing that says that you don't have  
6 the power to look at the qualifications of  
7 Mr. Stearns. There's just nothing in the  
8 statute that says you don't have the power to  
9 do that. What it does say is if there is an  
10 election and a timely protest to that  
11 election is filed you can consider it. I  
12 mean that's where we are right now. A timely  
13 protest and that protest was based  
14 qualifications that very clearly says on that  
15 and I think at this point we have a protest  
16 of the election which is within your  
17 jurisdiction of the statute and it relates to  
18 this gentleman's qualification. So I would  
19 daresay if we were to fail to have filed a  
20 timely protest people might say well you know  
21 you failed to file and you're out, you can't  
22 pursue this matter. So I think it's  
23 important, you know, for the citizens of this  
24 county that this matter is before you and  
25 that you have the chance yourselves in view





## ELECTION PROTEST HEARING - MCCORMICK

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1 of this public proceeding to actually hear  
2 from Mr. Stearns.. Thank you.

3 **MR. CALLISON:** Would you like to proceed, Madam  
4 Chairman, with Mr. Jones' ---

5 **CHAIRMAN:** I'd like to thank the lawyer, Mr. Tyson,  
6 and the other gentleman for their remarks but  
7 our job as a Board is the only thing we are  
8 going to do is to accept the protest or  
9 reject it. That's our job. That's the only  
10 job we have. So that will be our decision  
11 whether we accept the protest or reject the  
12 protest and when we do that it will go  
13 further. Whatever needs to be done will be  
14 handled by the State. So it's not our job to  
15 determine if he's the sheriff or he's the  
16 sheriff. Our only job is to accept or reject  
17 the protest and that's why we are having this  
18 hearing this morning. Mr. Callison, that's  
19 all I have to say.

20 **MR. CALLISON:** Thank you. Mr. Smith?

21 **MR. SMITH:** Yes, sir.

22 **MR. CALLISON:** On behalf of Mr. Jones present what  
23 you have and then we will follow up on your  
24 side. Kind of like we do a hearing so follow  
25 as close as possible to the rules of South



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## ELECTION PROTEST HEARING - MCCORMICK

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1 Carolina Judicial Department and Civil Rules  
2 as close as possible.

3 **MR. TYSON:** Yes, Mr. Callison, I appreciate that  
4 and Madam Chairman. I'm just trying to get,  
5 I guess, some clarification. So is that a  
6 denial of the motion?

7 **MR. CALLISON:** That is being taken up by the Board  
8 as we go into executive session so that has  
9 not determined as of yet. That's still on  
10 the table.

11 **MR. TYSON:** Okay. Well at this point I would like  
12 to add that they rule one way or the other.  
13 I don't ---

14 **MR. CALLISON:** I understand.

15 **MR. TYSON:** Thank you.

16 **MR. SMITH:** Thank you, sir. Madam Chair and  
17 members of the Commission we would first call  
18 as our first witness, Mr. Stearns, and ask  
19 that he be sworn in.

20 **MR. STEARNS:** Where would you like me?

21 **MR. CALLISON:** You need to be sworn by the court  
22 reporter.

23 **CLARKE ANDERSON STEARNS,** having been duly sworn,  
24 deposes and testifies as follows:

25 **MR. STEARNS - EXAMINATION BY MR. SMITH:**



## ELECTION PROTEST HEARING - MCCORMICK

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1 **MADAM COURT REPORTER:** Please state your full name  
2 for the record.

3 **MR. STEARNS:** Clarke Anderson Stearns.

4 Q: Thank you, Madam Chairman and the Commission.  
5 Mr. Stearns, I am going to provide you with a  
6 document and ask if you can identify it  
7 please sir?

8 A: Yes, sir. That is the Filing Affidavit for  
9 Sheriff of the State of South Carolina which  
10 I signed.

11 Q: So that is your affidavit?

12 A: That's correct.

13 Q: And when you signed it you signed it in the  
14 presence of a notary, is that correct?

15 A: That's correct.

16 Q: And it looks like Tonya C. Edmunds was the  
17 notary?

18 A: Correct.

19 Q: Who is that?

20 A: She works at Voter Administration in this  
21 building right here.

22 Q: Okay. And that is in fact your signature of  
23 Clarke A. Stearns on the bottom right corner?

24 A: Yes, it is.

25 Q: And when you signed it did you intend it to



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1           be under oath and you were swearing to the  
2           truth of the statements therein?

3   A:    Yes, I did.

4   Q:    Okay.

5   **MR. CALLISON:** Mr. Stearns, when you talk can you  
6           talk loud so everybody can hear you? Your  
7           back is kind of turned.

8   A:    Sure.

9   **MR. CALLISON:** Thank you very much.

10   Q:    So obviously and when looking at the  
11          affidavit you sought the nomination within the  
12          Republican Party for Sheriff, is that correct?

13   A:    That's correct.

14   Q:    Are you aware -- what do you understand are  
15          the requirements for you in order to be a  
16          candidate for sheriff?

17   A:    Be a resident of the county that you are  
18          running for. Be a registered voter. Be a US  
19          citizen. Attain 21 years of age. Have some  
20          sort of education with some sort of amount of  
21          years of experience.

22   Q:    Okay.

23   A:    And be finger printed by SLED and a  
24          background check conducted.

25   Q:    Sure. And how long have you been a resident



## ELECTION PROTEST HEARING - MCCORMICK

22

1 of McCormick County?

2 A: Three years.

3 Q: And are you currently a resident?

4 A: Yes, sir.

5 Q: And when did you move to McCormick County?

6 A: October of '13.

7 Q: And where was that from?

8 A: Alexandria, Virginia.

9 Q: Okay. Prior to your moving to -- so when you  
10 first moved to South Carolina that's when you  
11 moved to McCormick County. Is that correct?

12 A: I moved to McCormick and then was back in  
13 Virginia for seven months and then moved  
14 back.

15 Q: Okay.

16 A: But I have established residence here in  
17 McCormick County.

18 Q: Okay. So tell me have you ever been a  
19 certified law enforcement officer in South  
20 Carolina?

21 A: No.

22 Q: Okay. And did you -- when you signed this  
23 affidavit help me understand under paragraph  
24 14 which of those following education and  
25 experience requirements that you have met?



## ELECTION PROTEST HEARING - MCCORMICK

23

1 A: That would be a two years associate's degree  
2 and I have thirty years experience as a  
3 certified law enforcement officer.

4 Q: Okay. But you just testified that you've  
5 never been a certified law enforcement officer  
6 in South Carolina.

7 A: In the State of South Carolina, that's  
8 correct.

9 Q: But did you believe if you were a certified  
10 law enforcement officer in another state that  
11 that would qualify you in South Carolina?

12 A: Yes, sir. As it's written here. It says  
13 experience as a certified law enforcement  
14 officer.

15 Q: Okay. And so have you been certified as a  
16 law enforcement officer in another state?

17 A: Yes, sir.

18 Q: And what states were those?

19 A: Virginia.

20 Q: Solely Virginia?

21 A: There was a brief time where I was a  
22 deputized U.S. Marshall. I had jurisdiction  
23 in all 50 states for purposes of warrant  
24 service.

25 Q: Okay. And during your time in Virginia how



## ELECTION PROTEST HEARING - MCCORMICK

24

1 long were you a certified law enforcement  
2 officer in Virginia?

3 A: 31 years.

4 Q: Can the State of Virginia write qualifications  
5 for offices in South Carolina?

6 A: I'm now aware if they can or not. I don't  
7 know.

8 Q: Okay. And being a qualified or a certified  
9 law enforcement officer in South Carolina, I  
10 understand you have never held that  
11 certification. Is that correct?

12 A: Never in South Carolina.

13 Q: Okay. And that status have you pursued that?  
14 Have you sought certification ever?

15 A: I have not.

16 Q: Okay.

17 A: I'm still certified in Virginia.

18 Q: Okay. Do you intend to seek certification  
19 under South Carolina law?

20 A: When elected sheriff. Yes, sir.

21 Q: When you were elected to sheriff you decided  
22 to do it after the election?

23 A: By statute there's one year and that's  
24 something Mr. Tyson and I will discuss.

25 Q: Okay. When you signed this affidavit on



## ELECTION PROTEST HEARING - MCCORMICK

25

1 March 16th, 2016, you were not a certified  
2 law enforcement officer in South Carolina?

3 A: In South Carolina, no, sir.

4 Q: Okay. And you have not been one for at least  
5 three years. Is that correct?

6 A: That is correct.

7 Q: Okay. So in fact "b" you did not meet that  
8 qualification?

9 **MR. TYSON:** Object. Already asked and answered.

10 Q: I have not asked -- you did not meet the  
11 qualifications did you?

12 A: That's up to Mr. Tyson and you to discuss as  
13 far as the statute goes in South Carolina  
14 because in the state of Virginia I am still a  
15 certified law enforcement officer.

16 Q: Okay.

17 A: And it doesn't stipulate here that's it's  
18 anywhere other.

19 Q: But you are running for Sheriff in South  
20 Carolina?

21 A: That's correct.

22 Q: Okay. Thank you. One moment please. If you  
23 were, you know, certified and to take office  
24 as Sheriff for McCormick County, you would  
25 not have the constitutional authority to





## ELECTION PROTEST HEARING - MCCORMICK

26

1           arrest, are you aware of that?

2       A:     I would have to research the codes and  
3           discuss it with my attorney but that's a  
4           possibility.

5       Q:     Okay. All right. Thank you very much. I  
6           have nothing further.

7       **MR. STEARNS - CROSS-EXAMINATION BY MR. TYSON:**

8       Q:     Mr. Stearns, I am going to stand back over  
9           here. Mr. Stearns, I want to show you that  
10          form. I think it's similar to what Mr. Smith  
11          just had. There are three pages there, what  
12          are those?

13      A:     It's a Filing Fee Receipt, Statement of  
14          Intention of Candidacy and Party Pledge and  
15          the same copy of the Affidavit you just  
16          supplied to me.

17      Q:     And is that yours? Is it your filing fee and  
18          your statement of intention of candidacy?

19      A:     Yes, sir, it is.

20      Q:     James, I am going to move that these be  
21          introduced.

22      **MR. SMITH:**     That's no problem. That will be fine.

23      **MR. CALLISON:**   So you are including that affidavit?

24      **MR. SMITH:**   It was I just wanted to include the one  
25          I asked him about too.



## ELECTION PROTEST HEARING - MCCORMICK

27

1     **MR. TYSON:**   Okay.   Good.   So do we give that to  
2                    you?

3     **MR. CALLISON:**   You give that to the court reporter  
4                    and she will mark that.

5     **MR. TYSON:**   Okay.

6     **(Exhibit Number One was marked for identification**  
7     **purposes.)**

8     **Q:**     She will give you back a copy of that.   Let's  
9                    just go through this real quick just so that  
10                   everybody understands what this is.   That's a  
11                   filing fee on the front page?

12    **A:**     With my signature, yes, sir.

13    **Q:**     And it shows that you paid your fee, correct?

14    **A:**     That's correct.

15    **Q:**     All right.   And what date was that that you  
16                   paid this?

17    **A:**     On March 17, 2016.

18    **Q:**     Back during the filing period, correct?

19    **A:**     That's correct.

20    **Q:**     Okay.   And that's one of the requirements.  
21                   The second page, what is it titled?

22    **A:**     Statement of Intention of Candidacy and Party  
23                   Pledge.

24    **Q:**     Okay.   And this is your signature down there  
25                   at the bottom?



## ELECTION PROTEST HEARING - MCCORMICK

28

1 A: Yes, sir.

2 Q: Okay. So in the middle of that page you see  
3 there's an oath and a pledge?

4 A: That's correct.

5 Q: And it's for the Sheriff of McCormick County  
6 for the Republican Party. Do you see that?  
7 And you signed this? Mr. Smith was asking  
8 you a bunch of questions about the affidavit  
9 so I just wanted to make sure on this one,  
10 you understood what this oath and what this  
11 pledge was about, correct?

12 A: Yes, sir.

13 Q: Okay. You believe at that time -- when did  
14 you file this form?

15 A: Again, it was on March 17th, 2016.

16 Q: Okay. And it was accurate at that point in  
17 time when you filed it?

18 A: Yes, sir.

19 Q: Is it accurate today?

20 A: Yes, sir.

21 Q: Okay. Let's go to the third page. What is  
22 this?

23 A: That is the Filing Affidavit for the Office  
24 of Sheriff in the State of South Carolina,  
25 County of McCormick.



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## ELECTION PROTEST HEARING - MCCORMICK

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1 Q: And these are the ones that Mr. Smith was  
2 asking questions about?

3 A: Identical. Yes, they are.

4 Q: All right. Let me just go through this  
5 quickly. That affidavit that you filed with  
6 state law when did this go through this.  
7 This is section -- of the state law this is  
8 the qualifications for sheriff. 23-11-110.  
9 Now have you read that about what is  
10 qualified to be a sheriff?

11 A: Yes, sir.

12 Q: All right. Let's just quickly go through  
13 this I think it going to help the Commission.  
14 It says all candidates in this state must  
15 pass the following qualifications. And then  
16 it says one, be a citizen of the United  
17 States. Are you a citizen?

18 A: Yes, I am.

19 Q: Two, be a resident of the county in which he  
20 seeks the office of sheriff for at least one  
21 year immediately preceding the date of the  
22 election for sheriff. Do you meet that?

23 A: Yes, sir. I do.

24 Q: Because you've been in the county for how  
25 long?



## ELECTION PROTEST HEARING - MCCORMICK

30

1 A: Three years.

2 Q: Okay. Number three says you've got to be a  
3 registered voter. Are you a registered  
4 voter?

5 A: Yes, sir. I am.

6 Q: Number four says you have to attain the age  
7 of at least 21 years prior to the date of  
8 disqualifying for election to the office.  
9 I'm not saying that you look old but I'm just  
10 saying are you are over 21?

11 A: I am over 21.

12 Q: All right. Number five says all sheriffs in  
13 the state must have the following  
14 qualifications and then five says five and  
15 then its got an a, b, c, and d. Okay.  
16 You've got to be one of these, okay. Five a,  
17 you have to have obtained a high school  
18 diploma, it's recognized equivalent in  
19 educational training as established by the  
20 State Department of Education. Is that me?

21 **MR. SHUMWAY:** I'm not sure who it is.

22 Q: Why don't you just back up a little bit.  
23 Yeah just a little bit. Okay. You've got to  
24 have a high school diploma and have at least  
25 five years of experience as a certified law



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## ELECTION PROTEST HEARING - MCCORMICK

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1 enforcement officer. Do you meet those  
2 qualifications?

3 A: Yes, sir.

4 Q: And then "b" says you've got to obtain a two-  
5 year associate degree and three years  
6 experience as a certified law enforcement  
7 officer. Do you meet that?

8 A: Yes, sir.

9 Q: Okay. And then you would go to four "c" or  
10 "d". Four "c" would be to obtain a four-year  
11 degree and one year of experience. You  
12 didn't fill that blank out because that  
13 doesn't apply, correct?

14 A: It does not apply.

15 Q: And then "d" you would have to serve as a  
16 summary court judge for at least ten years  
17 and have you done that?

18 A: I have not.

19 Q: All right. So you qualify under five "a" and  
20 "b". Okay. Then if you look over into 23-  
21 11-110(B), okay. This is the next provision  
22 or the next requirement concerning this  
23 affidavit, okay. And let's just go through  
24 this and make sure that you meet all the  
25 qualifications pursuant to this state law.



## ELECTION PROTEST HEARING - MCCORMICK

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1 And then what it says is a person offering  
2 his candidacy for the office of sheriff shall  
3 file a sworn affidavit no later than the  
4 close of filing with the county executive  
5 committee of the person's political party.  
6 And that's this affidavit that's just been  
7 introduced as an exhibit, right?

8 A: Yes, sir.

9 Q: You filed it and it's a sworn affidavit,  
10 correct?

11 A: Yes, sir.

12 Q: Okay. And you filed it no later than the  
13 close of filing, correct?

14 A: Correct.

15 Q: And you filed it with the county executive  
16 committee of the Republican Party?

17 A: Yes, sir..

18 Q: Okay. The county executive committee is any  
19 political party with whom a person has filed  
20 his affidavit must file a copy of the  
21 affidavit with the appropriate county election  
22 commission by noon on the tenth day following  
23 the deadline for filing affidavits by  
24 candidates. And did the county executive  
25 committee do that?



## ELECTION PROTEST HEARING - MCCORMICK

33

1 A: Yes, sir.

2 Q: Okay. That's not in dispute, right?

3 A: That's correct.

4 Q: Okay. If the tenth day falls on a Saturday  
5 the person must do it the following day. A  
6 person seeking nomination by petition must  
7 file a sworn affidavit with the county  
8 election commission. Well you didn't do  
9 that?

10 A: No. That does not apply.

11 Q: All right. So number two here says the  
12 affidavit must contain the following  
13 information. So let's be clear we just went  
14 through the statutory requirements and added  
15 now we are going to go through what the  
16 affidavit requires.

17 A: Yes, sir.

18 Q: This is state law. It says affidavit must  
19 contain the following information: the date  
20 and place of the person's birth. So look  
21 back at that form, the exhibit that was just  
22 marked, is your date and place of your birth  
23 on there?

24 A: Yes, sir. It is.

25 Q: And you were born on August 22nd, 1961?





## ELECTION PROTEST HEARING - MCCORMICK

34

1 A: Yes, sir.

2 Q: In Munich, Germany?

3 A: Right.

4 Q: And "b" the date the person graduated from  
5 high school or the date the person obtained  
6 the recognized equivalent of a high school  
7 diploma. Did you complete that?

8 A: Yes, sir.

9 Q: And where is that on this form?

10 A: On my form it is number eight on the  
11 affidavit.

12 Q: Okay. And it says I received a high school  
13 diploma on June 16th, 1979.

14 A: Uh-huh (affirmative response).

15 Q: Is that correct?

16 A: That is correct.

17 Q: Okay. And then "c", the date the person  
18 received any associate or baccalaureate  
19 degrees when applicable. Okay. Did you fill  
20 that blank in?

21 A: Yes, I did.

22 Q: Where was that at?

23 A: That is on line ten and it was May of 1982.

24 Q: I received a two year associate degree on the  
25 following date, May of 1982. Okay. "d", the



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## ELECTION PROTEST HEARING - MCCORMICK

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1           number of years' experience the person has  
2           had as a certified law enforcement officer  
3           when applicable. Okay. Where is that on  
4           this form? Did you fill it in?

5   A:    Number nine.

6   Q:    And what do you say there?

7   A:    I have 31 years experience as a certified law  
8           enforcement officer.

9   Q:    Okay. So you meet that credential. Now Mr.  
10          Smith just asked a whole bunch of questions.  
11          He tried to add in language into the statute  
12          that says you've got to be a certified law  
13          enforcement officer only in South Carolina.  
14          But that's not in the statute, correct?

15   A:    That's correct.

16   Q:    Okay. And then the next part, "e" says the  
17          number of years the person has served as a  
18          summary court judge when applicable. That's  
19          not applicable, right?

20   A:    That's correct.

21   Q:    And then "f", an affirmation that the person  
22          meets all of the qualification requirements.  
23          And did you do that?.

24   A:    Yes, sir.

25   Q:    And where is that?



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## ELECTION PROTEST HEARING - MCCORMICK

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1 A: Number 14. Box number 14, is that what you  
2 are referring to?

3 Q: That's correct. And it's by your signature  
4 too?

5 A: That is correct.

6 Q: You are completing it and you are saying that  
7 you did that. So let me make sure. Under  
8 state statute we just went through the  
9 qualifications and you believe you meet all  
10 of the state statutes in 23-11-10, correct?

11 A: Yes, sir.

12 Q: And then the requirements about the affidavit  
13 and we just went through your affidavit that  
14 Mr. Smith introduced and that is filled out  
15 completely, consistent with state law,  
16 correct?

17 A: Yes, sir.

18 Q: All right. You won the election, correct?

19 A: I did.

20 Q: Okay. And has anybody -- have you heard of  
21 any voting irregularities?

22 A: No, sir. I've heard of none.

23 Q: No challenges to that?

24 A: No challenges whatsoever.

25 Q: Anybody every bring up ever anything about



## ELECTION PROTEST HEARING - MCCORMICK

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1           your experience?

2       A:     No, sir.

3       Q:     All right.

4       **(Exhibit Number Two was marked for identification**  
5       **purposes.)**

6       Q:     All right. I've just handed you what?

7       A:     Training History from the Northern Virginia  
8             Criminal Justice Training Academy.

9       Q:     All right. You said you've got 31 years of  
10            law enforcement officer experience?

11      A:     Yes, sir.

12      Q:     Does this form document that?

13      A:     It actually starts from the graduation of the  
14            basic law enforcement and deputy sheriff  
15            school from May of 1984 so that would be one  
16            year short. That would be 30 years.

17      Q:     So what are on these four pages?

18      A:     These are all of my training records from the  
19            Academy in the state of Virginia.

20      Q:     It demonstrates your experience. Is that  
21            what this is?

22      A:     Experience, proficiency and continual training  
23            in the law enforcement field.

24      Q:     So on the affidavit where it asks your number  
25            of years of law enforcement experience would



## ELECTION PROTEST HEARING - MCCORMICK

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1           it be fair to say this documents and supports  
2           your answer of 31 years?

3   A:    Absolutely.

4   Q:    I move that it be introduced as the next  
5           exhibit number two.

6   **MR. SMITH:**   No objection.

7   Q:    Now Mr. Stearns do you have anything.   Let me  
8           rephrase that question.   Do you believe you  
9           are qualified to be sheriff?

10   A:    Yes, I do.

11   Q:    Do you believe the people of McCormick County  
12           voted thinking that you had the  
13           qualifications?

14   A:    Absolutely.

15   Q:    Thank you.   Answer any -- Mr. Smith might  
16           have a couple more questions or the  
17           Commission might have some questions for you.

18   **MR. STEARNS - RE-EXAMINATION BY MR. SMITH:**

19   Q:    Thank you.   Madam chair, just briefly.   Let's  
20           get right to the point here because we are --  
21           these questions are really narrowing it.   You  
22           are a man of the law aren't you?

23   A:    Yes, I am.

24   Q:    Spent your life in law enforcement?

25   A:    I have.



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## ELECTION PROTEST HEARING - MCCORMICK

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1 Q: And following the law is very important to  
2 you?

3 A: It is.

4 Q: Right. And so what your counsel would have  
5 us all believe that there is no definition of  
6 a certified law enforcement officer with South  
7 Carolina and if you met that qualification in  
8 any state you would meet that qualification  
9 here. Is that what you believe?

10 **MR. TYSON:** Objection.

11 Q: What is your understanding when you signed  
12 this?

13 A: The affidavit as written is not specific to  
14 any state. The question on the affidavit was  
15 are you or do you have experience as a  
16 certified law enforcement officer and to that  
17 my question is, yes I am. My answer is, yes  
18 I am.

19 Q: And so let's look at what the law provides  
20 and let's go through as your lawyer did but  
21 he stopped at defining what a certified law  
22 enforcement officer is in South Carolina.  
23 And in South Carolina we are fortunate that  
24 the statute tells us, it gives us a  
25 definition. Are you familiar with --



## ELECTION PROTEST HEARING - MCCORMICK

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1           actually you just said you were familiar with  
2           the qualifications of 23-11-110. You said  
3           that you had read that and you went through  
4           that with your lawyer and you are familiar  
5           with the qualifications of this office of  
6           sheriff, correct?

7   A:    Yes.

8   Q:    Well after that last segment it reads, for  
9           the purpose of this section a certified law  
10          enforcement officer is a person who has been  
11          issued a certificate as a law enforcement  
12          officer pursuant to 23-23-10. Did you look  
13          up 23-23-10 to see what a certified law  
14          enforcement officer is under this statute?

15   A:    I believe I did.

16   Q:    You believe you did. Well then it would tell  
17          you that is the section where you get  
18          certified in South Carolina to be a law  
19          enforcement officer and it defines a law  
20          enforcement officer -- a certified law  
21          enforcement officer means someone who is  
22          certified from the state, from the state of  
23          South Carolina. You understand that?

24   A:    I believe that the statute is open to  
25          interpretation.



## ELECTION PROTEST HEARING - MCCORMICK

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1 Q: Well I guess, you know, we all might have  
2 opinions but it is your belief that you don't  
3 have to be certified by South Carolina in  
4 order to be a sheriff. You only have to be a  
5 certified law enforcement officer in South  
6 Carolina in order to be a sheriff. Is that  
7 what your belief is?

8 A: The question or the statement on the  
9 affidavit was are you a certified law  
10 enforcement officer. I am a certified law  
11 enforcement officer in the state of Virginia.

12 Q: Okay.

13 A: That's the question. It wasn't specific to  
14 South Carolina law on reviewing the statute,  
15 the statute is wide open for interpretation  
16 and could be argued either way.

17 Q: So Mr. Stearns if you are certified in law  
18 enforcement in Virginia can you arrest  
19 somebody in South Carolina?

20 A: No, sir.

21 Q: Of course you can't because you aren't  
22 certified in South Carolina. So aren't you  
23 concerned that your election, not being  
24 certified as a law enforcement officer in  
25 South Carolina, will call into question every





## ELECTION PROTEST HEARING - MCCORMICK

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1           arrest you make and every arrest your deputy  
2           makes if you are not certified in South  
3           Carolina?

4    A:    What I know is that the Republican Party  
5           certified me as a candidate and put me on the  
6           ballot so I campaigned and I won.

7    Q:    Is the Republican Party an arbiturer of who  
8           can arrest in South Carolina?

9    A:    Not that I know of.

10   Q:    No, I wouldn't think so. So if you're not  
11           certified to arrest in South Carolina none of  
12           your deputies are going to be certified to  
13           arrest in South Carolina and everyone who  
14           commits a crime in McCormick County will not  
15           have a sheriff that can arrest them. Do you  
16           understand that?

17   A:    No, I don't understand that.

18   Q:    I have nothing further.

19   A:    That's something my attorney and I need to  
20           talk about.

21   Q:    Thank you.

22   **MR. STEARNS - RE-CROSS-EXAMINATION BY MR. TYSON:**

23   Q:    Mr. Stearns, you just heard Mr. Smith and he  
24           got pretty excited about all of that but let  
25           me ask you something he said that the GOP is



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## ELECTION PROTEST HEARING - MCCORMICK

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1 not an arbiturer of who has the  
2 qualifications for that, right?

3 A: That's what he said. My understanding was  
4 that it wasn't.

5 Q: Okay. And are the voters of McCormick  
6 County?

7 A: Yes, sir.

8 Q: How about these people right here they don't  
9 get to make that determination either do  
10 they?

11 A: That's correct.

12 Q: Okay. Thank you.

13 **MR. SMITH:** I have nothing further. Thank you very  
14 much.

15 **MR. CALLISON:** Is that all?

16 **MR. SMITH:** That's all that we have to present on  
17 our protest.

18 **MR. CALLISON:** Mr. Tyson, do you have a response?

19 **MR. TYSON:** No.

20 **MR. CALLISON:** Okay. Thank you. Madam Chairman, I  
21 would like to ask Mr. Stearns attorney, you .  
22 know, what his interpretation of that  
23 provision would be. It is again 23-11-110  
24 where it indicates for the purposes of this  
25 session a certified law enforcement officer is



## ELECTION PROTEST HEARING - MCCORMICK

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1 a person who initiates a certificate of a law  
2 enforcement officer pursuant to Section 23-23-  
3 10. What would be your interpretation of  
4 that?

5 **MR. TYSON:** Thank you. That is a very good  
6 question.

7 **MR. CALLISON:** And, you know, then referencing 23-  
8 23-10, would you do that please?

9 **MR. TYSON:** Yeah. I would say as Mr. Smith just  
10 said the statute is not properly -- is not  
11 very well worded. I understand Mr. Smith's  
12 legal argument that the specific  
13 qualifications of what they call for are very  
14 straight forward and the affidavit are very  
15 straight forward. If you go to the section  
16 that describes law enforcement officer it is  
17 titled, Law Enforcement Training Council and  
18 Criminal Justice Academy. And so if you look  
19 at that section of the law and what a law  
20 enforcement officer is it says it's an  
21 appointed officer employed and hired by and  
22 regularly on the payroll of the state or any  
23 of its subdivision who is granted statutory  
24 authority to enforce all or some of the state  
25 and who possesses with respect to those laws



## ELECTION PROTEST HEARING - MCCORMICK

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1 the power to arrest. While I understand Mr.  
2 Smith, he wants to him to be in South  
3 Carolina thus -- the statue of South  
4 Carolina. I understand his legal argument.  
5 It's not clear. I think an exception where  
6 it is talking about the criminal justice  
7 academy its unfortunate that this Commission  
8 is now having to hear a protest about an  
9 election to try to figure out this statute  
10 whether it makes sense or not. As I said  
11 earlier in my opening comments, I don't think  
12 you have that jurisdiction to do that. If  
13 you did I think its ambiguous at best and if  
14 it is ambiguous at best then I think you fall  
15 back on the election results of the county to  
16 then determine what the majority should be.  
17 So I think that, you know, it's not a great  
18 answer. We don't have any case law on this.  
19 We don't have the ability to tell you this is  
20 exactly how it is but I understand Mr.  
21 Smith's legal argument but I think for  
22 purposes of an election protest you have  
23 don't have authority to do this.

24 **MR. CALLISON:** All right. That is what I was going  
25 to ask. Is there any legal precedence that



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1           you are aware of, case law or even attorney  
2           general opinions?

3   **MR. SMITH:** Well there there is case law and of  
4           course myself and Mr. Tyson have been in what  
5           would be analogous cases certainly in the  
6           area of the court cases that we could bring.  
7           But I have one that -- I only have one I want  
8           to share with the Commission because it is  
9           not ambiguous. It's not even questionable in  
10          this instance because the language that you  
11          pointed out, Mr. Callison, if you will read  
12          that it defines certified law enforcement  
13          officer is a person who has been issued a  
14          certificate as a law enforcement officer  
15          pursuant to that section. Well that section  
16          doesn't issue Virginia certified law  
17          enforcement certificates. It doesn't issue  
18          Georgia certified law enforcement  
19          certificates. It only issues South Carolina  
20          so that's all they do. That's all the power  
21          that they have to do and he has not been  
22          issued a certificate from South Carolina. So  
23          this isn't even a close call. I understand  
24          my colleagues response and argument, Mr.  
25          Tyson, about jurisdiction. I understand that.



## ELECTION PROTEST HEARING - MCCORMICK

47

1 That's a legal question and one where you all  
2 can make a decision on ultimately. But the  
3 question is whether he has been issued a  
4 certificate as a law enforcement officer  
5 pursuant to that section. He's already  
6 testified under oath he hasn't received that  
7 so he does not meet the qualifications. The  
8 only question is can you all pass on that  
9 decision. Thank you very much.

10 **MR. TYSON:** I think the answer, Mr. Smith, to your  
11 question, Mr. Smith, is there is no case law  
12 on this and as we say it is ambiguous and,  
13 you know, left to some place besides here to  
14 decide it. Thank you.

15 **MR. CALLISON:** That appears to be all for now. I  
16 would suggest that the Board make a motion to  
17 go into executive session to seek legal  
18 advice concerning this issue and return to  
19 the public session.

20 **MR. SHUMWAY:** So moved.

21 **MS. MOSS:** Second.

22 **CHAIRMAN:** There's been a motion and second that  
23 the Board will go into executive session at  
24 this time.

25 **(EXECUTIVE SESSION)**



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## ELECTION PROTEST HEARING - MCCORMICK

48

1 **CHAIRMAN:** Thank everybody for your time and  
2 attention. If you would be quiet we have two  
3 motions to vote on at this time and we will  
4 turn it over to our lawyer, Mr. Callison.

5 **MR. CALLISON:** Yes, Madam Chairman. The first  
6 thing we will do is take up the motion to  
7 dismiss that was made on the basis that this  
8 Board doesn't have authority to hear the  
9 protest because it is a protest of  
10 qualifications which was certified by the  
11 Republican Party and is not a contest  
12 concerning or a protest concerning the  
13 canvassing of votes. So that is the first  
14 issue that will be before the Board and you  
15 will take a vote on that. All in favor of  
16 the motion would say aye and all opposed nay.  
17 So I say go ahead and lets vote on that.

18 **(VOTE - MOTION TO DISMISS)**

19 **CHAIRMAN:** All in favor of the motion to dismiss --  
20 -

21 **MR. CALLISON:** Say aye.

22 **CHAIRMAN:** Say aye. Raise your hands.

23 **(Ayes heard)**

24 **MR. CALLISON:** All opposed.

25 **(Opposed heard)**



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## ELECTION PROTEST HEARING - MCCORMICK

49

1 **MR. CALLISON:** All right. The motion to dismiss is  
2 denied by a majority of the vote. Then the  
3 second issue to be addressed will be the  
4 actual protest itself and whether or not the  
5 protest is granted or denied. And that would  
6 be what is before the Board now and the  
7 following phase of granting the protest OF  
8 saying aye and those opposed nay.

9 (VOTE - PROTEST)

10 **CHAIRMAN:** All in favor granting the protest let me  
11 know by raising your hand.

12 (Three hands raised)

13 **MR. CALLISON:** All right. That's three.

14 **CHAIRMAN:** I have three. And all those opposed.

15 (Three hands raised)

16 **CHAIRMAN:** I have three.

17 **MR. CALLISON:** That's three. Madam Chairman, based  
18 on that being three and three decision on  
19 that IT requires a majority of the vote so  
20 the protest fails. And Mr. Jones will have  
21 the opportunity to file an appeal with the  
22 State office. I know he is well aware of  
23 that proceeding.

24 **MR. SMITH:** Thank you very much.

25 **MR. CALLISON:** All right.



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## ELECTION PROTEST HEARING - MCCORMICK

50

1     **MR. SMITH:**   Thank you.

2     **MR. CALLISON:**   That's it.   I would say that we  
3                   entertain a motion to adjourn.

4                               **(ADJOURNMENT)**

5     **CHAIRMAN:**   We will entertain a motion to adjourn.  
6                   Thank y'all so much for coming.

7     **MR. TYSON:**   Thank y'all very much.

8     **MR. SMITH:**   Thank you.

9     **(There being no further discussion, the hearing**  
10    **concluded at 12:20 p.m.)**

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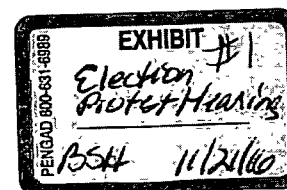
## Filing Fee Receipt

Checks for filing fees must be made payable to the appropriate political party. Checks received by election commissions will be delivered to the appropriate political party. The candidate must sign the receipt. If the candidate is not present at the time the filing fee is submitted, the receipt may be delivered to the candidate electronically, the receipt signed by the candidate, and a copy of the signed receipt returned electronically to the appropriate election commission.

|                                    |                                               |          |         |
|------------------------------------|-----------------------------------------------|----------|---------|
| Candidate Name                     | CLARKE A STEARNS                              |          |         |
| Party                              | Republican                                    |          |         |
| Office                             | Sheriff                                       | District |         |
| Election                           | 11/8/2016, Statewide General Election (20026) |          |         |
| Amount of Filing Fee               | \$2,224.92                                    |          |         |
| Date Received                      | 03/17/2016                                    |          |         |
| Time Received                      | 3:05 PM                                       |          |         |
| Check Number                       | 100                                           |          |         |
| Receiving Official                 | Cassandra L Lomax                             |          |         |
| Election Commission (County/State) | MCCORMICK                                     |          |         |
| Signature                          | <i>Cassandra Lomax</i>                        | Date     | 3/17/16 |
| Candidate Signature                | <i>Clarke A Stearns</i>                       | Date     | 3/17/16 |

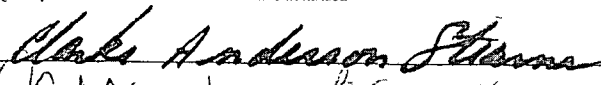
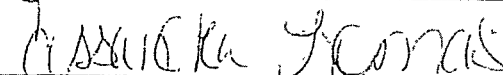
The Candidate Filing Receipt is issued pursuant to S.C. Code of Laws 7-11-15(E)

SOUTH CAROLINA  
ELECTION COMMISSION

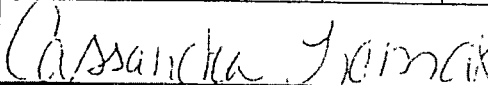


## Statement of Intention of Candidacy & Party Pledge

- The Statement of Intention of Candidacy & Party Pledge (SICPP) must be completed by any candidate seeking a political party's nomination and filed with the appropriate election commission
- The name as it is to appear on ballot may be a given name or a derivative. The name may not contain quotations, parentheses, or other distinguishing marks. Nicknames are allowed if they are used in good faith for honest purposes and do not imply professional or social status, include an office or military rank, or exceed 15 letters
- The S.C. Constitution prohibits a person who has been convicted of a felony from filing for public office for 15 years after the completion of the sentence, including probation and parole time, unless previously pardoned.
- The candidate must sign in the presence of an election commission official or Notary Public
- Candidates are also required to separately file a Statement of Economic Interests and a Campaign Disclosure online with the State Ethics Commission. Failure to file these reports may result in candidate fines. Candidates are not required to file copies of these documents with the election commission. Contact the State Ethics Commission for more information <http://ethics.sc.gov>

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                |                   |               |              |              |       |         |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------|---------------|--------------|--------------|-------|---------|
| Name                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Clarke Anderson Stearns                                                                                                                                        |                   |               | Party        | Republican   |       |         |
| Office                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Sheriff                                                                                                                                                        |                   |               | District     | 33-McCormick |       |         |
| Voter Reg. Number                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | 470303154                                                                                                                                                      |                   | Election Date | 11-08-2016   |              |       |         |
| Address                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | 613 Heritage Cove                                                                                                                                              |                   | City          | McCormick    | Zip          | 29835 |         |
| Email Address                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | clarke.stearns@gmail.com                                                                                                                                       |                   |               |              |              |       |         |
| Telephone                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | Cell                                                                                                                                                           | 703-927-3113      | Home          | 864-391-2414 | Work         |       |         |
| Name as it is to appear on ballot                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |                                                                                                                                                                | Clarke A. Stearns |               |              |              |       |         |
| Phonetically spell name, if necessary, for audio ballot. (e.g., Jackson Gervais: jur-VAY)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                | Clarke A. STERNS  |               |              |              |       |         |
| <b>Candidate's Oath &amp; Pledge</b><br>I affirm that I meet, or will meet by the time of the general or special election, the qualifications for this office. I hereby file my notice as a candidate for the nomination as <u>Sheriff 33-McCormick</u> in the primary election or convention to be held on <u>11-08-2016</u> . I affiliate with the <u>Republican</u> Party, and I hereby pledge myself to abide by the results of the primary or convention. I shall not authorize my name to be placed on the general election ballot by petition and will not offer or campaign as a write-in candidate for this office or any other office for which the party has a nominee. I authorize the issuance of an injunction upon ex parte application by the party chairman, as provided by law, should I violate this pledge by offering or campaigning in the ensuing general election for election to this office or any other office for which a nominee has been elected in the party primary election, unless the nominee for the office has become deceased or otherwise disqualified for election in the ensuing general election. I hereby affirm that I meet, or will meet by the time of the general or special election, or as otherwise required by law, the qualifications for this office. |                                                                                                                                                                |                   |               |              |              |       |         |
| Candidate Signature                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | <small>Sign in presence of election official or have notarized</small><br> |                   |               |              |              |       |         |
| Name of Witness                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                             |                   |               |              |              |       |         |
| Signature of Witness                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                             |                   |               |              |              | Date  | 3-17-16 |

To be completed by election commission:

|                        |                                                                                     |               |         |                                                                               |                            |
|------------------------|-------------------------------------------------------------------------------------|---------------|---------|-------------------------------------------------------------------------------|----------------------------|
| Date Received          | 3-17-16                                                                             | Time Received | 3:05 PM | <input type="checkbox"/> SEC <input checked="" type="checkbox"/> J. McCormick | County Election Commission |
| Signature of Recipient |  |               |         |                                                                               |                            |

# Filing Affidavit- Sheriff

State of South Carolina

County of MCCORMICK

I, CLARKE ANDERSON STEARNS being duly sworn, make this affidavit to meet the requirements of law set forth in S.C. Code of Laws §23-11-110.

- 1 I am a candidate for the REPUBLICAN Party for nomination for Sheriff.
2. My date of birth is                      and my place of birth is MUNICH GERMANY.
3. I am a resident of MCCORMICK County and have been a resident for 2 years.
4. I am a registered voter in MCCORMICK County
- 5 I am a citizen of the United States.
6. I have, or will have, attained the age of at least twenty-one years prior to the date of election for this office.
7. I have not been convicted of or plead guilty to a violation of Section 56-1-460 or 56-5-2930, or both, within the past ten years or a felony in this State or another state.
8. I received a high school diploma or its recognized equivalent in educational training as established by the State Department of Education on the following date: JUNE 16, 1979.
9. I have 31 year(s) experience as a certified law enforcement officer. (if none, enter zero)
10. I received a two-year associate degree on the following date: MAY 1982. (if not, leave blank)
11. I received a four-year baccalaureate degree on the following date:                     . (if not, leave blank)
12. I have served as a summary court judge for: 0 year(s). (if none, enter zero)
- 13 I have been fingerprinted and had the State Law Enforcement Division search local, state, and federal fingerprint files for any criminal record, and the results have been filed with the appropriate filing officer; or I will submit the fingerprints necessary to conduct this search to SLED no later than 130 days prior to the General Election.
14. I meet one of the following education and experience requirements:
  - a. obtained a high school diploma or its recognized equivalent in educational training as established by the State Department of Education and have at least five years experience as a certified law enforcement officer; or
  - b. obtained a two-year associate degree and have three years experience as a certified law enforcement officer; or
  - c. obtained a four-year baccalaureate degree and one year experience as a certified law enforcement officer or
  - d. served as a summary court judge for at least ten years.

| Completed by Notary Public for South Carolina |                       | Completed by Candidate |                                                  |
|-----------------------------------------------|-----------------------|------------------------|--------------------------------------------------|
| Signature                                     | <u>Tonyac Edmunds</u> | Signature              | <u>Clarke A Stearns</u>                          |
| Sworn before me on this date                  | <u>March 16, 2016</u> | Address                | <u>613 HERITAGE COVE<br/>MCCORMICK, SC 29835</u> |
| Commission expiration date                    | <u>March 12, 2018</u> |                        |                                                  |

# TRAINING HISTORY

## Northern Va. Criminal Justice Training Academy

11/17/2016:10 51 54 AM

ROUTING:

|                 |         |
|-----------------|---------|
| ACE ID:         | 5408    |
| Last Name:      | STEARNS |
| First Name:     | CLARKE  |
| Middle Initial: | A       |
| Date of Birth:  |         |

|                                  |                 |       |
|----------------------------------|-----------------|-------|
| Appointing Agency/Department:    | Date Appointed: | Rank: |
| Alexandria City Sheriff's Office |                 | 0     |

|                                          |                 |                |
|------------------------------------------|-----------------|----------------|
| OPERATOR'S LICENSE OR ALTERNATE DCJS ID: | License Number: | License State: |
|                                          |                 |                |

|                                                                                                                                                                                                                                                                                       |                                                                                              |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| <p>Check the appropriate one:</p> <p><input type="checkbox"/> Full time</p> <p><input type="checkbox"/> Part time (Compensated more than 80 hours ann.)</p> <p><input type="checkbox"/> Part time (Compensated less than 80 hours ann.)</p> <p><input type="checkbox"/> Auxiliary</p> | <p>Badge:</p> <p>Hire Date: 12/2/1983</p> <p>Routing:</p> <p>Employment Status: Resigned</p> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|

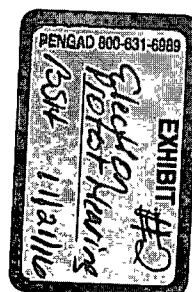
| CAREER TOTALS | Legal | CD     | Culture | ClassTotal |
|---------------|-------|--------|---------|------------|
|               | 110   | 1048 5 | 28      | 1193 5     |

### FUNCTIONS

Current hours that apply to each function

|                                      | Primary/Secondary | Due Date   | Legal | CD | Culture |
|--------------------------------------|-------------------|------------|-------|----|---------|
| Jail Officer/Inmate Security         | 1                 | 12/31/2016 |       |    |         |
| Court Security/Civil Process Officer | 2                 | 12/31/2016 |       |    |         |
| Law Enforcement Officer              | 2                 | 12/31/2016 |       |    |         |

### CLASSES



STEARNS, CLARKE A 5408

# TRAINING HISTORY

## Northern Va. Criminal Justice Training Academy

11/17/2016 10 51 56 AM

ROUTING:

|                                                                                                     | Class # | Comp. Date | Legal | CD | Culture | Class Total | Credited |                          |
|-----------------------------------------------------------------------------------------------------|---------|------------|-------|----|---------|-------------|----------|--------------------------|
| ON-LINE LEGAL for CORRECTIONS OFFICERS (Version 4/2/2014) Completed #2                              | 13433   | 6/5/2014   | 4     | 0  | 0       | 4           | Y        | Satisfactorily completed |
| ON-LINE TRAINING: CULTURAL DIVERSITY - NYCJTA (Completed #5) - 2014                                 | 13402   | 6/4/2014   | 0     | 0  | 2       | 2           | Y        | Satisfactorily completed |
| OSHA & Fall Firearms Training - ASO                                                                 | 12911   | 10/30/2013 | 0     | 6  | 0       | 6           | Y        | Satisfactorily completed |
| LEADERSHIP LESSONS: BATTLE of ANTIETAM (Command Staff)                                              | 12167   | 9/6/2013   | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| LESSONS LEARNED in LEADERSHIP. TRIP to GETTYSBURG (Command Staff)                                   | 12163   | 8/16/2013  | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| LEADERSHIP LESSONS FROM the BATTLE of SECOND MANASSAS (Command Staff)                               | 11986   | 7/19/2013  | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| Pepper Ball Training - ASO                                                                          | 12598   | 7/5/2013   | 0     | 3  | 0       | 3           | Y        | Satisfactorily completed |
| HATE CRIMES                                                                                         | 11862   | 4/10/2013  | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| VERBAL JUDO                                                                                         | 11949   | 3/13/2013  | 0     | 16 | 0       | 16          | Y        | Satisfactorily completed |
| CORRECTED FORM 41: Alexandria Sheriff Court & Jail Function Codes - 2012 to 2014 ENTERED 10/24/2013 | 12815   | 12/5/2012  | 4     | 18 | 2       | 24          | N        | Satisfactorily completed |
| 2012 Firearms Training - ASO                                                                        | 12088   | 11/16/2012 | 0     | 5  | 0       | 5           | Y        | Satisfactorily completed |
| Legal for Field Training Officers - ASO                                                             | 11977   | 11/12/2012 | 4     | 0  | 0       | 4           | Y        | Satisfactorily completed |
| LBGTQ TRAINING - ASO                                                                                | 12087   | 11/12/2012 | 0     | 0  | 2       | 2           | Y        | Satisfactorily completed |
| LAW ENFORCEMENT OFFICERS KILLED & ASSAULTED (LEOKA)                                                 | 11546   | 10/31/2012 | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| MANAGING POLICE USE OF FORCE (Command Staff)                                                        | 11351   | 9/26/2012  | 4     | 4  | 0       | 8           | Y        | Satisfactorily completed |
| LEADERSHIP TRIP to ANTIETAM LESSON LEARNED in LEADERSHIP                                            | 11367   | 9/13/2012  | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| TERRORIST TRENDS DOMESTIC & INTERNATIONAL TERRORISM                                                 | 10206   | 1/12/2012  | 0     | 24 | 0       | 24          | Y        | Satisfactorily completed |
| CIVIL RIGHTS SUMMIT                                                                                 | 11066   | 11/30/2011 | 4     | 4  | 0       | 8           | Y        | Satisfactorily completed |
| SOME THOUGHTS ON MANAGING HIGH RISK WORLD of LAW ENFORCEMENT                                        | 10526   | 10/20/2011 | 0     | 8  | 0       | 8           | Y        | Satisfactorily completed |
| Patrol Training Refresher (Phase 2 / 9 hrs) - ASO                                                   | 10802   | 6/27/2011  | 0     | 9  | 0       | 9           | Y        | Satisfactorily completed |
| CIT TRAINING - Amended (PIC)                                                                        | 10794   | 6/17/2011  | 4     | 34 | 2       | 40          | Y        | Satisfactorily completed |
| DIGNITARY PROTECTION                                                                                | 10166   | 4/22/2011  | 0     | 24 | 0       | 24          | Y        | Satisfactorily completed |
| Patrol Training Refresher (Phase-1 / 4 hrs) - ASO                                                   | 10452   | 3/25/2011  | 0     | 4  | 0       | 4           | Y        | Satisfactorily completed |
| CORRECTED FORM 41: Alexandria Sheriff Court & Jail Function Codes - 2010 to 2012 ENTERED 10/24/2013 | 12814   | 12/5/2010  | 4     | 18 | 2       | 24          | N        | Satisfactorily completed |
| LEGAL UPDATES for JAIL OPERATIONS                                                                   | 9978    | 11/11/2010 | 4     | 0  | 0       | 4           | Y        | Satisfactorily completed |

# TRAINING HISTORY

## Northern Va. Criminal Justice Training Academy

11/17/2016 10 51 56 AM

ROUTING:

|                                                                                                   |       |            |   |    |   |    |   |                          |
|---------------------------------------------------------------------------------------------------|-------|------------|---|----|---|----|---|--------------------------|
| ON-LINE TRAINING CULTURAL DIVERSITY - NVCJTA (Completed #4) 2010                                  | 10077 | 10/31/2010 | 0 | 0  | 2 | 2  | Y | Satisfactorily completed |
| 2010 Firearms Training - ASO                                                                      | 10092 | 9/23/2010  | 0 | 5  | 0 | 5  | Y | Satisfactorily completed |
| LESSONS IN LEADERSHIP TRIP TO GETTYSBURG - COMMAND STAFF                                          | 9660  | 7/16/2010  | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| EMERGING TECHNOLOGIES COURSE FOR COMMAND STAFF                                                    | 9582  | 4/6/2010   | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| VERBAL JUDO                                                                                       | 9240  | 3/31/2010  | 0 | 16 | 0 | 16 | Y | Satisfactorily completed |
| LEGAL UPDATES / CULTURAL DIVERSITY (Alexandria PD & SO)                                           | 9503  | 3/16/2010  | 4 | 0  | 4 | 8  | Y | Satisfactorily completed |
| CULTURAL DIVERSITY (Alexandria Sheriff)                                                           | 9227  | 10/13/2009 | 0 | 0  | 2 | 2  | Y | Satisfactorily completed |
| LEADERSHIP TRIP TO ANTIETAM NATIONAL BATTLEFIELD-Command Staff Training                           | 9057  | 9/25/2009  | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| Cultural Diversity On-Line Training - ASO                                                         | 9192  | 6/30/2009  | 0 | 0  | 4 | 4  | Y | Satisfactorily completed |
| LEGAL UPDATES / CULTURAL DIVERSITY                                                                | 8755  | 6/4/2009   | 4 | 0  | 0 | 8  | Y | Satisfactorily completed |
| LESSONS IN LEADERSHIP FROM THE CIVIL WAR-(COMMAND STAFF)                                          | 8847  | 5/8/2009   | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| COMMUNICATION FOR SUPERVISORS                                                                     | 8741  | 4/2/2009   | 0 | 13 | 0 | 16 | Y | Satisfactorily completed |
| CRISIS MANAGEMENT FOR COMMAND STAFF - Command Staff Training                                      | 8440  | 2/20/2009  | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| TERRORISM AND FRAUDULENT DOCUMENTS SEMINAR                                                        | 8611  | 1/23/2009  | 0 | 0  | 0 | 8  | N | No Show no show          |
| CORRECTED FORM 41 Alexandria Sheriff-Court & Jail Security Codes- 2008 to 2010 ENTERED 10/24/2013 | 12802 | 12/5/2008  | 4 | 18 | 2 | 24 | N | Satisfactorily completed |
| NEXT GENERATION EXECUTIVES - Command Staff Training                                               | 8438  | 10/9/2008  | 0 | 32 | 0 | 32 | Y | Satisfactorily completed |
| On-Line - Cultural Diversity in a Corrections Setting -ASO                                        | 8558  | 6/30/2008  | 0 | 0  | 4 | 4  | Y | Satisfactorily completed |
| VIRGINIA TECH MASS SHOOTING (PIC)                                                                 | 8078  | 12/11/2007 | 0 | 35 | 0 | 35 | Y | Satisfactorily completed |
| NIMS-ICS 400 COURSE - WETA                                                                        | 7193  | 9/28/2007  | 0 | 16 | 0 | 16 | Y | Satisfactorily completed |
| TRI ACADEMY COMMAND STAFF MIR (PIC)                                                               | 7729  | 9/14/2007  | 4 | 4  | 0 | 8  | Y | Satisfactorily completed |
| 7 HABITS HIGHLY EFFECTIVE PEOPLE FOR LE                                                           | 7194  | 3/28/2007  | 0 | 24 | 0 | 24 | N | Satisfactorily completed |
| NIMS-ICS 300 COURSE - WETA                                                                        | 7078  | 2/23/2007  | 0 | 16 | 0 | 16 | N | Satisfactorily completed |
| JAIL EVACUATION CLASS - NSA                                                                       | 7059  | 2/13/2007  | 0 | 8  | 0 | 8  | N | Satisfactorily completed |
| LEGAL UPDATE                                                                                      | 6857  | 12/13/2006 | 4 | 4  | 0 | 8  | Y | Satisfactorily completed |
| TERRORISM INTERV/ INTERR DIFFER CULTURES                                                          | 6785  | 6/2/2006   | 0 | 16 | 0 | 16 | Y | Satisfactorily completed |
| MOTORCYCLE HATE GROUPS                                                                            | 6742  | 3/10/2006  | 0 | 16 | 0 | 16 | Y | Satisfactorily completed |
| CHALLENGING ORGANIZATIONAL CULTURE                                                                | 6048  | 3/4/2004   | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| GANGS IN NORTHERN VIRGINIA                                                                        | 5743  | 9/18/2003  | 4 | 28 | 0 | 32 | Y | Satisfactorily completed |
| ASO - TERRORISM THREAT ASSESSMENT                                                                 | 5714  | 10/4/2002  | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |

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# TRAINING HISTORY

## Northern Va. Criminal Justice Training Academy

11/17/2016 10 51 56 AM

ROUTING

|                                                                               |      |            |   |    |   |    |   |                          |
|-------------------------------------------------------------------------------|------|------------|---|----|---|----|---|--------------------------|
| ASO-GANG IDENTIFICATION/INVESTIGATION                                         | 5385 | 8/17/2001  | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |
| LEGAL-LE                                                                      | 4828 | 11/12/1999 | 8 | 0  | 0 | 8  | Y | Satisfactorily completed |
| LE IN-SERVICE - A                                                             | 4823 | 11/5/1999  | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |
| LEGAL DAY                                                                     | 4444 | 10/24/1997 | 8 | 0  | 0 | 8  | Y | Satisfactorily completed |
| DEFENSIVE TACTICS RECERTIFICATION                                             | 4372 | 9/10/1997  | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| ASIAN CRIME GROUPS                                                            | 4292 | 4/22/1997  | 0 | 16 | 0 | 16 | Y | Satisfactorily completed |
| SPECIAL ENF PROBLEMS-GANGS                                                    | 4289 | 4/17/1997  | 0 | 16 | 0 | 16 | Y | Satisfactorily completed |
| HOSTAGE NEGOTIATIONS                                                          | 4262 | 3/13/1997  | 0 | 40 | 0 | 40 | Y | Satisfactorily completed |
| SUDDEN CUSTODY DEATH SYNDROME                                                 | 1680 | 10/18/1996 | 2 | 6  | 0 | 8  | Y | Satisfactorily completed |
| DEFENSIVE TACTICS RECERTIFICATION                                             | 1496 | 9/11/1996  | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| KINESIC INTERVIEWING TECHNIQUES                                               | 957  | 4/28/1995  | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |
| GANGS & CRIME                                                                 | 938  | 3/13/1995  | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| DEFENSIVE TACTICS INSTRUCTOR RECERT                                           | 775  | 5/25/1994  | 0 | 24 | 0 | 24 | Y | Satisfactorily completed |
| CRIMINAL PATROL DRUG ENFORCEMENT                                              | 318  | 11/15/1993 | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |
| ASIAN CRIME SEMINAR                                                           | 3713 | 7/20/1992  | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |
| AMERICAN DISABILITY ACT SEMINAR                                               | 4195 | 2/27/1992  | 0 | 2  | 0 | 2  | Y | Satisfactorily completed |
| DEFENSIVE TACTICS INSTRUCTOR RECERT                                           | 4141 | 12/17/1991 | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| DEFENSIVE TACTICS INSTRUCTOR                                                  | 3935 | 4/26/1991  | 0 | 48 | 0 | 48 | Y | Satisfactorily completed |
| DEVELOPING EFFECTIVE SUPERVISORY SKILLS                                       | 3558 | 5/7/1990   | 8 | 32 | 0 | 40 | Y | Satisfactorily completed |
| FIELD TRAINING OFFICER SEMINAR                                                | 3513 | 10/20/1989 | 4 | 36 | 0 | 40 | Y | Satisfactorily completed |
| PARTIAL IN-SERVICE CREDIT - 1988                                              | 3885 | 1/1/1988   | 0 | 0  | 0 | 0  | Y | Satisfactorily completed |
| DEFENSIVE TACTICS INSTRUCTOR                                                  | 3908 | 12/11/1987 | 0 | 40 | 0 | 40 | Y | Satisfactorily completed |
| LEGAL DAY                                                                     | 4013 | 10/24/1987 | 0 | 8  | 0 | 8  | Y | Satisfactorily completed |
| INSTRUCTOR DEVELOPMENT WORKSHOP                                               | 3905 | 7/31/1987  | 0 | 40 | 0 | 40 | Y | Satisfactorily completed |
| SHERIFF'S IN-SERVICE - ALEXANDRIA S O                                         | 3375 | 9/29/1986  | 0 | 0  | 0 | 0  | Y | Satisfactorily completed |
| SHERIFF'S IN-SERVICE                                                          | 3372 | 9/26/1986  | 0 | 0  | 0 | 0  | Y | Satisfactorily completed |
| BASIC COMBINED SCHOOL                                                         | 1731 | 5/7/1984   | 0 | 0  | 0 | 0  | Y | Satisfactorily completed |
| SUDDEN CUSTODY DEATH SYNDROME                                                 | 1678 |            | 2 | 6  | 0 | 8  | Y | Cancelled                |
| CANCELLED - ORGANIZED CRIME, TERRORISM and the THEFT of INTELLECTUAL PROPERTY | 8492 |            | 0 | 0  |   | 0  | N | Currently enrolled       |
| INSTRUCTOR RECERTIFICATION                                                    | 196  |            | 2 | 6  | 0 | 8  | Y | Cancelled                |
| GANGS IN NORTHERN VIRGINIA                                                    | 5156 |            | 4 | 36 | 0 | 40 | Y | Cancelled                |
| CULTS AND SATANIC CRIMES                                                      | 1472 |            | 0 | 24 | 0 | 24 | Y | Cancelled                |
| DRIVER TRAINING REFRESHER                                                     | 4386 |            | 0 | 16 | 0 | 16 | Y | Cancelled                |
| LEGAL UPDATE                                                                  | 6847 |            | 4 | 4  | 0 | 8  | N | Cancelled                |
| ON KILLING UNDERSTANDING ACTS OF VIOLENCE                                     | 6775 |            | 0 | 8  | 0 | 8  | Y | Cancelled                |
| GANGS AND LAW ENFORCEMENT                                                     | 1438 |            | 0 | 16 | 0 | 16 | Y | Cancelled                |

STEARNS, CLARKE A 5408



# TRAINING HISTORY

## Northern Va. Criminal Justice Training Academy

11/17/2016 10 51 56 AM

ROUTING:

|                                        |     |   |    |   |    |   |           |
|----------------------------------------|-----|---|----|---|----|---|-----------|
| DEFENSIVE TACTICS INSTRUCTOR<br>RECERT | 691 | 0 | 40 | 0 | 40 | Y | Cancelled |
|----------------------------------------|-----|---|----|---|----|---|-----------|

### F41s

| F41# | F41 Date   | Class End Date |                                                                                                    | Class ID |
|------|------------|----------------|----------------------------------------------------------------------------------------------------|----------|
| 2607 | 6/6/2014   | 6/4/2014       | ON-LINE TRAINING CULTURAL DIVERSITY - NVCJTA (Completed #5) - 2014                                 | 13402    |
| 2607 | 6/6/2014   | 6/4/2014       | ON-LINE TRAINING CULTURAL DIVERSITY - NVCJTA (Completed #5) - 2014                                 | 13402    |
| 2607 | 6/6/2014   | 6/4/2014       | ON-LINE TRAINING CULTURAL DIVERSITY - NVCJTA (Completed #5) - 2014                                 | 13402    |
| 2392 | 10/24/2013 | 12/5/2012      | CORRECTED FORM 41 Alexandria Sheriff-Court & Jail Function Codes - 2012 to 2014 ENTERED 10/24/2013 | 12815    |
| 2390 | 10/24/2013 | 12/5/2010      | CORRECTED FORM 41 Alexandria Sheriff-Court & Jail Function Codes - 2010 to 2012 ENTERED 10/24/2013 | 12814    |
| 2389 | 10/24/2013 | 12/5/2008      | CORRECTED FORM 41 Alexandria Sheriff-Court & Jail Security Codes- 2008 to 2010 ENTERED 10/24/2013  | 12802    |
| 2057 | 9/28/2012  | 9/26/2012      | MANAGING POLICE USE OF FORCE (Command Staff)                                                       | 11351    |
| 2057 | 9/28/2012  | 9/26/2012      | MANAGING POLICE USE OF FORCE (Command Staff)                                                       | 11351    |
| 2014 | 9/17/2012  | 9/13/2012      | LEADERSHIP TRIP to ANTIETAM LESSON LEARNED in LEADERSHIP                                           | 11367    |
| 2014 | 9/17/2012  | 9/13/2012      | LEADERSHIP TRIP to ANTIETAM LESSON LEARNED in LEADERSHIP                                           | 11367    |
| 1412 | 7/20/2011  | 6/17/2011      | CIT TRAINING - Amended (PIC)                                                                       | 10794    |
| 1412 | 7/20/2011  | 6/17/2011      | CIT TRAINING - Amended (PIC)                                                                       | 10794    |
| 1076 | 7/20/2010  | 7/16/2010      | LESSONS IN LEADERSHIP TRIP TO GETTYSBURG - COMMAND STAFF                                           | 9660     |
| 1009 | 4/20/2010  | 3/16/2010      | LEGAL UPDATES / CULTURAL DIVERSITY (Alexandria PD & SO)                                            | 9503     |
| 851  | 9/30/2009  | 9/25/2009      | LEADERSHIP TRIP TO ANTIETAM NATIONAL BATTLEFIELD-Command Staff Training                            | 9057     |
| 820  | 8/14/2009  | 6/30/2009      | Cultural Diversity On-Line Training - ASO                                                          | 9192     |
| 563  | 8/27/2008  | 6/30/2008      | On- Line - Cultural Diversity in a Corrections Setting -ASO                                        | 8558     |
| 563  | 8/27/2008  | 6/30/2008      | On- Line - Cultural Diversity in a Corrections Setting -ASO                                        | 8558     |

### CERTIFICATIONS

### FIREARMS SCORES

1 State of South Carolina

Court of Common Pleas

2 County of McCormick

3  
4  
5 J.R. Jones )

6 v. )

Transcript of Record

16-CP-35-0134

7 South Carolina Republican )

8 Party, et al. )

9 Defendants. )

10  
11 January 6, 2017

McCormick, South Carolina

12  
13  
14 B E F O R E:

The Honorable William P. Keesley, Judge.

15  
16  
17 A P P E A R A N C E S:

18 James E. Smith, Jr., Esquire  
Attorney for the Plaintiff

19 Robert E. Tyson, Jr., Esquire  
Vordman Carlisle Traywick, III, Esquire  
20 Attorneys for Clarke Stearns

21 Karl S. Bowers, Jr., Esquire  
Attorney for the Republican Party

22 George P. Callison, Jr., Esquire  
23 Attorney for McCormick County

24 Stacy L. Sheppard, RPR  
25 Circuit Court Reporter

## I N D E X

WITNESSPAGE

Jarrod Bruder

Direct Examination By Mr. Smith

30

Cross-Examination By Mr. Tyson

41

Cross-Examination By Mr. Bowers

42

Certificate of Reporter

100

## E X H I B I T S

NO.DESCRIPTIONID.EVD.

P-1

Letter

38

38

P-2

Letter

38

D-1

Letter

28

28

1                   (The following proceedings were held on  
2                   January 6, 2017.)

3                   **THE COURT:** All right. We had a delay in  
4                   getting started. The media has requested to cover  
5                   this event, and I want to cooperate in any way I can  
6                   with that, but the rules require that a form be  
7                   submitted to the Court in advance. So we had to get  
8                   the form and get it filled out. So I've signed a  
9                   form for WJBF allowing them to have a camera in the  
10                  courtroom. If there's any other media in here and  
11                  you haven't submitted a form, you can't take  
12                  pictures in the courtroom.

13                  (Pause.)

14                  **THE COURT:** All right. I've also signed a form  
15                  for the Index Journal. Now, these forms indicate  
16                  that the personnel in the courtroom are familiar  
17                  with the rule and will abide by the rule with there  
18                  can be no flash photography in a courtroom, there's  
19                  not supposed to be any sounds from the cameras that  
20                  distract the proceedings in any way. And with those  
21                  conditions, we're happy to have you --

22                  **UNIDENTIFIED SPEAKER:** We can't hear you, Your  
23                  Honor.

24                  **THE COURT:** Is somebody yelling at me? Folks,  
25                  the microphone in here doesn't work. If you can't

1       hear me, I'm sorry. I'll do the best I can, but we  
2       have to maintain proper courtroom decorum also, so  
3       please -- please do that.

4             All right. I sent an e-mail to the attorneys  
5       this morning because I was getting materials from  
6       them to let them know my understanding of the scope  
7       of this hearing. My understanding of the scope of  
8       this hearing is that it's a request by the plaintiff  
9       -- plaintiffs for issuance of a temporary  
10      injunction. There was a request for a temporary  
11      injunction without a hearing, which the Court  
12      denied. So I've asked -- I've told everybody I can  
13      be available today.

14            My understanding is we have some time  
15      constraints. If you all need to get to Columbia by  
16      3:00, you're going to need to leave here soon. So,  
17      Mr. Smith, I suppose we start with you.

18            **MR. SMITH:** Yes, Your Honor. May it please the  
19      Court. And with respect to the investiture, it's  
20      purely if it's available. I'm not concerned if it  
21      goes beyond the time.

22            And, Your Honor, I want to thank you for taking  
23      the time today to take this matter up of significant  
24      importance to the citizens of McCormick County.

25            May it please the Court. In beginning our

1 argument for an injunctive relief in the form of a  
2 TRO or a preliminary injunction, I'd like to call  
3 Mr. Jarrod Bruder to the stand.

4 **THE COURT:** You want to call a live witness?

5 **MR. SMITH:** A live witness if I might, Your  
6 Honor, simply for the purpose of authenticating a  
7 document that shows the level of importance and also  
8 shows, Your Honor, the need for action. He is a  
9 member of -- is the executive director of the  
10 sheriff's association who has a vested interest,  
11 obviously, they're involved in writing the laws that  
12 apply here, and also help the Court understand, I  
13 think, what's at issue should the Court not grant  
14 the temporary injunction. And I think that should  
15 be part of the evidence for the Court to consider.

16 **THE COURT:** All right. What about the  
17 jurisdictional arguments? Do I need to address  
18 those first?

19 **MR. TYSON:** I was going to suggest -- Your  
20 Honor, good afternoon. My name is Rob Tyson. I'm  
21 the attorney for Clarke Stearns. With me is Lisle  
22 Traywick from my office.

23 I thought that was a good starting spot. I  
24 mean, if you don't have jurisdiction, we don't need  
25 to get into the injunction issue at all. So I

1       thought Mr. Smith was going to start there on his  
2       motion. I'm glad to raise it right now and then let  
3       him respond or however you'd like to, but I think  
4       it's the -- it's the appropriate issue we need to  
5       address first.

6               **THE COURT:** Logically, I think we need to do  
7       that. Now, I may take it under advisement and go  
8       ahead with the proceedings and make a ruling later,  
9       but, logically, I think, Mr. Smith, let's start with  
10      the jurisdictional argument.

11              **MR. SMITH:** That will be fine, Your Honor, and  
12      I think the better way to do that would be to allow  
13      Mr. Tyson to begin.

14              **THE COURT:** Thank you.

15              Yes, sir.

16              **MR. TYSON:** Again, good afternoon, Your Honor.  
17      You've got the brief that we submitted to you.

18              **THE COURT:** I read it.

19              **MR. TYSON:** Yes, sir. I apologize for all the  
20      other elements because we weren't sure when we'd be  
21      back, so that's in there. But you can see bullet  
22      number one, point number one, is jurisdiction. And  
23      we don't think you've got jurisdiction to hear -- to  
24      hear this case, and I say that respectfully, Your  
25      Honor.

1           As you know, our state election laws are  
2           designed in a specific way by our legislature to  
3           handle protest, to handle election disputes. The  
4           way that that process is laid out is very specific.  
5           It demonstrates what a candidate, who wants to file  
6           a protest, like Mr. Jones in this case or the  
7           Democratic Party in this case, if they want to file  
8           a protest, here's how you do it:

9           It gives you time restraints. It tells you  
10          when it's got to be filed. It tells you how to  
11          serve it. It goes through that whole process. Then  
12          it tells the county election commission what it's  
13          got to do, when it has to hold a hearing. From  
14          there, once they have a hearing, it tells the county  
15          election commission when it's got to make a ruling.  
16          After they make a ruling, then it tells you when  
17          you've got to file an appeal to the state election  
18          commission. Then it goes on after that and even  
19          further says, if you want to file an appeal to the  
20          State Supreme Court, it gives you the time.

21          I say that because there's a patchwork, a  
22          statutory framework, laid out for what one wants to  
23          do if he or she wants to challenge an election. In  
24          this case, Mr. Jones and the Democratic Party did do  
25          that. They did file the protest. They filed it



1       timely.

2               Mr. Callison, the county attorney, was there,  
3       that was the first question he asked, 'Are there any  
4       disputes about whether this is a timely protest? We  
5       all agree it was timely. The protest was a one-line  
6       protest about the qualifications of Mr. Stearns.

7               I made a motion to start that the commission  
8       didn't have jurisdiction. I didn't believe that  
9       that commission would be able to handle the  
10      jurisdictional issues. I know Mr. Smith is going to  
11      raise that later. I just -- I say I filed that  
12      motion -- or I raised that motion. Mr. Smith argued  
13      against it, said it was the appropriate place to be  
14      in front of the county election board. I lost. The  
15      county election commission said, We have  
16      jurisdiction; we will hear this protest. And so  
17      then we put evidence on. We submitted it into the  
18      record. Shortly thereafter, the board came back or  
19      the commission came back and denied Mr. Jones and  
20      the Democratic Party's protest.

21              At the end of that hearing when Mr. Callison,  
22      after they had the vote, in the election -- in the  
23      commission transcript, Mr. Callison then said,  
24      Mr. Jones and Mr. Smith, you know the rights to  
25      appeal -- and he made a comment about them -- And if

1       you appeal, it goes to the state office, to the  
2       state election office. That was back on November  
3       the, I think, the 21st was the ruling.

4               When you look at the following dates and you go  
5       through it, they had until Monday at noon to file an  
6       appeal to the state election commission. They did  
7       not. They did not file the appeal to the election  
8       commission.

9               The election commission was anticipating it. I  
10      called over there several times. They were looking  
11      for it. They checked their e-mail. They might have  
12      even called Mr. Smith. I know they called me  
13      wondering if I had seen it. So the appeal was not  
14      filed.

15              South Carolina Law 7 -- Section 7-17-30 states  
16      that any county election commission decisions are  
17      required to decide all cases under protest. And  
18      then it further says, All appeals go to the state  
19      election commission. All appeals goes to the state  
20      election commission. It did not happen.

21              Mr. Jones and the other plaintiffs here are  
22      trying to go around the backdoor now and -- tried to  
23      sneak in the backdoor and tried to file a case here  
24      asking for the same relief that they sought in the  
25      state election commission. We don't believe they

1 have the jurisdiction and we respectfully request  
2 that the Court deny their ability to do that.

3 Your Honor, there's case law on that. It's  
4 cited in the brief. It's the Bluffton Town Council  
5 Election of 2008. And that case is very instructive  
6 of this process and it lays it out.

7 In that case, an appeal was made to the state  
8 election commission in that case when it shouldn't  
9 have been. The state election commission made a  
10 ruling. The Supreme Court heard that and then  
11 reversed it and said it was improper to go that way.  
12 That's exactly what's happened here. You can look  
13 at this process; you can see it. And they should  
14 have continued to follow the process that's laid out  
15 in the Statute, and because they didn't, Your Honor,  
16 this Court doesn't have jurisdiction.

17 They don't get to come here now and ask for the  
18 same equitable relief that they sought there. They  
19 missed the time to do that, and because of that,  
20 they're not able to do it, to try to seek this  
21 relief that they want here.

22 Just quickly, Mr. Smith raised this argument or  
23 this issue about whether we were judicially estopped  
24 from arguing jurisdiction now when I made a similar  
25 argument at the county commission, and, Your Honor,

1 I cited the Auto Owners case.

2 Two simple points to that: On judicial  
3 estoppel, you've got to prevail. To be estopped  
4 from making that argument, you have to prevail.  
5 Clearly, I lost; I lost that argument. I didn't  
6 think the election commission had jurisdiction, but  
7 they said, No, sir, Mr. Tyson, we do have  
8 jurisdiction. They heard the case and then they  
9 made a ruling on it. So judicial doesn't --  
10 judicial estoppel doesn't apply there in that  
11 situation in a case where I haven't -- when I didn't  
12 prevail.

13 Also, Your Honor, as I'm sure you're well  
14 aware, judicial estoppel involves questions of fact,  
15 and it talks about when you're making inconsistent  
16 statements of fact. And we're not doing that here.  
17 That's not what this case is about. It's just a  
18 question of jurisdiction. That's a question of law.  
19 And as Your Honor knows, jurisdiction can be raised  
20 at any time. And so, clearly, we believe that it's  
21 proper now to raise this question of jurisdiction  
22 and that we don't believe that we're judicially  
23 estopped from making that request now.

24 So, Your Honor, we think the case should be  
25 dismissed for lack of jurisdiction, subject matter

1 jurisdiction, from this Court. Our state has a very  
2 specific set of rules, statutory framework, on how  
3 election protests should be handled. Mr. Smith and  
4 the plaintiffs understood that when they started  
5 down that road. For some reason, they failed to  
6 continue to go down that road and now they're trying  
7 to come in the backdoor here and have the Court hear  
8 them when they didn't prevail at that place. And  
9 for those reasons, we don't think this Court has  
10 jurisdiction. Thank you.

11 **THE COURT:** Mr. Bowers, have anything on this?

12 **MR. BOWERS:** Yes, Your Honor. Thank you. Good  
13 afternoon. May it please the Court.

14 For the record, Butch Bowers here on behalf of  
15 the State Republican Party and McCormick County  
16 Republican Party. I also represent Governor Haley,  
17 but as we have -- as we have communicated with the  
18 Court earlier this week, Mr. Smith has graciously  
19 agreed to dismiss her without prejudice. And so I  
20 don't think she's a -- she's not technically a party  
21 still to the case, but I just wanted to make that  
22 clear for the record. We haven't filed any  
23 paperwork yet, but that's an agreement among  
24 counsel.

25 **THE COURT:** Yes, sir.

1           **MR. BOWERS:** I'll just echo what Mr. Tyson  
2           said. I was actually one of the lawyers involved in  
3           that Bluffton Town Council case back in -- it was a  
4           2008 election. The case was heard by the Supreme  
5           Court in 2009. And it's very simple, Your Honor,  
6           the Statute 7-17-60 requires that -- that an appeal  
7           or that -- an appeal from a county election  
8           commission decision must go to the state election  
9           commission. It's that simple.

10           This lawsuit that has been filed on behalf of  
11           the plaintiff is nothing more than an appeal. It's  
12           an appeal of that decision that the county election  
13           commission made back in November. And so for that  
14           reason, Your Honor, we think the law is clear. We  
15           think that the Court lacks jurisdiction to hear this  
16           case, and we'd ask you to deny their request here  
17           today. Thank you, Your Honor.

18           **THE COURT:** Okay. I also have Mr. Callison.

19           **MR. CALLISON:** Yes, sir.

20           **THE COURT:** Do you have any input on this at  
21           all?

22           **MR. CALLISON:** No, sir, not on that issue at  
23           all. The county's interest is simply to have a  
24           qualified chair for McCormick County.

25           **THE COURT:** Okay. So, Mr. Smith, what's your

1 argument?

2 **MR. SMITH:** Thank you, Your Honor. Quite  
3 simple, this is not a case that is an election  
4 protest case, Your Honor. And I'm privileged to be  
5 here with my client, Mr. Jared Jones, who's to my  
6 side and my left, and Mr. Tommy Stafford, who's also  
7 counsel of record.

8 What's important, too, is this is not an  
9 appeal, Your Honor. It's not even the same case in  
10 that it doesn't have the same parties.

11 The question here is not whether or not there  
12 were election irregularities, not whether or not  
13 there was people who were unqualified to vote  
14 voting. When you look at the Statute, Your Honor,  
15 the question is is he qualified to be sheriff? It's  
16 not whether or not he's qualified to be a candidate  
17 for sheriff. The only qualification is that you  
18 have to sign an affidavit. The issue is whether or  
19 not he is qualified to be sheriff.

20 Jurisdiction is well within this court. Matter  
21 of fact, I know this Court has heard many cases of  
22 qualifications, whether it be coroners. I've been  
23 on the opposite side of counsel table with these  
24 lawyers on many occasions talking about  
25 qualifications.

1           And the fact is the Statute that they  
2           reference, it does not permit the local county board  
3           or the state board to pass on a question of  
4           qualifications. That is, in fact, the policy of the  
5           state election commission as shared with me with  
6           respect to our appeal. And so it wasn't a question  
7           of failing to appeal, it was a decision not to  
8           because they were taking the position that they  
9           don't have the authority to pass on this question of  
10          qualifications of being a sheriff or not.

11           **THE COURT:** They is who? The commission or the  
12          defendant?

13           **MR. SMITH:** The director, Your Honor. The  
14          staff, they'll take the position that it is not  
15          their -- they don't have authority to pass on the  
16          qualifications of whether or not they meet the  
17          qualifications to hold the office.

18           When an election board reviews, it's whether or  
19          not the election was handled properly, whether or  
20          not it was voted on properly, whether or not they,  
21          you know, the votes were counted properly. That is  
22          the purview.

23           And I think -- the truth is I think Mr. Tyson  
24          was correct in the position that he raised at the  
25          hearing that -- and we've been, you know, in circuit



1 courts on this issue dozens and dozens of times,  
2 whether it be coroners or sheriffs. And this Court  
3 certainly has the jurisdiction to determine whether  
4 or not Mr. Stearns meets the qualifications.

5 And the other question, it's not -- it's not an  
6 exclusive jurisdiction of this -- of the commission  
7 to handle a dispute over qualifications of this  
8 individual. If we were talking about election  
9 irregularities or the failure to, you know, or  
10 challenge to a voter or a challenge to the way it  
11 was counted, challenge to certain ballots, absentee  
12 ballots, that's what is within the jurisdiction of  
13 the election -- local election commission and the  
14 state commission.

15 The other point is, Your Honor, these are not  
16 the same parties. Nothing to prevent any citizen of  
17 this county to raise this issue, to file the very  
18 same lawsuit. And they're not bound by whether or  
19 not an appeal was taken by Mr. Jones. Mr. Jones was  
20 the protestant in the case before the local  
21 commission. And here we have the additional parties  
22 in the plaintiffs of the state party and the county  
23 party. And so we could file a separate claim,  
24 somebody else could bring the same case and be  
25 properly before this Court.

1           And -- so, Your Honor, I would submit the Court  
2           does have jurisdiction to hear this matter. There's  
3           not any prevention of this matter being taken up by  
4           virtue of what's taken place. And the commission --  
5           and the question is whether or not he can be  
6           sheriff, not whether or not he can be a candidate  
7           for sheriff, and that's what the lawsuit raises.

8           **THE COURT:** Has there been any discussion of  
9           pursuing this in the original jurisdiction of the  
10          Supreme Court?

11          **MR. SMITH:** I think the original jurisdiction  
12          of the Supreme Court could certainly take this up as  
13          well. And I think, you know, depending upon the  
14          Court's ruling, there might be an appeal to take it  
15          in that direction, but it certainly could be brought  
16          there if they granted that. I think all of these  
17          areas, I think it's best heard here, which is why we  
18          brought it here, but it could certainly be taken up  
19          in the Supreme Court as well.

20          **THE COURT:** All right. Mr. Tyson.

21          **MR. TYSON:** Yes, sir, just quickly, Your Honor.  
22          I mean, with all due respect to Mr. Smith, you just  
23          asked about original jurisdiction and he said, We  
24          maybe could go there, too; says, Depending on how  
25          this Court rules. That's not -- that's not original

1 jurisdiction, that's an appeal. If he wants to file  
2 an action in original jurisdiction, he files an  
3 action in original jurisdiction, but what happened  
4 here is he chose a venue, period. He chose the  
5 county election board. He's stuck with it. He  
6 heard -- he chose it. He says it's different  
7 parties.

8 This is what Mr. Smith said, he says, Good  
9 morning. I represent -- my name is James Smith and  
10 I represent the McCormick County Democratic Party  
11 and the State Democratic Party. And I'm pleased to  
12 be amongst you today along with Mr. Jones.

13 He sued -- and then he sued -- and the protest  
14 was against Mr. Stearns who was the candidate. So  
15 the County Republican Party or the State Republican  
16 Party or the Governor or the State of South Carolina  
17 wouldn't have been appropriate for a protest, but  
18 the issue there was over the qualifications of  
19 Mr. Stearns. That's what this is about, does he  
20 meet the qualifications or not?

21 So he can style it this way over here if he  
22 wants to in the state election commission. He can  
23 style it right here before you. He can style it  
24 with original jurisdiction, but the fact is he  
25 doesn't get all the choices. He's got to pick one

1       and he's got to run with it.

2               He said -- it's interesting, he now agrees with  
3 my position on jurisdiction before the county  
4 election commission. They already argued that the  
5 county election commission did have jurisdiction.  
6 And now, after he lost, he says that they don't  
7 think it's proper to be here in the court. Well,  
8 that just kind of begs the question, then why did  
9 you file the protest in the county? Why did you do  
10 that? I mean, that's where he went. That's where  
11 he went. That was the route that he went to file a  
12 protest.

13              The protest, I think, is attached to one of his  
14 -- one of his documents. That's where he chose. He  
15 said, I am protesting the elections and the  
16 qualifications of Mr. Stearns. That's what he said  
17 and that's what this case is about today, if we ever  
18 get to the merits of it. We don't think you should.

19              And the other point just quickly, I agree with  
20 Mr. Smith. He and I have argued about  
21 qualifications in circuit court for coroners and  
22 sheriffs in a number of cases. Here's the  
23 difference: None of those started in the county  
24 election commission and then were lost and then came  
25 over to the circuit court. You either start at

1 election commission and follow the statutory  
2 procedure or you start in circuit court. You don't  
3 get to decide when you lose and then come over here  
4 and pick something and try to do it differently.

5 So I'm not saying that he's forum shopping, but  
6 you've got to pick which forum you want, and,  
7 unfortunately, for Mr. Smith, he started with the  
8 state -- or the county election commission. He  
9 lost. The protest was denied. So then the  
10 appropriate next step was to appeal that to the  
11 state election commission.

12 And, Your Honor, as we have cited in the case,  
13 as Mr. Bowers has said, the Bluffton case, we  
14 believe clearly states that this Court doesn't have  
15 jurisdiction. Thank you.

16 **THE COURT:** Well, what about his statement, if  
17 I understood him, that the county election  
18 commission stated they could not pass on  
19 qualification? I mean, the first request I had for  
20 a hearing was January the 3rd. And I asked both  
21 sides to send me the materials. I'll review them  
22 for the request about a restraining order without a  
23 hearing. I read, at that time, the report from the  
24 commission or the transcript, I believe it was.

25 **MR. TYSON:** Yes, sir.

1           **THE COURT:** What did the county commission  
2 rule?

3           **MR. TYSON:** The county commission ruled they  
4 had jurisdiction.

5           **THE COURT:** They had jurisdiction to rule on  
6 the qualifications of the candidate?

7           **MR. TYSON:** That's right because that was the  
8 protest. The protest was a one line whether -- we  
9 protest the qualifications of Clarke Stearns.

10          **THE COURT:** Well, what about his statement that  
11 that's not what they did?

12          **MR. SMITH:** Your Honor, can I clear that up?

13          **THE COURT:** Yes.

14          **MR. SMITH:** I said that the state election  
15 commission, Ms. Andino, stated that it's not their  
16 -- the policy is that they don't pass on  
17 qualifications. And that was the basis for the --

18          **THE COURT:** When was that?

19          **MR. SMITH:** Given the quick way we moved, I can  
20 certainly get an affidavit to support that, but that  
21 was during the time of making a decision to appeal  
22 or not to appeal.

23          **THE COURT:** Okay. It's not part of the record?

24          **MR. SMITH:** Not yet, but it can be, Your Honor.

25          **MR. TYSON:** No, sir. It's not here today. And

1 your question's a good question.

2 They ruled. I got there. After we got to the  
3 protest, went there, I said, I don't think you've  
4 got jurisdiction. I read them the Statute. It  
5 talks about voting irregularities, that's, you know,  
6 where somebody's challenging somebody's vote, that's  
7 the general purview of the election commission. I  
8 don't think you have jurisdiction; y'all shouldn't  
9 be here. And I moved to dismiss it.

10 **THE COURT:** Right. I read that in the  
11 transcript.

12 **MR. TYSON:** Okay. They denied it. They denied  
13 my motion and said, We have jurisdiction. We're  
14 going to hear the protest about qualifications.

15 Mr. Smith then put Mr. Stearns up and went  
16 through all of the lines about qualifications and  
17 whether he meets them. He put up his training  
18 record. He did all of those things to determine  
19 whether he had qualifications. At the end, they  
20 voted and they denied the protest, the commission  
21 did, saying, you know, that the protest was denied.  
22 They weren't going to rule that he didn't have  
23 qualifications. They denied it.

24 **THE COURT:** It was a 3-3 vote.

25 **MR. TYSON:** It was a 3-3 vote, Your Honor. And

1 to prevail -- to have a motion prevail, you've got  
2 to have a majority, and they didn't have it, so it  
3 was denied.

4 **THE COURT:** Was it a 3-3 vote on the  
5 qualification issue?

6 **MR. TYSON:** Yes, sir. Yes, sir. It was a 3-3  
7 vote. So the motion to hear the protest was denied.  
8 The protest was that he was not qualified. They  
9 denied that.

10 So they had two votes. The first one was --

11 **THE COURT:** That's what I'm saying. There was  
12 two votes. One was a jurisdictional argument.

13 **MR. TYSON:** Which I lost. They said, We've got  
14 jurisdiction.

15 **THE COURT:** I know you lost, but did you lose  
16 3-3 or did they --

17 **MR. TYSON:** Oh, no, sir. I lost 4-2. 4-2. So  
18 I lost that.

19 And then on the -- and they did the same thing  
20 you were talking about, they let us argue in the  
21 front, took it under advisement, came back and then  
22 they had to vote on jurisdiction. And they said, on  
23 my motion to dismiss this for lack of jurisdiction,  
24 it failed on the two to four vote. Okay?

25 And then they said, Now, we're going to take up



1 the matter of the protest, and then all those in  
2 favor of granting this protest. And it failed on a  
3 tie, 3-3 vote, since there wasn't a majority.

4 **THE COURT:** All right.

5 **MR. TYSON:** Does that clarify that --

6 **THE COURT:** Yes, sir, that's what I read. I  
7 just wanted to make sure I remembered it correctly.

8 **MR. TYSON:** That's exactly right. And I  
9 appreciate Mr. Smith's comments about the state  
10 election commission would do this and that, that's  
11 not here before us today. So thank you, Your Honor.

12 **THE COURT:** All right. I just got confused. I  
13 thought he was talking about something in the  
14 record, and he was talking about the county  
15 commission. So I apologize to you.

16 Mr. Bowers.

17 **MR. BOWERS:** Your Honor, thank you. Very  
18 briefly, as the Court just noted, the piece that --  
19 Mr. Tyson said it correctly, he nailed it.  
20 Mr. Smith said one thing that -- about Ms. Andino  
21 and the state election commission, I know it's not  
22 in the record, so you're not going to consider it, I  
23 just wanted to get it out there that I'm certain  
24 that Ms. Andino said -- I'm certain that Mr. Smith  
25 has represented it correctly.

1           I also -- I was chairman of the state election  
2           commission for three years from '04 to '07.  
3           Ms. Andino is an excellent agency head. She worked  
4           for me and I'm sure she said that, but I'm also just  
5           as certain that the state election commission, while  
6           they don't normally pass on qualifications, they  
7           absolutely take appeals from county election  
8           commissions that were held -- that were duly held by  
9           that county election commission. So -- and I'm  
10          happy to get an affidavit to that effect as well.  
11          Thank you, Your Honor.

12           **THE COURT:** Okay. Mr. Callison, you're  
13          still --

14           **MR. CALLISON:** I have nothing to add.

15           **THE COURT:** Okay. Then we're back, Mr. Smith.

16           **MR. SMITH:** Yeah, just, Your Honor, very  
17          briefly. I was not present and was not the party  
18          that filed this protest. So just to correct what  
19          was raised by Mr. Tyson, I didn't bring the protest.

20           The reality is if you look at the lawsuit that  
21          we have filed, it does not protest the election.  
22          Okay? This is a question of whether or not he's  
23          qualified for the office. And you have to be both  
24          elected and qualified.

25           We're not saying it's not -- we've not brought

1       -- challenging that he didn't get the votes that he  
2       got. We're not challenging that he didn't get more  
3       votes than Mr. Jones got. We're not challenging  
4       anything about the election itself, which is why  
5       this is not properly before the commission itself.  
6       This is a challenge of his qualifications.

7               And the law talks about that in many areas and  
8       talks about it in the constitutional provisions  
9       dealing with the sheriff. You know, the current  
10      sheriff continues until their successor is elected  
11      and qualified. It's a separate consideration. And  
12      it's a consideration that is not for the local  
13      election commission. However improvidently filed  
14      and the decisions that went -- that were passed  
15      there, that doesn't provide exclusive jurisdiction  
16      now to determine the question of qualification and  
17      deny this Court of jurisdiction to deal with that  
18      question. That question, you know, needs to be  
19      dealt with and needs to be resolved, but this Court  
20      has jurisdiction to hear this matter based upon the  
21      lawsuit that we provided. If you look at the  
22      lawsuit, it does not contest the election.

23              **THE COURT:** All right. Thank you.

24              I'll have to take the ruling under advisement.  
25      So that we don't have to reconvene again, let me

1       take that under advisement and proceed without  
2       prejudice to anyone as far as the issues that have  
3       been raised.

4               **MR. TYSON:** Your Honor, I'm sorry, I don't know  
5       if this will help you. I do have his -- the  
6       protest, if you would like that to be introduced, of  
7       what he said, of what the protest was. "I am  
8       submitting this letter in the formal protest of the  
9       November 8th McCormick County Sheriff's race.  
10      Mr. Stearns does not meet the qualifications set  
11      forth by the state of South Carolina". So it is  
12      about qualifications. So I'm glad to submit this  
13      as --

14              **THE COURT:** You can make an exhibit, if you  
15      like. When you say "he", you mean Mr. Jones filed  
16      that or Mr. Smith filed it?

17              **MR. TYSON:** That was the protest filed by  
18      Mr. Jones before the state -- I mean, before the  
19      county election commission contesting the  
20      qualifications. Mr. Smith said --

21              **THE COURT:** I just didn't know who "he" was.

22              **MR. TYSON:** Yes, I understand. Mr. Smith just  
23      said it wasn't about qualifications and I just  
24      wanted you to read it, that's exactly what it was  
25      about.

1           **THE COURT:** Mark it as an exhibit.

2                   (Defendant's Exhibit Number 1, letter, was  
3 marked and admitted into evidence.)

4           **MR. SMITH:** Maybe I -- of course, I know what  
5 the protest said, Your Honor. The protest was filed  
6 raising the question of qualifications in a area,  
7 which was -- it was improvidently filed there  
8 because they don't pass on qualifications. They  
9 pass on elections. They're two different  
10 considerations. We're not contesting the election  
11 here. We're contesting his qualifications. And  
12 this is the proper venue for that.

13           **THE COURT:** Do you dispute the Bluffton case  
14 says what they say it says?

15           **MR. SMITH:** You know, I don't believe it does,  
16 Your Honor. I don't believe it provides -- it  
17 requires that you don't have jurisdiction and we --  
18 and can't consider a separate issue of  
19 qualifications that we believe was, you know,  
20 improvidently filed. And we have separate parties  
21 that are involved in this with the addition of also  
22 other defendants. So we think it's a separate case.

23           **THE COURT:** Well, I read a lot since y'all  
24 contacted me on the 3rd. I've read transcripts.  
25 I've read affidavits. I've read letters. I've read

1 e-mails, but I haven't had a chance to read cases or  
2 the Constitution, which I told you all the  
3 constitutional provisions that relate to sheriff, I  
4 told y'all there may be questions about that today,  
5 but it's just a time crunch. I didn't have an  
6 opportunity to do that. I had hearings all day  
7 yesterday and just haven't had a chance to do it.

8 All right. So, Mr. Smith, I suppose we're back  
9 to where we started.

10 **MR. SMITH:** Thank you, Your Honor. At this  
11 time, we'd like to begin our argument on the TRO.  
12 And we'll call Mr. Jarrod Bruder.

13 **MR. TYSON:** Your Honor, I just would object to  
14 that. I mean, you know, we're here to talk about an  
15 injunction. There are three elements of that. We  
16 can discuss that. We have the -- we have this  
17 motion that he's filed; we have that. I'm not sure  
18 testimony is needed to describe that, so I would  
19 object to him --

20 **THE COURT:** I don't know of anything that  
21 prohibits live testimony in an injunction  
22 proceeding, most of the time there's not, but I  
23 don't know of anything that prohibits it.

24 Call your witness.

25 **MR. SMITH:** Thank you, Your Honor.

1 JARROD BRUDER,  
2 having been duly sworn, testified as follows:

3 **THE COURT:** What's your name, sir?

4 **THE WITNESS:** Jarrod Bruder, Executive Director  
5 of South Carolina Sheriff's Association.

6 **COURT REPORTER:** Can you spell your last name?

7 **THE WITNESS:** B-r-u-d-e-r.

8 **THE COURT:** First name is J-e-r-r-o-d?

9 **THE WITNESS:** J-a-r-r-o-d.

10 **THE COURT:** J-a-r-r-o-d. I'm sorry.

11 Mr. Smith.

12 **MR. SMITH:** Thank you, Your Honor. May it  
13 please the Court.

14 **THE COURT:** Yes, sir.

15 **MR. SMITH:** May I approach the witness?

16 **THE COURT:** Sure.

17 DIRECT EXAMINATION

18 BY MR. SMITH:

19 **Q** Mr. Bruder, what is your job?

20 **A** I am the Executive Director of the South  
21 Carolina Sheriff's Association. I represent the 46  
22 sheriffs of South Carolina.

23 **Q** Okay. And I just handed you a document. Do  
24 you recognize that document?

25 **A** Yes, sir.

1       **Q**     And what is it?

2       **A**     This is a letter that I sent to Mr. Stearns to  
3       follow up on a conversation that he and my  
4       president, Sheriff Hunt of Aiken County, had during  
5       the sheriff's school back, I believe, on December  
6       7th. This is just confirming that information that  
7       we shared then.

8       **Q**     And is that your signature on the second page?

9       **A**     Yes, sir, it is.

10      **Q**     And I think you testified, you prepared this  
11     document?

12      **A**     I did.

13      **Q**     And what does it express?

14      **A**     The sheriff's association board of directors  
15     came together and discussed the matter after it was  
16     brought to our attention about the qualifications of  
17     Mr. Stearns. The sheriff's association has been  
18     around for at least a hundred years or over a  
19     hundred years and we played a vital part in getting  
20     the qualifications installed into the Statute back  
21     in 1988. So we're very -- very aware, very involved  
22     with that whole process.

23             The sheriffs are obviously concerned about  
24     maintaining the integrity of the office, and we feel  
25     that's best done by making sure that every person



1       who is a sheriff, elected sheriff, properly  
2       qualifies.

3               And that -- this letter is expressing our  
4       concern that Mr. Stearns, although he has 31 years  
5       of law enforcement experience in Virginia, does not  
6       meet our statutory definition, and that's simply  
7       what we're trying to convey to him. Appreciate his  
8       service in Virginia, but we do not believe that that  
9       qualifies him to be the sheriff of McCormick County.

10      **Q**       So --

11               **MR. TYSON:** Your Honor, I would object to that,  
12       and maybe it's just a proper time to do this in  
13       general, I mean, you can see the letter. Mr. Bruder  
14       is providing his interpretation of the law.

15               You know, Rule 701 doesn't allow for someone --  
16       a lay witness to provide expert testimony, such as  
17       what the law means or says or interpreted, or  
18       whether Mr. Stearns does meet the qualifications or  
19       not. He can testify to facts all he wants, but  
20       that's not what this letter is. So we object to the  
21       letter, and we object to his testimony where he  
22       tries to offer legal opinions that are way beyond  
23       the realm of Rule 701.

24               **THE COURT:** Mr. Smith, what do you say about  
25       that?

1           **MR. SMITH:** Your Honor, I'll be happy to have  
2 him qualified as an expert -- I think he is -- on  
3 this subject. He's been there in the process of  
4 working with this legislation in getting it passed  
5 for years. He's immanently familiar with it. He  
6 spends his day and life working for its enforcement.  
7 So if the Court would prefer that, he certainly  
8 would qualify. He knows more about the Statute, I  
9 think, than anybody else in the room.

10          **THE COURT:** I don't have any issue with him  
11 testifying about the legislative history, and like  
12 he mentioned in his letter, that there was a change  
13 in the Statute, but I've never qualified an expert  
14 on the law. I've never known -- I've had that  
15 argued before and I've wrestled with it a lot, but I  
16 don't know that I can qualify him as an expert on  
17 the law.

18          **MR. SMITH:** Don't you think, Your Honor, it  
19 would be appropriate, notwithstanding the objection  
20 raised, that he can give what is the position of the  
21 association he represents? It is their, as he said,  
22 their job to uphold the integrity of the office.  
23 And they have taken a position on this matter, which  
24 I think is relevant to the Court. And they also  
25 have concerns of its implication, which is relevant

1       for my purpose of showing irreparable harm and  
2       immediate harm.

3               **THE COURT:** Well, I was going to say to you, I  
4       think you can go to the issue of the injunction. I  
5       don't know that I would allow it on declaratory  
6       judgment or a mandamus issue, but -- but in  
7       assessing the elements of the injunctive relief  
8       that's being sought, I see your point there.

9               Do you have something, Mr. Tyson?

10              **MR. TYSON:** I was just going to say, Your  
11       Honor, I don't know whether Mr. Bruder is a lawyer  
12       or not, but I --

13              **THE COURT:** Well, he said he could tender him  
14       as an expert. He hasn't done it.

15              **MR. TYSON:** Yes, sir, but what he's done is  
16       he's offered, you do not meet the statutory  
17       qualifications. He's providing a legal opinion.  
18       He's not doing that as his office of the association  
19       over that. He's saying, you would need to have  
20       these years of experience; you need to do this. I  
21       just don't think that he's able to testify to that.

22              If he wants to testify about what he believed  
23       happened in 1988 -- I don't know how old he is, I  
24       don't know if he was around in 1988, but he can  
25       testify to that. But I don't think he can testify

1 to a legal interpretation of what the Statute is.  
2 That's why we've got -- why we're before the Court  
3 today.

4 And as your point is, we're here on the three  
5 elements of the TRO. And his interpretation of that  
6 I'm not sure is relevant to that at all.

7 **THE COURT:** All right. Anybody else need to  
8 put anything on the record?

9 **MR. BOWERS:** No, Your Honor.

10 **THE COURT:** Anything else, Mr. Smith?

11 **MR. SMITH:** No, Your Honor.

12 **THE COURT:** All right. The objection is  
13 sustained in part and denied in part. I'm not going  
14 to accept his legal opinions as evidence, but I am  
15 going to allow him to state the position of the  
16 association.

17 Now, if you want to tender him or make a  
18 proffer, I'm not stopping you from doing that.

19 **MR. SMITH:** I don't believe that's necessary  
20 with the Court's ruling, Your Honor.

21 **THE COURT:** All right. Go ahead.

22 BY MR. SMITH:

23 **Q** Mr. Bruder, given the letter you've written, do  
24 you have concerns in your office for the citizens of  
25 this county of the impact of this issue of

1        qualifications and whether or not he qualifies for  
2        this office?

3        **A**     I do, but before I get into that, I want to  
4        just clarify that whenever I'm authorized to speak,  
5        I'm speaking on behalf of especially my board of  
6        directors. I have 11 elected sheriffs that are my  
7        board of directors, and they authorize me to go and  
8        speak on behalf of them. So when I say that we have  
9        concerns, it's the concerns of the 11 sheriffs that  
10       are on the board and the total 46 sheriffs in the  
11       state.

12       **Q**     Yes, sir.

13       **A**     Our concern, quite frankly, is -- gets down to  
14       the arrest authority, whether or not an individual  
15       who does not meet the qualifications per se a  
16       Statute, if they do then have the authority to make  
17       an arrest, a legal and lawful arrest, in McCormick  
18       County. That's part of our concern of why we have  
19       those issues.

20       **Q**     And that concern would be immediate upon him  
21       taking office, would it not?

22       **A**     Yes, sir. The office of sheriff, especially in  
23       South Carolina, is unique than any other -- unique  
24       to any other law enforcement agency in the state.  
25       The deputies derive their authority directly from

1 the sheriff himself. The law looks at it as if he  
2 was the individual so --

3 **MR. TYSON:** Your Honor, I would object. He's  
4 offering opinion on statutes and where they derive  
5 authority. And as you just said, he can speak on  
6 behalf of the association, but not as to his  
7 interpretation of the statutes.

8 **THE COURT:** Mr. Smith, do you have anything on  
9 this?

10 **MR. SMITH:** Just the same position we took last  
11 time, Your Honor. It's not offered for -- that he  
12 has the correct conclusion, but he is making the  
13 case for the immediate and irreparable harm that  
14 would be a cloud under this office and this officer  
15 and the potential for every defense lawyer to  
16 challenge every arrest made by this new sheriff if  
17 he's not qualified for the office and the need to  
18 have a decision made before he takes office.

19 **THE COURT:** Just to move this along, I'm going  
20 to deny the objection at this point.

21 **MR. SMITH:** Thank you, Your Honor.

22 **THE COURT:** I know that's inconsistent with  
23 what I said earlier.

24 **MR. SMITH:** Thank you, Your Honor.

25 Can I have this marked?

1           **THE COURT:** All right. Subject to previous  
2 objections as far as this exhibit?

3           **MR. TYSON:** I'm sorry?

4           **THE COURT:** He wants to offer the letter.

5           **MR. TYSON:** Yes, sir, I just raise the same  
6 objections as I did.

7           **THE COURT:** Mr. Bowers?

8           **MR. BOWERS:** Same objection.

9           **THE COURT:** Mr. Callison?

10          **MR. CALLISON:** No objection.

11          **THE COURT:** Mark it in evidence, please.

12                   (Plaintiff's Exhibit Number 1, letter,  
13 marked and admitted into evidence.)

14          **MR. SMITH:** Thank you.

15                   If you would mark this for identification,  
16 please.

17                   (Plaintiff's Exhibit Number 2, letter,  
18 marked for identification.)

19          BY MR. SMITH:

20          **Q**     Mr. Bruder, I'm providing you what's been  
21 marked for identification as Plaintiff's 2 and ask  
22 if you can identify that?

23          **A**     Yes, sir. This is a statement from the  
24 Criminal Justice Academy that was offered when we  
25 inquired about Mr. Stearns having ever been issued a

1 certificate from the Criminal Justice Academy in  
2 South Carolina.

3 **Q** Right. And so you made the inquiry to  
4 determine whether or not he had received a  
5 certificate from South Carolina?

6 **A** Under the instruction of my board, yes, sir.

7 **MR. TYSON:** Judge, Your Honor, you know, I was  
8 waiting for this to be admitted. This is -- I would  
9 object to this. He's offering hearsay testimony  
10 about what was offered and what was said by  
11 Mr. Swinder or Swindler or whatever. And,  
12 obviously, I don't think Mr. Swindler is here to  
13 authenticate it, so I'm going to object to any  
14 testimony about this without the authentication.

15 **MR. SMITH:** Your Honor, it's actually in the  
16 form of an affidavit. It's been signed by a notary.  
17 It's competent to be offered in just the form of as  
18 an affidavit. The lady who signed next to that is a  
19 notary who notarized this who doesn't have the form.  
20 The original has the seal on the -- I'll provide the  
21 Court with the original that has the notary seal,  
22 but it didn't come through on the copies, Your  
23 Honor, but it's clearly been notarized.

24 **MR. TYSON:** And who notarized that?

25 **MR. SMITH:** Jean Crump or --



1           **MR. TYSON:** Did somebody at his office or did  
2 somebody here? Who did it?

3           **THE WITNESS:** She is the assistant to  
4 Mr. Swindler.

5           **MR. TYSON:** Your Honor, again, I raise the same  
6 objection.

7           **MR. BOWERS:** Same objection, Your Honor. This  
8 is clearly hearsay. It's improperly submitted.

9           **THE COURT:** Do you have anything else,  
10 Mr. Smith, on this?

11           **MR. SMITH:** Just that it's an affidavit and the  
12 Court can consider it even just if I filed it with  
13 my pleadings.

14           **THE COURT:** You can file it with the Court, but  
15 it's hearsay, it's not an exhibit. I don't think  
16 the issue's in dispute. He testified, in the  
17 testimony that was submitted to me, that he's never  
18 been issued a certificate by the South Carolina  
19 Criminal Justice Academy.

20           **MR. SMITH:** If they don't dispute that, then  
21 I'm fine. I just was needing to make sure that was  
22 in the record.

23           **THE COURT:** I thought I heard that from both  
24 sides that --

25           **MR. TYSON:** Yes, Your Honor.

8           **THE COURT:** All right. It's marked for  
9           identification purposes. If I'm wrong, then the  
10          appellate court can tell me I'm wrong.

15           **THE COURT:** Do you have any questions of the  
16           witness?

18 CROSS-EXAMINATION

20 Q Mr. Bruder, I heard you say that on behalf of  
21 your association, you had concerns about the  
22 qualifications of Mr. Stearns; is that right?

24           **Q**     Your board did. And when did those concerns  
25     arise?

1       **A**     Almost immediately after the election. We, you  
2       know, we obviously have a responsibility under the  
3       Statute to train -- in sheriff's school, we have a  
4       responsibility to train all newly elected sheriffs.  
5       So, on November the 9th, I believe it was, we came  
6       in and started looking at information. And it was  
7       later brought to our attention that Mr. Stearns had  
8       not been certified in South Carolina.

9       **Q**     And who decided to bring that to your  
10      attention?

11      **A**     I was notified of it by Mr. Jones.

12                     (Laughter.)

13              **MR. TYSON:** No further questions.

14              **THE COURT:** Folks, y'all are in a courtroom.  
15      You need to maintain order, please.

16              Mr. Bowers, do you have anything?

17              **MR. BOWERS:** Yes, Your Honor, briefly. Thank  
18      you, sir.

19                               CROSS-EXAMINATION

20      BY MR. BOWERS:

21      **Q**     Mr. Bruder, I want to follow up on that  
22      question that Mr. Tyson just asked you. You said  
23      that your concerns about his qualifications arose  
24      after the election; is that correct?

25      **A**     Yes, sir. I did do some digging and I guess

1       just some general research about Mr. Stearns. When  
2       I looked it up to try to contact him, I did see that  
3       he had law enforcement experience in Virginia, but I  
4       did not see any in South Carolina. So I did have  
5       some concerns then, but they were later clarified  
6       when Mr. Jones reached out.

7       **Q**     Did you participate -- or did you tell the  
8       county election commission about your concerns at  
9       the protest hearing?

10      **A**     I was never called upon.

11      **Q**     You didn't -- well, if you had those concerns  
12      right after the election but prior to the county  
13      election commission hearing, why didn't you just  
14      voluntarily say, hey, I've got these concerns? You  
15      didn't do that, did you?

16      **A**     No, sir. I was never asked to, and I don't  
17      know that I would have standing there either.

18      **Q**     But you have standing to sit here and give this  
19      testimony, correct?

20      **A**     I'm being called as a witness, that's the only  
21      way that I'm here today.

22      **Q**     But you weren't at the hearing before the  
23      county election commission to raise these concerns,  
24      were you?

25      **A**     I was at the hearing, but I did not --

1       **Q**     Oh, you were at the hearing?

2       **A**     Yes, sir.

3       **Q**     So you were there?

4       **A**     Yes, sir.

5       **Q**     But you didn't take the opportunity to let the  
6       commission know your hearings -- I mean, your  
7       feelings?

8       **A**     There was never an opportunity given to the  
9       crowd to speak.

10      **Q**     Was Mr. Smith at that hearing?

11      **A**     Yes, sir, he was.

12      **Q**     Did you let him know about these concerns at  
13      that hearing?

14      **A**     I made him aware of my concerns, yes, sir.

15      **Q**     At that hearing?

16      **A**     As well as I did Mr. Tyson.

17      **Q**     Okay. And you were not offered as a witness?

18      **A**     No, sir.

19      **Q**     And you didn't provide them with any  
20      information at that hearing, right?

21      **A**     No, sir.

22      **Q**     Okay. You are aware that -- you were there  
23      then. You're aware that the county election  
24      commission denied the protest, right?

25      **A**     Yes, sir.

1       **Q**     So, in essence, finding that he was qualified,  
2       right?

3       **A**     I did not hear that. It was my understanding  
4       that the election commission basically said that  
5       they did not have that authority to speak on that,  
6       but that's just my understanding.

7       **Q**     Okay. Well, you will acknowledge that the  
8       finding of the county election commission was not  
9       that he was unqualified, right?

10      **A**     Sure.

11      **Q**     Right? Okay.

12      **A**     Yes, sir.

13      **Q**     You were talking -- during your direct  
14      testimony under questioning from Mr. Smith, you were  
15      talking about you don't believe that he's -- and I'm  
16      paraphrasing here; I'm not quoting you directly --  
17      that you don't believe that he's qualified even  
18      though he's got 31 years of service in Virginia,  
19      correct?

20      **A**     Yes, sir.

21      **Q**     So you believe that strict compliance with the  
22      statutes is important, right?

23      **A**     Yes, sir.

24      **Q**     All statutes, right?

25      **A**     Yes, sir.

1           **MR. BOWERS:** Thank you. Nothing further.

2           **THE COURT:** Mr. Callison, do you want to ask --

3           **MR. CALLISON:** No questions, Your Honor.

4           **THE COURT:** Mr. Smith, do you have any follow  
5 up?

6           **MR. SMITH:** Nothing further, Your Honor.

7           **THE COURT:** Thank you, sir. You may step down.

8           All right. Any other live testimony from the  
9 plaintiff?

10           **MR. SMITH:** No further live testimony, really  
11 just very brief argument on the TRO.

12           **THE COURT:** Go ahead, please.

13           **MR. BOWERS:** Thank you, Your Honor.

14           You know, this is very much a needed case for  
15 the application of this provision providing for a  
16 temporary restraining order. The question that  
17 remains before this county is whether or not they've  
18 elected someone that complies with the, you know,  
19 the qualifications and the requirements to be  
20 sheriff according to the Statute. Factually,  
21 there's no dispute to that.

22           And facts are stubborn things because they --  
23 he does not and has never been a certified law  
24 enforcement officer in this state. The Statute  
25 clearly requires that. It doesn't say that all

1 candidates for sheriff in this state must have these  
2 qualifications. It just says, All sheriffs in this  
3 state must have these qualifications.

4 It doesn't say that they have to be certified  
5 when they are sheriff. This is about experience.  
6 Having at least three years of experience of being a  
7 certified law enforcement officer in South Carolina  
8 is what is required. He does not have that.

9 The constitutional provisions that the Court  
10 referenced earlier, Article 5 Section 24, and it  
11 talks about he's going to have to take an oath, Your  
12 Honor. He's going to have to take an oath and  
13 swear, his first official act, that he is duly  
14 qualified according to the Constitution of the State  
15 of South Carolina. And not meeting that Statute, he  
16 can't do that unless this Court says he can do that,  
17 which is why we need instruction from the Court.

18 But Article 4 -- Article 5 Section 24 is very  
19 clear, says, The general assembly also may provide  
20 laws for the age and qualifications of sheriffs and  
21 coroners.

22 Mr. Tyson, in his brief, tries to say that the  
23 law is ambiguous, that it's in conflict, but the  
24 fact is is that every Statute he has cited can be  
25 read together. There is no conflict. It is



1       absolutely unambiguous.

2               The operative language is 23-11-110(A)(5) says,  
3       All sheriffs in this state must have the following  
4       qualifications: They must have obtained a high  
5       school diploma. Well, I think Mr. Stearns went  
6       under (b), which is, Obtained a two-year associate's  
7       degree -- which I believe he has -- And three years  
8       experience as a certified law enforcement officer.

9               The defendants may try to, you know, affect  
10       some, you know, allegations that there's confusion  
11       because they point to 23-11-110 and says, A law  
12       enforcement officer means an appointed officer, an  
13       employee. Well, of course, it does. And that's  
14       what he has to have, at some time, been served as a  
15       law enforcement officer in his career. In order to  
16       even hold the office, he has to have that  
17       experience. It is an absolute qualification. It is  
18       a minimum qualification that he has to have, and he  
19       does not have it.

20              The likelihood of success on the merits, you  
21       know, Your Honor, it's clear as it can be.  
22       Factually, there's no dispute, he doesn't have the  
23       qualification. The law is very clear. It doesn't  
24       say they may have or they might have. It says they  
25       must have. And he does not have at least those

1 three years of experience.

2 You know, having been in the General Assembly  
3 when we passed the coroner laws, we passed the --  
4 they had made some changes. We actually reduced --  
5 at one time, it was a five-year requirement. We  
6 reduced it to three years with a two-year degree.  
7 But these are important mandates of the law because  
8 we want our citizens to have sheriffs who have  
9 experience in South Carolina in serving our state,  
10 and we deemed that they had to have at least three  
11 years of experience, so that there is in no way,  
12 shape or form that he can qualify today, tomorrow,  
13 not until he goes gets the course.

14 Even, Your Honor, when he takes the -- finishes  
15 taking the new sheriff's course they teach how to be  
16 sheriff there, it doesn't make him a certified law  
17 enforcement officer. He will not have that  
18 experience unless until he completes the course at  
19 the Criminal Justice Academy in South Carolina; is  
20 issued, as the law requires, that certificate;  
21 spends three years serving somewhere in that  
22 capacity as is required by the Statute.

23 All of these laws can be read together. There  
24 is no conflict. There is no ambiguity. They can  
25 all work together to achieve what they were intended

1 to achieve, which is to make sure we have good,  
2 qualified sheriffs serving our citizens in each of  
3 the 46 counties in South Carolina.

4 So it's a real simple, you know, issue. One  
5 fact, he does not meet it, and, essentially, one  
6 Statute.

7 The 23-23 section dealing with the Criminal  
8 Justice Academy really are -- are not operative on  
9 what is or is not a sheriff, that comes from the  
10 Constitution and that comes from the law. 23-23  
11 says what you got to do, where you got to go to get  
12 that certificate. And the law in 23-11-100 says if  
13 you're going to be a sheriff, you have to have  
14 received -- been issued a certificate from that  
15 agency, which he has not.

16 So there is no conflict. He absolutely can and  
17 should comply before he is able to serve as sheriff  
18 of this county. And failing to do that, leaves a  
19 cloud over this office and over his ability to  
20 provide justice and provide public safety to the  
21 county.

22 As was, you know, stated earlier in the  
23 testimony by Mr. Bruder, he has -- has very much  
24 concerns about what this would have -- have an  
25 impact, and it is very immediate and that it would

1 take place as soon as he was -- were to assume the  
2 office. All manner of his official duties could be  
3 called into question because he does not qualify for  
4 the office.

5 **THE COURT:** All right. I'm going to have some  
6 other questions, but just so I don't forget this,  
7 after I hear from the other side, I'm going to have  
8 some specific questions about waiver. And it seems  
9 to me there are some factual issues that might need  
10 to be developed, so that it's not as clearcut at  
11 this point as it might seem or as it's being argued.

12 But on this point that you just raised, if he  
13 has not taken the oath yet -- if the fact is he has  
14 not taken the oath yet, if he qualifies before  
15 taking the oath, do I -- is that going to be  
16 sufficient? How does all that tie into the body of  
17 law about not undoing elections?

18 **MR. SMITH:** Right. Well, that's -- we're not  
19 seeking to undo -- the effect is to undo election,  
20 right, Your Honor, because we're not challenging the  
21 election. Right? The Statute and the Constitution  
22 is very clear about this, Your Honor. It talks  
23 about the sheriff being both elected and qualified.  
24 We're challenging whether or not -- not whether or  
25 not he was elected. He got more votes than the

1 other candidate did.

2 **THE COURT:** But are you asking me at this point  
3 to rule on an issue that is not ripe?

4 **MR. SMITH:** Not at all, Your Honor. I think  
5 this is the important thing. This is why an  
6 injunction is very appropriate. Under the  
7 Constitution, it says, all the officers that serve  
8 for terms of four years until their successors are  
9 elected and qualified.

10 **THE COURT:** Right. So if I were to say, okay,  
11 he has not taken the oath, and I were to rule that  
12 he cannot take the oath as sheriff until he's  
13 qualified, would he still not be able to go and seek  
14 qualifications, particularly under those provisions  
15 of the law that allow him to submit his out-of-state  
16 qualifications as being equivalent, and then he  
17 would take the oath and he will become the sheriff  
18 because he had been the successful candidate in the  
19 election? Are you saying that I've got to go in  
20 right now and deal with this and undo the election,  
21 which you say you're not asking me to do, and order  
22 a new election?

23 **MR. SMITH:** Well, I think it depends upon what  
24 the Court does, Your Honor. Our preference, and the  
25 reason we asked for this, because we think, to more

1       safely move forward for the citizens of McCormick  
2       County, it would be appropriate to enjoin him  
3       assuming office and he would either be treated as --  
4       if he fails to qualify or if he is not qualified,  
5       then there's a provision where a new election would  
6       be held if the Court finally rules on the decision,  
7       makes a declaratory ruling on that at some point.

8               But the point, the failure to not grant the  
9       injunction would bring a cloud over this county of  
10      uncertainty of whether or not he has fully vested  
11      with not being -- being elected, but does he fully  
12      qualify and does he have the authority of the office  
13      if he doesn't meet these constitutional  
14      requirements?

15             **THE COURT:** Enjoin him from taking the oath?

16             **MR. SMITH:** Enjoin him from taking the oath.  
17      What we have requested in our relief is enjoining  
18      the taking of the oath, enjoining assuming the  
19      office, taking the official acts of responsibility  
20      of holding the office until he is qualified.

21             He is not qualified as required by the law, as  
22      required by the Constitution, and he cannot take  
23      that office unless and until he is qualified. And  
24      the Constitution provides that the previous office  
25      holder continues to hold that office until his

1        successor is elected and qualified. And that's why  
2        we are seeking the TRO.

3                It would be, we think, the best course and the  
4        safest course to preserve the status quo to ensure  
5        that this issue is, you know, fully vetted, that  
6        it's an opportunity to have a fuller hearing and a  
7        declaratory decision on whether or not he is, in  
8        fact, qualified or not. And if the Court decides on  
9        the declaratory judgment stage that he's not, then a  
10       new election would be held.

11               **THE COURT:** All right. So, factually, again,  
12       y'all say that -- y'all have written me about,  
13       particularly the plaintiffs, that there's no dispute  
14       about the facts, and I just can't agree with that.  
15       I mean, I don't know what his intentions are.

16               It's been something in the e-mails, if I read  
17       them correctly, that his interpretation of the law  
18       was that after he got past January 1 or some time  
19       between the election and taking the oath of office,  
20       he could seek to be declared qualified in South  
21       Carolina. Would that -- I know he wouldn't have a  
22       three-year period, but I'm getting confused about --  
23       you're telling me there's a difference between the  
24       candidate's qualifications and a sheriff's  
25       qualifications, and I'm getting confused in that.

1           **MR. SMITH:** Well, I just direct the Court to  
2           the Statute and that's what operates here.

3           And where there are no facts in dispute, those  
4           are the facts that operate the Statute and that  
5           require the relief that we are seeking because it's  
6           talking about not candidates for sheriff, it's  
7           talking about in order to be sheriff, in order to  
8           hold the office. These are qualifications that are  
9           imputed by our Constitution and by the Statute, and  
10          it's unambiguous.

11          A sheriff must -- and that's why it wouldn't be  
12          sufficient, Your Honor, for him to -- in order to be  
13          sheriff, it isn't you can get elected sheriff and  
14          then be the sheriff and then later get qualified.  
15          It doesn't say that you can have, you know, four  
16          years after being elected to get qualified. It  
17          says, in order to be sheriff, you must have had this  
18          experience.

19          And in the plain reading of the Statute, it's  
20          , very clear, you must have three years' experience as  
21          a certified law enforcement officer. It defines  
22          what a certified law enforcement officer, having  
23          been issued a certificate from the South Carolina  
24          agency, which he has not, and that is not in  
25          dispute.



1           **THE COURT:** But if you flip over to that  
2 section that it cites, it doesn't say -- it doesn't  
3 read in the Statute, except to make reference to the  
4 other section, the other code section. And in the  
5 other code section, there's that language that I  
6 responded to you about in the e-mail as one of the  
7 reasons why I didn't feel like I could issue a  
8 hearing -- excuse me -- a restraining order without  
9 any type of hearing. It mentions something about  
10 not applying to sheriffs. What does that mean?

11           **MR. SMITH:** Your Honor, it means this: The  
12 question that -- you can read those two together.  
13 Right? You can say, and it is not in conflict, that  
14 you can -- this is what it means, Your Honor,  
15 exactly what it means: You can be a sheriff and not  
16 be a certified law enforcement officer. That's the  
17 point. You can be --

18           **THE COURT:** But you can't be a sheriff if you  
19 haven't had three years of experience --

20           **MR. SMITH:** Correct.

21           **THE COURT:** -- as a certified law enforcement  
22 officer certified by the officials in South  
23 Carolina.

24           **MR. SMITH:** At some time. So he could be --  
25 his first three years he could have served as

1       sheriff and 20 years later -- I mean, his first  
2       three years he could have been a certified law  
3       enforcement officer somewhere in South Carolina and  
4       then not renew his certification, no longer be a  
5       certified law enforcement officer, but serve as  
6       sheriff. So that's -- the point is is you have to  
7       have that experience some time.

8               And it is -- and you can read exactly what you  
9       pointed to in the 23-23 section and that title,  
10      which is the education requirements, the educational  
11      process, to say that, you know, in order to be a  
12      deputy, in order to work at a -- as a city officer,  
13      you have to have that certification. In order to be  
14      a class A, you know, certified law enforcement  
15      officer to do those duties, you have to have that  
16      current in order to do that. That's what that's  
17      talking about. In order to be sheriff, you don't  
18      have to have that current, but you do have to have  
19      that experience.

20             Both of those statutes can be read together and  
21      bring the result which was intended by the General  
22      Assembly to make sure we elected sheriffs with  
23      experience in South Carolina and experience as a  
24      certified law enforcement officer in South Carolina  
25      because, you know, one is also a general from a

1 specific and, you know, that larger Statute talks  
2 about, and this is very specific here --

3 **THE COURT:** Yeah. The specific controls over  
4 the general.

5 **MR. SMITH:** Yes, it does.

6 **THE COURT:** And I understand your argument  
7 would be that language is specifically tailored to  
8 that section of the code so that it has greater  
9 meaning than -- or greater significance than  
10 something in another section of the code. Do you  
11 have anything else, Mr. Smith?

12 **MR. SMITH:** I don't believe so, Your Honor. I  
13 think you've got this. But the elements are  
14 present. I mean, in order to, I think, move forward  
15 safely, the best thing to do is to not allow -- keep  
16 the status quo, not allow him to take office while  
17 this cloud is -- of uncertainty is present. The  
18 citizens of McCormick County will be taken care of  
19 by the current officeholder, who, by the  
20 Constitution and by the law, is still that -- holds  
21 that office until his successor is elected and  
22 qualified. That's the best way to move forward in  
23 this case. And that's, principally, why a TRO is  
24 appropriate to not do that. To not do that would  
25 throw the county into a great deal of uncertainty.

1           We can move quickly to have this resolved and  
2           have a final hearing on the merits, but to not take  
3           the action that we've requested, I think would cause  
4           greater harm, and it would be immediate upon him  
5           taking office. And it would be curious as to  
6           whether or not he could even take the oath and  
7           actually say he is duly qualified according to the  
8           Constitution when there's clearly some significant  
9           doubt that he's not. Thank you.

10           **THE COURT:** What about the issue of bond?

11           **MR. SMITH:** You know, I don't think a bond's  
12           required. I mean -- because there's --  
13           particularly, if the current officeholder is still  
14           in place, you know, there's no particular need for a  
15           bond in a situation of this nature. I can't see how  
16           you would calculate a bond.

17           **THE COURT:** Well, is Mr. Stearns going to get  
18           paid as sheriff if he's the sheriff?

19           **MR. SMITH:** Well, he has to be elected and  
20           qualified, so not until --

21           **THE COURT:** Well, what about if six months or a  
22           year from now, it's determined that he should have  
23           been sheriff all along, is he going to be out six  
24           months' salary? I mean, what about the issue of  
25           bond?

1           **MR. SMITH:** You know, it's our position that  
2 one is not required. And it's a question of -- I  
3 understand what the Court has raised and, you know,  
4 maybe Mr. Callison would like to speak to that.

5           **THE COURT:** As far as the Republican Party and  
6 -- I understand your argument a little better, but  
7 it does seem to me that, from what I recall about  
8 injunctions, I'm supposed to consider the issue of  
9 bond. And there would be some financial impact. I  
10 don't know what a sheriff in McCormick makes, but --

11           **MR. SMITH:** Well, we would comply with whatever  
12 the Court's instructions are on that, Your Honor.

13           **THE COURT:** All right. Mr. Tyson.

14           **MR. TYSON:** Yes, sir. I was just looking under  
15 Rule 65, a bond is mandatory. So I just -- I mean,  
16 you know, whatever that is, whatever you determine.  
17 But Mr. Smith doesn't get to say, Oh, I just don't  
18 think there's a particular need for it, because it  
19 is mandatory.

20           I would just say, just to kind of start off,  
21 Mr. Smith was right, it's as clear as it can be.  
22 The Statute is unclear, period. I mean, Mr. Smith  
23 and you just spent 15 minutes trying to understand  
24 what the Statute says. No disrespect to you, no  
25 disrespect to Mr. Smith, there's no way that it's

1 clear; it's just not.

2 He's got three elements he's got to prove,  
3 likelihood of success. If we can't even figure out  
4 what the Statute is, there is no way there is a  
5 likelihood of success on the merits. There's just  
6 not.

7 And, Your Honor, with all due respect to  
8 Mr. Smith, it's clearly ambiguous. I'm just --  
9 you've seen the brief.. Just look at the language in  
10 23-11-110, it goes through those provisions. And it  
11 says, For purposes of this section, a -- and then it  
12 has open quotes -- Certified law enforcement  
13 officer, closed quotes, is a person who has been  
14 issued a certificate as a law enforcement officer  
15 pursuant to Section 23-23-10.

16 So we go over there, like you said, and we look  
17 at 23-23-10 and it says, As contained in this  
18 chapter, open quotes, law enforcement officer,  
19 closed quotes. It's not even the same word of art  
20 that's referenced in the other Statute. That's  
21 ambiguous. That is ambiguous.

22 You look at 23-23-10, it's about one, two,  
23 three, four, five paragraphs long. It doesn't even  
24 say the word certified in that section.

25 So the Statute -- and, Your Honor, we could ask

1 Mr. Smith, and I bet he wrote this section of the  
2 code -- no, with all due respect.

3 **THE COURT:** I might have written it.

4 **MR. TYSON:** Well, then, it was clear, Your  
5 Honor. It's very clear then if you wrote it.

6 **THE COURT:** I don't know what year it was.

7 **MR. TYSON:** But it -- the reference point is,  
8 for purposes of this, it's a person who's been  
9 issued a certificate under that section, so you've  
10 got to go to that section to look at it. If it  
11 doesn't use the word certified, that is as unclear  
12 as it can be. Your Honor, you hit the nail on the  
13 head.

14 The Statute is very clear on this part, though,  
15 no doubt about it: Nothing in this section -- may  
16 anything in this chapter be construed to affect any  
17 sheriff or other law enforcement officer elected  
18 under the provisions of the Constitution of this  
19 state.

20 **THE COURT:** Because sheriffs are different,  
21 they're elected.

22 **MR. TYSON:** They are elected.

23 **THE COURT:** They're the only elected law  
24 enforcement officials in the state.

25 **MR. TYSON:** That's right. So it says you can't

1 -- this section doesn't apply. That's what it just  
2 said. This section doesn't apply, period.

3 **THE COURT:** But that section that he's talking  
4 about only talks about sheriffs.

5 **MR. TYSON:** Which section?

6 **THE COURT:** The 23-11-110.

7 **MR. TYSON:** Well, that's right, but, Your  
8 Honor, my point is he's got to show this is a simple  
9 -- you know, he's got three elements to prove,  
10 likelihood of success on the merits, and he can't  
11 get there on that one. That's not clear.

12 **THE COURT:** If it were crystal clear,  
13 absolutely 100 percent crystal clear, I would have  
14 signed the thing without a hearing.

15 **MR. TYSON:** Well, I understand that, Your  
16 Honor. And, you know, the -- we've cited -- you  
17 understand that. It's a drastic remedy. An  
18 injunction is something that has to be -- it has to  
19 be up there, that it is something that's just  
20 outrageous. It's got to be -- it is something --  
21 and the case law says, We caution the court to issue  
22 that, because it's such an extreme action. This  
23 case doesn't meet that.

24 Your Honor, we've got this law here that says  
25 that nothing in this chapter is construed to affect



1           any sheriff. I don't know how you can do that.

2           All right. So let's say that it does apply.

3           Okay? We're going to take Mr. Smith's argument that  
4           says it does apply. When you go to the next section  
5           of the code -- or two sections further, it's  
6           23-23-40, and those are the certification  
7           requirements. So this is how one gets certified.  
8           Mr. Smith says Mr. Stearns has got to go through and  
9           got to get certified. Well, this is how he will get  
10          certified. Okay?

11          You start that section off. It says, No law  
12          enforcement officer employed or appointed. I guess,  
13          that means no sheriff can ever take this, but we're  
14          going to -- for argument's sake, we're going to say  
15          that you've got to get certified because this is the  
16          Statute. It says how you do that. It goes through  
17          this whole process of how one could be certified.

18          **THE COURT:** All right. So appointed means like  
19          the chief of SLED?

20          **MR. TYSON:** Sir?

21          **THE COURT:** Appointed. You said employed or  
22          appointed. Is that --

23          **MR. TYSON:** Yes. It says employed or  
24          appointed.

25          **THE COURT:** Well, the chief of police of a .

1 local municipality would be an employee, wouldn't be  
2 elected. The chief of SLED would be appointed, I  
3 assume, by a governor.

4 **MR. TYSON:** Yes, sir.

5 **THE COURT:** And -- but it doesn't use the term  
6 elected in any of that section.

7 **MR. TYSON:** No, sir. It's got to be one way or  
8 the other. It's either it doesn't apply to the  
9 sheriffs because the constitutional law says it  
10 doesn't apply and so then -- then Mr. Stearns is  
11 duly elected, or it's got to be it does apply and  
12 there's got to be a process for him to go get  
13 certified, and that's what this process is. We  
14 don't believe that's the route you need to go.

15 But my point is there's a process that one goes  
16 through. It describes what you've got to do. It  
17 says simply that you can be employed, which is what  
18 would happen once you swear him in, he would be  
19 employed, or once Mr. Callison swears him in, he  
20 would be employed at that point in time. He would  
21 be working for the county. Then it describes his  
22 process for him to be certified. It goes through  
23 this whole thing of what he can do.

24 Mr. Smith worries about the recklessness and  
25 the crime, and we might go amok in McCormick County.

1 Well, this provides that once he's sworn in, once  
2 he's employed, his agency has to give notice to the  
3 council within three days to start this process.  
4 Once the council, and this is the council -- the  
5 training council, once they receive that, they have  
6 to provide firearms qualification program within  
7 three days. Okay?

8 So let me just step back. The Statute says  
9 that if he's -- once he's employed, if he's not  
10 certified, he doesn't have the authority. He  
11 doesn't have the power of arrest that Mr. Smith is  
12 addressing. That's correct. His deputies do. And  
13 we've got the Statute that says that. So, clearly  
14 -- that'll be 23-13-50, so that -- so somebody's  
15 running the shop, the deputies have that authority.  
16 The deputy authority comes from the office, not from  
17 the sheriff specifically, but from the office.

18 But this Statute says once -- if you're  
19 employed or appointed and you're not certified, you  
20 don't have the authority to -- let me make sure I  
21 read this -- shall not perform any duties of the law  
22 enforcement -- of law enforcement officer involving  
23 the control or direction of members of the public or  
24 exercising the power of arrest. So Mr. Smith is  
25 right. On the day that he's sworn in, he's not

1       certified; he doesn't have that authority to do  
2       that.

3               But here's what the Statute says: He says,  
4       though, within three days of being appointed, you  
5       know, employed, your office has to give notice to  
6       this council to go take this firearms qualification  
7       program. Once the council receives that, they have  
8       to provide that firearms qualification program  
9       within three days. If -- once he takes that  
10      firearms qualification program, he then has this  
11      authority. As you read through the Statute, then he  
12      would be able to exercise the powers of arrest.

13             So at a minimum or at a maximum, it's six days  
14      that we would be worried about that the deputies  
15      might have something to do. That he would take the  
16      office. He then has three days to give notice to  
17      the council. He does that. The council has then  
18      three days to offer this program. If the program is  
19      not offered within the three days, the Statute says  
20      he then has these powers. So there is no concern.

21             So I go back to -- I'm not even sure this  
22      section applies, but I just want to be clear when we  
23      talk about irreparable harm, either the section  
24      doesn't apply, which is what we believe, the  
25      sheriffs, as the state law says, and so he's able to

1 be sworn in right now and then start his office, or,  
2 secondly, if it does apply, like Mr. Smith says,  
3 then he's got this process where he can immediately  
4 try to go through to become certified and he would  
5 have the powers of the sheriff's office, at a  
6 maximum, of six days. Mr. Stearns tells me he's  
7 ready to submit that stuff today, so I think it'll  
8 be four days. It'll be less than that, at the most,  
9 that he would have that.

10 So I just tell you that you can't have it both  
11 ways. I mean, either it doesn't apply, and if it  
12 does apply, then he has the ability to be sworn in  
13 and go through the certification process.

14 As you look further in that, this is the  
15 section where it talks about exceptions to the  
16 one-year rule -- and let me step back. He's got to  
17 be certified within a year by the Statute. The  
18 Statute says if he's not certified within a year,  
19 there's an exception. And the exception is, Upon  
20 presentation of documentary evidence, that the  
21 officer-candidate has successfully completed  
22 equivalent training in one of the other states.

23 You saw our exhibit to the brief. He's got 31  
24 years. He would provide that equivalent training to  
25 the council for them to make that determination.

1           I say that there is a process that is  
2           contemplated for which somebody who is not certified  
3           in South Carolina goes through. And that process  
4           would be you get -- you're sworn into office, you're  
5           employed, you're appointed, then you go through that  
6           and then you work through that.

7           I think it would be illogical to read this  
8           language to mean nothing, like Mr. Smith, to say  
9           that you aren't able to look at this equivalent  
10          training. Mr. Bruder's letter talks about he  
11          doesn't think the training of Virginia counts or  
12          whatever. Well, he doesn't get to make that call.  
13          That's what this Statute provides for.

14          So, Your Honor, I just say that I think, on the  
15          likelihood of success on the merits, he hasn't met  
16          that burden. He just hasn't. The Statute is very  
17          clear, it says it doesn't apply. If you want to  
18          take his argument that says it does apply, then  
19          there's a process for which one goes through to  
20          become certified. For that, on the likelihood of  
21          success of the merits, I don't think he's met that.

22          Let me just say just quickly on the irreparable  
23          harm, because the irreparable harm that he lists on  
24          his TRO -- let me make sure I got the language right  
25          -- is -- is, Jones' civil and political rights are

1 directly affected by the Statute at issue. I don't  
2 think that's enough. He doesn't even mention  
3 anything like that in his complaint. This is only  
4 in his TRO.

5 And, Your Honor, how about the civil and  
6 political rights of the citizens of McCormick County  
7 who voted for Mr. Stearns? How about their rights?  
8 Fifty-three hundred people voted in this county. It  
9 was a 75 percent voter turnout. And so we're going  
10 to -- Mr. Smith can -- I'm not picking on Mr. Smith,  
11 he's doing a good job, but when he says, We're not  
12 asking you to overturn the election, bologna, you  
13 are. He is asking you to overturn the election.

14 These people have voted. The state election  
15 commission has already certified him as the winner,  
16 Mr. Stearns as the winner. Twenty-nine hundred  
17 people voted for that.

18 So I don't believe he's met irreparable harm  
19 just because of the sentence of, Jones' civil and  
20 political rights are directly affected.

21 **THE COURT:** Well, how is that a proper inquiry  
22 anyway?

23 **MR. TYSON:** What do you mean?

24 **THE COURT:** Well, if -- again, I'm trying to  
25 get -- my question's directed to what the ultimate

1 disposition would be if everything went a certain  
2 way?

3 If everything went a certain way, it seems to  
4 me that what would happen is you'd have a new  
5 election, and you'd go through the whole process  
6 again, which is -- I guess, goes to my ripeness  
7 question about I don't know if Mr. Jones would be  
8 the democratic nominee in a subsequent election. I  
9 don't know who the republican nominee would be. I  
10 don't know if some independent or third-party  
11 candidate might not be.

12 So I don't know that that's a really -- I don't  
13 know that's a proper concern as far as evaluating  
14 irreparable harm because there's no guarantee if I  
15 set -- if the Court -- whatever court -- if the  
16 Court set aside this election, it wouldn't be handed  
17 to another person, would it?

18 **MR. TYSON:** No, sir. No, sir. You'd have to  
19 go back. You would upset the will of the people,  
20 that's what you would do.

21 **THE COURT:** Well, I mean -- yeah, there's a  
22 whole body of law that I asked about earlier about  
23 overturning the election for the sanctity of  
24 election.

25 **MR. TYSON:** Yes, sir. And that's another high



1       burden that you have, too. And I've cited the cases  
2       there, you know, the integrity of the election  
3       process, its fundamental right. We had all of the  
4       cases four years ago where there was all the  
5       confusion about the ballots.

6               We've got case law everywhere that says for a  
7       judge to -- for a court to overturn an election,  
8       it's a steep, steep hurdle. It is. That's our  
9       democratic process is that -- that we have an  
10      election and the winner's declared.

11             Mr. Jones and the Democratic Party clearly have  
12      legal rights to challenge. You've seen us. We've  
13      got the waiver argument, the estoppel, unclean  
14      hands. We believe that they're too late, but that's  
15      another day. We'll argue that somewhere later if we  
16      have to. But the irreparable harm, he's got the  
17      burden to show that. And right now, I don't think  
18      he's met that.

19             I understand your concern about is it ripe? As  
20      I said earlier, I don't even think you have  
21      jurisdiction. So I don't -- I think you can get rid  
22      of this before you even get to that, but the  
23      irreparable harm is more, I believe, in the favor of  
24      the defendants who would be harmed.

25             If we're worried about the political rights and

1 civil rights of Mr. Jones, then I think we also have  
2 the equities for the people who voted for  
3 Mr. Stearns.

4 **THE COURT:** Well, I mean, I suppose the  
5 argument would be -- I don't know. I suppose the  
6 argument would be that Mr. Jones, as the nominee of  
7 his party, would have the right not to have to run  
8 against someone who is not qualified to run in the  
9 first place, but putting that -- that seems like  
10 water over the bridge -- under the bridge to me.

11 **MR. TYSON:** No, sir, I think that's right.  
12 We've got --

13 **THE COURT:** I don't want to -- I want to hear  
14 the rest of your argument, but I want to hear about  
15 waiver. And, again, this might be one of those fact  
16 specific things, but --

17 **MR. TYSON:** I'm glad to talk about waiver, Your  
18 Honor. The Anderson case is the seminal case here  
19 in South Carolina. Four years ago, we kicked people  
20 off the ballots all over everywhere because we had  
21 the concern -- we had the dysfunction between the  
22 statements of economic interest and the filing  
23 documents. And so we had all of those issues and so  
24 people were kicked off the ballots throughout.

25 One of the -- one of the biggest quotes that

1       came from that -- from the Anderson case, Your  
2       Honor, it said that -- it granted relief to the  
3       plaintiffs to require compliance with the law and  
4       ensure that only legally qualified candidates are  
5       included on the ballots based upon the court's  
6       recognition that finding the dispute ripe for  
7       judicial review avoided the greater chaos and  
8       multiple challenges that would inevitably follow the  
9       party primary elections.

10               So what the court told us is that there was an  
11       argument raised about it wasn't ripe. You don't  
12       need to be looking at qualifications. You don't  
13       need to be looking at these forms at that point in  
14       time. And the court said, no, no, we're going to  
15       look at it right now because there is a bigger  
16       issue, a bigger problem if you allow people to  
17       campaign and then you have an election. You're  
18       betting on whose ever not going to -- whoever  
19       doesn't win, you're hoping that person doesn't win.  
20       But the court said, no, that's not what we do. It  
21       says, You bring that at that time.

22               Mr. Stearns filed his affidavit on March the  
23       16th, March the 16th. If he had -- if anybody had a  
24       concern, Mr. Smith's right, any other citizen could  
25       bring that. He's correct. He is correct, but they

1        didn't. This one -- I'll just say that this one,  
2        Mr. Jones and the Democratic Party brought.

3                But he filed it on March 16th. He went through  
4        a primary where he had several opponents. He won  
5        that. He became the republican nominee on June the  
6        15th or June the 16th -- 14th, so nearly five months  
7        later. If anybody had any questions about his  
8        qualifications, they had the time to do it. They  
9        didn't. Nobody did. Nobody raised it. Mr. Jones  
10       and the Democratic Party raised this after the  
11       election after they lost.

12               There's a -- in the Index Journal, there's an  
13       article about after Mr. Jones and the democrats  
14       filed the protest, they said, Did you know about  
15       this qualification issue earlier? Mr. Jones said,  
16       Yeah, I kind of knew about it, but I didn't really  
17       think it was up to me or I didn't know when to bring  
18       it.

19               Well, you don't get to do that. You don't get  
20       to sit back on your hands and not do anything. You  
21       heard Mr. Bowers ask the fellow from the sheriff's  
22       association. You don't get to sit back and then  
23       waive a foul only when you lose. You've got a right  
24       to do that earlier, a responsibility. So we believe  
25       that they're waived of making that argument right

1           now.

2           And like I said, the court said in the Anderson  
3           case, it followed it in the -- in the Florence  
4           County case and then in the Temple case, it  
5           reiterated that point when there were questions  
6           about timing, the court held all of those right then  
7           at that point in time. Those were the primaries  
8           that they were worried about, and the court fixed  
9           them and they gave strict deadlines.

10          Mr. Smith and I were involved in a lot of those  
11          cases about they had to follow back up and they had  
12          to do filing by this time and they couldn't do this.  
13          So it was clear in the court's mind, timing was  
14          relevant, not after the election after you lost.  
15          And so, Your Honor, we think that they've waived  
16          their right to challenge those qualifications.

17          We would say, again, you know, as the  
18          jurisdictional argument, if he is going to protest  
19          the election, the qualifications, he did that at the  
20          election commission. That was his avenue. He then  
21          loses there and then comes over here to do it, and  
22          we think he's waived his right to do that. We've  
23          got jurisdictional issues and then we think we have  
24          waiver issues on that.

25          And, Your Honor, that just goes to the, I

1       guess, the third point on the injunction, he's got  
2       to show there's not an adequate remedy at law.

3               **THE COURT:** Right.

4               **MR. TYSON:** There was an adequate remedy at  
5       law. He chose the forum.

6               Mr. Smith said they improvidently filed the  
7       protest at the state election commission. Your  
8       Honor, he filed it. He filed it. I don't know what  
9       that means that he -- it was improvidently filed.  
10      The protest was filed there, whether it was  
11      improvidently filed, whether whatever. So that was  
12      his remedy. That's his adequate remedy at law. He  
13      filed it. He had the opportunity. He filed his  
14      protest. He lost.

15              Then there's a process in our Statute that says  
16      he goes to the next level at the state election  
17      commission. He doesn't get to come in the backdoor  
18      and come over here at the -- into circuit court and  
19      seek this equitable relief. I don't think he's met  
20      that third element of an injunction of there's not  
21      an adequate remedy at law. Clearly, he had an  
22      adequate remedy at law, he just failed to follow it.

23              So, Your Honor, you're here today, as you said  
24      several times, on the injunction, and he's got to  
25      meet those three elements. You know that to grant

1       that injunction, it's a high, high standard. It  
2       should only be -- it should only be done when it is  
3       clear. It's not clear.

4               There's no likelihood of success on the merits  
5       based on the -- well, it's not clear, let's just  
6       start there, no likelihood of success. We're not  
7       even sure you've got jurisdiction. So there's no --  
8       clearly, there's no likelihood of success there.  
9       That one is easily defeated. If he doesn't have  
10      that one, then he can't meet it.

11              There's no irreparable harm. And then as we  
12      said, Your Honor, the remedy at law. He had a  
13      remedy at law; he failed to use it. Thank you.

14              **THE COURT:** Let me ask you -- if any of y'all  
15      need a break, tell me.

16              I'll try not to belabor this too much more. My  
17      recollection -- I think I've been involved in three  
18      election disputes in the past, maybe four or five.  
19      I don't know. I remember that there was an election  
20      dispute involving a City of West Columbia official  
21      and whether she lived in the district. The city  
22      elections go to the courts, as I understand it. I  
23      heard that after the election and upheld the  
24      election.

25              The second one I remember is when Governor

1       Haley was not Governor Haley, she was newly elected  
2       Representative Haley, and there was a challenge to  
3       her election in Lexington County. And I can't  
4       remember the specifics of it. I remember,  
5       obviously, that I ruled to uphold the election, but  
6       she went on to be representative and now governor  
7       and now ambassador elect or ambassador appointed --  
8       nominee. I'll find the right word in a moment.

9               Recently, I mentioned to the attorneys there  
10       were several lawsuits concerning coroners. Coroners  
11       have qualifications under a Statute as well. And  
12       what happened in those cases -- I think there were  
13       three or four across the state. We had one in  
14       Saluda County.

15              I got contacted as a chief judge for  
16       administrative purposes by the state election  
17       commission. The state election commission wanted to  
18       know, before they ever printed the ballot, Is this  
19       person, this nominee, of this political party  
20       eligible to be on the ballot? They had the same  
21       thing I think in Laurens County, and I think they  
22       had one in Horry or Georgetown County.

23              So what I did was -- they told me the deadline  
24       for certification for the ballot. We set all the  
25       hearings up. And I didn't wind up hearing it. I



1 think Judge Addy heard it from Greenwood. And I  
2 honestly don't know what ruling he made because once  
3 it was off my desk, I'd done my job, I moved on to  
4 other things.

5 But my concern is with the timing of this as  
6 far as injunctive relief is concerned. I understand  
7 somebody might have a right to litigate this at a  
8 later stage, but if this lawsuit was filed on  
9 December the 8th and before that, there was  
10 knowledge, which would be a factual issue, the  
11 timing concerns me because the first request I had  
12 for a hearing was January the 3rd after the term  
13 would have ended. I guess he would take office on  
14 January 1st had this been clean or is it a special  
15 date?

16 **MR. SMITH:** It would have been this week.

17 **THE COURT:** I know the solicitor -- I'm going  
18 to swear the solicitor in next week because there's  
19 a Statute that says the solicitor serves until the  
20 second Tuesday -- or the Wednesday following the  
21 second Tuesday of the month of January.

22 The timing concerns me. So if y'all want to  
23 address that, you may. If not, then I'll just let  
24 it hang.

25 **MR. TYSON:** Your Honor, good news, I was the

1       coroner lawyer for a while, so I heard all those  
2       cases. I brought them on behalf of the coroners in  
3       circuit court. I didn't do the Saluda one. We had  
4       a conflict, but I talked to the people. So the  
5       other three, Georgetown, Sumter and Laurens, brought  
6       those.

7               We brought them in circuit court. And the  
8       reason why they were brought in circuit court then,  
9       at that point in time, when we found out that there  
10      was -- after we found out that a candidate had not  
11      filled out his affidavit properly. You know, the  
12      affidavit that's been submitted as part of it where  
13      Mr. Stearns fills it out and says how he had his  
14      experience, he says how it is. Now, what our issue  
15      today is whether the 31 years of experience meets  
16      the Statute.

17             In those situations, the people that were  
18      running didn't fill in any blank. They left it  
19      empty. And so we felt compelled to bring that  
20      matter, at that point in time, before a circuit  
21      court to get this -- to have an injunction to have  
22      them declared ineligible because they had failed to  
23      file, properly, the administrative documents. And  
24      you're correct, all of those threw those candidates  
25      off.

1           I would say Judge Nicholson -- I believe it's  
2           Judge Nicholson heard the Georgetown case. And he  
3           went for a long time with me, Mr. Tyson, let's just  
4           wait and see what happens after the election, and  
5           then, hopefully, the unqualified candidate will lose  
6           and then we'll deal with it then, you know, so it  
7           won't be an issue. And we said, No, sir. You've  
8           got an issue today about whether he's qualified or  
9           not. So that goes to our point.

10           You can go online. You go on, you see right  
11           away -- I'm sure Mr. Stearns and Mr. Jones and the  
12           other candidates went online to see that affidavit.  
13           They knew as of March the 16th when he filed his  
14           affidavit. It's online. You can see whether he  
15           meets the qualifications.

16           The protest was filed in a timely manner after  
17           the election. They lost. So then they decide two  
18           weeks later that they're going to bring a complaint.  
19           And you're right, now we're here on January. They  
20           didn't move quickly at all on that.

21           But all of that, I believe, is the time  
22           should -- I don't think we should be punished for  
23           something they failed to do at the time -- if they  
24           thought he had a qualifications issue, they were on  
25           notice and they should have brought it after he

1 submitted the affidavit. So I agree with you, the  
2 timing is a problem.

3 **THE COURT:** Well, I said I have concerns. I  
4 have issues.

5 **MR. TYSON:** Yes, sir.

6 **THE COURT:** I mean, it seems to me just -- I'm  
7 thinking off the top of my head, which is dangerous  
8 -- that there could be a ruling in this case that  
9 doesn't address whether he's qualified or not. It  
10 addresses these particular litigants being barred  
11 from challenging him because they waived -- they  
12 waived the right to do so.

13 Now, y'all, I'm not trying to throw y'all curve  
14 balls. These are things that -- this is the reason  
15 why I said we need to have a hearing. And I'll be  
16 happy to read anything you submit to me, happy might  
17 be too strong of a word, but I will certainly read  
18 whatever you submit to me. I don't want to catch  
19 you on your feet and cause you to miss something,  
20 but it seems to me that's an option, but that's --  
21 that goes to the injunctive relief issue, but it  
22 also goes to anything else down the road.

23 I think I'm to Mr. Bowers, unless what I just  
24 said causes you to need to argue something else.

25 **MR. TYSON:** No, sir. I'll just say, Your

1 Honor, that there's always this specter of potential  
2 litigation down the road, and we understand that. I  
3 mean, that's -- we all understand that. But as of  
4 where we are today and what our problem is, the  
5 protest was filed; they lost. Now they come over  
6 here to circuit court and trying to get the same  
7 relief that they want over there. We just think  
8 they've waited too long. Thank you.

9 **THE COURT:** Yes, sir, Mr. Bowers.

10 **MR. BOWERS:** Thank you, Your Honor, very  
11 briefly. I'm certain that I have some artfully  
12 persuasive arguments that I can spend another half  
13 hour on, but in the interest of time, I will not. I  
14 will just tell you that I think Mr. Tyson has hit  
15 the nail on the head. I think the Court's questions  
16 about waiver are insightful because I think the  
17 waiver issue is directly connected to the  
18 jurisdictional issue.

19 And so, anyway, again, we will adopt and  
20 incorporate by reference all of Mr. Tyson's  
21 arguments and ask that you respectfully deny the  
22 requested relief by the plaintiff. Thank you, Your  
23 Honor.

24 **THE COURT:** Okay. I hate to do it.  
25 Mr. Callison, why are you here?

1           **MR. CALLISON:** Your Honor, I don't know. I  
2           woke up this morning and I said I think I've got to  
3           go to McCormick for some reason.

4           **THE COURT:** Well, there was an argument, which  
5           I don't know if it's abandoned or it's just not  
6           appropriate for today, that they have the wrong  
7           parties. And then the next thing I know you come  
8           on.

9           **MR. CALLISON:** Yes, sir, we've been named a  
10          party. And, you know, as far as the county's  
11          concerned, we really don't have a position as to  
12          qualifications or not qualifications, first of all.  
13          What the county is interested in is to make sure  
14          that McCormick County has a duly-qualified sheriff  
15          under the laws of the state of South Carolina to be  
16          sheriff of this county.

17          Now, Candidate Stearns was certified by the  
18          Republican Party, the County Republican Party and  
19          the State Republican Party, as a qualified  
20          candidate. The election commission for McCormick  
21          County doesn't go behind that. The election  
22          commission has to take the word of the party that's  
23          certifying the candidate.

24          Now, when a protest was to be held -- of  
25          course, I'm representing the county -- and the

1 election commission, I anticipated, would ask me,  
2 what is the law? Because that's the first thing  
3 they'd want to know is whether, you know, what's the  
4 law about him being qualified?

5 I did some research then. I might not be the  
6 greatest researcher ever, but I couldn't find any  
7 case law, any binding precedent on this Court about  
8 this particular issue. The only thing I found were  
9 two attorney general hearings that addressed,  
10 specifically, some of these issues. One was, I  
11 think, in December 29, I believe, of -- no --  
12 January 29 of 2004. The other one was an opinion of  
13 December 13, 2007.

14 And, really, I bring that to the attention of  
15 the Court not as an argument in regard to either  
16 side, but as, really, sort of as a duty as an  
17 officer of the court to inform the Court as to what  
18 I found when I was looking at it because that was,  
19 specifically, a question that the election  
20 commission had.

21 **THE COURT:** Are they part of the record?

22 **MR. CALLISON:** No, sir. They were not  
23 introduced. That was something that was raised. I  
24 just bring that to the Court's attention that in  
25 looking at it, trying to find a precedent, I did

1 find two attorney general opinions on that issue.

2 Other than that, what I'm asking for from  
3 McCormick County is guidance as to how we proceed  
4 further because if a restraining order is granted,  
5 then we will continue forward with the current  
6 sheriff and the chief deputy as we are now. If the  
7 restraining order is denied, is Sheriff-elect  
8 Stearns entitled to be sworn in? And that's the  
9 issue we have with the county because we want to  
10 make sure that we know what direction we're headed.

11 **THE COURT:** And how do you think I can make  
12 that -- if I don't grant the injunction --

13 **MR. CALLISON:** Yes, sir. Then I want you to  
14 tell me can we swear him in?

15 **THE COURT:** Well, then, how can I do that  
16 without going all the way over to the merits? I  
17 can't, can I? Because I haven't told anybody not to  
18 swear him in to this point.

19 **MR. CALLISON:** Right. And that's what I'm  
20 saying, it puts the county in the position do we  
21 swear in this candidate? Because we would not have  
22 an order. There would be no order from the court.

23 **THE COURT:** Does the county have to swear him  
24 in or can a notary public swear him in?

25 **MR. CALLISON:** Notary public can swear him in,



1           anybody can swear him in. In fact, there's a form  
2           that you can use that's an oath of office.

3           **THE COURT:** All right. Why are you a party?

4           **MR. CALLISON:** Because I was brought in this  
5           week by e-mailed complaint.

6           **MR. TYSON:** I don't know that -- if you are a  
7           party.

8           **MR. SMITH:** He is.

9           **MR. TYSON:** Have you amended the complaint?

10          **MR. SMITH:** I did and I served him with it.

11          **THE COURT:** That was done, I guess, since  
12          Tuesday.

13          **MR. SMITH:** Served by mail and e-mail.

14          **MR. CALLISON:** I was served with an amended  
15          complaint, which I agreed to accept service as I do.

16          **MR. TYSON:** I just hadn't seen it.

17          **MR. CALLISON:** I was served by e-mail, so  
18          that's why I'm in here today.

19          **THE COURT:** All right. I just don't want to  
20          ignore any interest --

21          **MR. CALLISON:** I appreciate that. I appreciate  
22          your observance of my sitting over here at the table  
23          by myself.

24          **MR. TYSON:** Your Honor, I just say on that, for  
25          Mr. Callison's, you know, for guidance for that, I

1       don't see there's any reason -- if you deny the  
2       injunction, okay, I don't see there's any legal  
3       reason why the county should not swear in  
4       Mr. Stearns.

5               **THE COURT:** If I deny the preliminary to  
6       temporary injunction, but there could be -- on the  
7       merits now, there could be injunctive relief that  
8       would flow from a decision on a declaratory judgment  
9       action, could there not?

10              **MR. TYSON:** Yes, sir, but when that will be, I  
11       don't know. I understand that, but I'm just saying  
12       if -- today, if you deny the injunction, I think we  
13       would request the county to go on and swear him in.

14              **THE COURT:** Well, for irreparable harm, I think  
15       I have to consider that he was going to get sworn in  
16       if the temporary order is not granted. So I guess  
17       that's more precisely what I've got to deal with  
18       today.

19              **MR. CALLISON:** Yes, sir. That's all. Thank  
20       you.

21              **THE COURT:** Mr. Smith.

22              **MR. SMITH:** Brief argument in reply, Your  
23       Honor, and I'll take some of these issues in reverse  
24       order. But, you know, the Court's experience, Your  
25       Honor, I think is illustrative of the correct

1 decision. The fact that the state election  
2 commission called you to make this decision of  
3 whether or not those coroners were qualified shows  
4 that we don't have an adequate remedy at law, that  
5 that system -- remember there's an election and  
6 qualified. They, as a matter of practice -- if they  
7 did pass on qualifications, they wouldn't have  
8 picked up the phone and given you a call to handle  
9 the Saluda case.

10 The fact is is we do not have an adequate  
11 remedy at law, and the fact is that he is not  
12 qualified and he's required to be.

13 And let's talk about what Mr. Tyson talked  
14 about about the options going forward. They aren't  
15 available. The county cannot hire him because he's  
16 not qualified. It's an experience requirement. He  
17 has to have that experience. He must have that  
18 experience in order to be sheriff. They are not  
19 permitted to hire, employ, appoint, or whatever you  
20 want to consider, him as sheriff until he is  
21 qualified. And the Constitution speaks to that. It  
22 speaks to being elected and qualified.

23 We're not contesting the election. The  
24 election occurred. The votes were counted. We're  
25 contesting that he is qualified and he cannot hold

1       that office because he does not meet the  
2       constitutionally mandated requirements of the  
3       office. And that's why it's properly before this  
4       Court. That's why there's not an adequate remedy at  
5       law at the election commission, and it is only here  
6       that you can provide the relief that I think is  
7       important to the citizens of this county.

8               So there is no way for him to be employed and  
9       hired because he's not qualified. He can't go  
10      start, somehow take, get certified -- or go apply  
11      and start the process because he's got to have three  
12      years of experience. It's experience that's  
13      required to have that, South Carolina experience.  
14      It's not ambiguous. He must have it. He does not  
15      have it, and he will not have it, and he has to have  
16      it before he holds the office. He cannot be sheriff  
17      under the law unless he has those three years of  
18      experience.

19             To safely move forward, it requires an  
20      injunction because it will throw, I believe, the  
21      county in chaos. Whether or not they have a  
22      qualified person in office, that question is not  
23      resolved, and I think it's important that it be  
24      resolved before he is sworn in. And that is the  
25      relief we requested.

1           We do have immediate and irreparable harm. It  
2       was testified to by Mr. Bruder, and I just described  
3       it. It takes place immediately upon him assuming  
4       office. There's a cloud over his position here,  
5       whether or not he has any authority, whether or not  
6       -- that's why the county's asking this Court for  
7       guidance because if you deny it, is he going to  
8       swear that he's duly qualified according to the  
9       Constitution of this state when he's admitted he  
10      doesn't have the experience required by the Statute?  
11      That's where you're going to send this case if you  
12      don't grant the relief we've requested.

13           **THE COURT:** Have you filed a response yet?

14           **MR. CALLISON:** No, sir. I just was brought in  
15      the case this week by e-mail.

16           **THE COURT:** I understand. I just want to make  
17      sure.

18           **MR. CALLISON:** I've read the amended complaint.

19           **THE COURT:** All right. Is that it, Mr. Smith?

20           **MR. SMITH:** That is it, Your Honor. Thank you.

21           **THE COURT:** Are you sure? I don't want to cut  
22      you off.

23           **MR. SMITH:** No, that's it. I think that we  
24      don't have an adequate remedy at law because that  
25      doesn't apply to us. We do have immediate and

1       irreparable harm and we are likely to succeed on the  
2       merits because there's no dispute as to the operable  
3       fact here, which he is not qualified. Thank you.

4               **THE COURT:** Anything else?

5               **MR. TYSON:** Yes, sir. Mr. Smith just  
6       mentioned, I think, Mr. Bruder and said that was his  
7       justification for irreparable harm. Well, clearly,  
8       he's not a party, so I don't know how he gets to do  
9       that. And then, again, he can't offer the legal  
10      advice as we described earlier.

11              Your Honor, again, Mr. Smith says there's no  
12      way he can get certified until he's had three years  
13      of experience, that's not what the Statute says.  
14      23-23-40 specifically states, Upon presentation of  
15      documentary evidence that the officer-candidate has  
16      successfully completed equivalent training in one of  
17      the other states which by law regulate and supervise  
18      the quality of police training.

19              Regulation 37.06 describes what equivalent  
20      training is for out-of-state experience. So there  
21      is a very specific statutory and regulation that  
22      describes how one meets this certification  
23      requirement. It gives the authority to the director  
24      to make that determination, and he's the one who  
25      certifies them. So that's just, you know, just for

1        clarity, there is an avenue. It's not the three  
2        years' experience. The Statute doesn't say that.

3                And so we'll just go back to there's no  
4        likelihood of success at all on the merits. And so  
5        we would just suggest -- respectfully request that  
6        you deny his request for an injunction.

7                **THE COURT:** Thank you.

8                Mr. Bowers.

9                **MR. BOWERS:** Yes, sir. Briefly, Your Honor.  
10       Thank you. And thank you for your time and  
11       consideration today.

12               Your Honor, and I'll be very brief, in the  
13       spirit of full disclosure, Mr. Smith is a great  
14       personal friend of mine. Mr. Smith is a great  
15       attorney. Mr. Smith is my representative in the  
16       House of Representatives, which is why I can say  
17       that just because he says it with certainty and  
18       conviction, doesn't make it so. Okay?

19               He has said time and again here in his closing  
20       argument that Mr. Stearns is not qualified. Well,  
21       they had a bite at that apple before the county  
22       election commission, and guess what? The county  
23       election commission found that he was qualified.

24               And, in fact, we know that the qualifications  
25       of Mr. Stearns were at issue the heart of the

1 protest because that's what the protest said.  
2 Mr. Tyson put it into evidence as an exhibit, and  
3 that's -- the protest was based on the lack of  
4 qualifications. So not only is he qualified, but  
5 the county election commission found him to be  
6 qualified, and nobody -- no competent authority has  
7 disturbed that ruling. And they failed to appeal it  
8 to the state election commission.

9 And then -- Mr. Callison didn't ask me, but my  
10 advice to him is he's got an order. He's got an  
11 order that he can comply with, and that is the order  
12 of the county election commission that says he's  
13 qualified, he can be sworn in. And we just ask the  
14 Court to not -- not to interrupt that and to not  
15 throw away the election results on such tenuous  
16 grounds. Thank you, Your Honor.

17 **MR. SMITH:** Very briefly, Your Honor, one thing  
18 is, as Mr. Tyson said, and he's right about the  
19 operation of the Statute, he can get certified, but  
20 he ignores and continues to ignore the Statute that  
21 controls, which is 23-11-110. He can get certified,  
22 but he can't get three years of experience  
23 overnight. He's not going to be able to meet the  
24 requirements to be sheriff, which is the point.

25 You can be certified at some point in your



1       life, have those three years in South Carolina and  
2       no longer be certified and be sheriff, but you have  
3       to have those three years in order to hold the  
4       office to begin with. And he doesn't have it, and  
5       there's no dispute about that.

6               Lastly, on waiver, Your Honor, I think this is  
7       an issue that requires some factual investigation  
8       because I think what the facts will show is that  
9       some of my plaintiffs might have known about this  
10      issue earlier, some of them might have known about  
11      it later. And in every circumstance, all of them  
12      knew it within a time period such that waiver would  
13      not apply, and the facts, I believe, will show that.

14             But more importantly, again, this isn't an  
15      election contest. This is a contest of his  
16      qualifications, and that was brought timely before  
17      he was allowed to take office and assume office and  
18      timely -- and on the face, Your Honor, they said  
19      they could go look it up and see the affidavit.  
20      Well, you go read the affidavit and he swears that  
21      he complied with the Statute.

22             Now, I'm not saying he intentionally lied and  
23      intentionally deceived all of these wonderful people  
24      in McCormick County. He may have misapprehended or  
25      misunderstood, but he swore under oath that he had

1 three years of experience as a South Carolina  
2 certified law enforcement officer.

3 The top of the -- it says, I swear that I  
4 understand and in compliance with this section, is  
5 what he said on this affidavit. So there's no  
6 reason to inquire, the man gave his word. He says,  
7 I have qualified according to this Statute, which  
8 now we learn that that's not true. Maybe he was  
9 confused. I don't believe he intentionally misled  
10 folks, but the fact is is he did not meet the  
11 requirements.

12 But if you looked on its face, there's no  
13 reason to think otherwise. The county -- the party  
14 passed on it. The state party passed on it. And as  
15 Mr. Callison said, the local commission doesn't look  
16 behind that because they don't look at  
17 qualifications. And the state doesn't look at it  
18 because they don't look at qualifications. It's got  
19 to be brought before a circuit judge, which is why  
20 we're here today. Thank you, Your Honor.

21 **THE COURT:** If they don't look at  
22 qualifications and the -- I'm trying to let y'all  
23 get out of here. The Chief Justice is getting sworn  
24 in today at three o'clock and he's a lot higher up  
25 the totem pole than I am. And I want to tell you

1           you're not going to make it.

2           **MR. SMITH:** I understand, Your Honor. I'll  
3           send my apologies.

4           **THE COURT:** Unless you've got a helicopter,  
5           you're not -- you can make it to the reception,  
6           whoever's going. I think several people are going.

7           How can they, on the one hand, say, We don't  
8           look behind qualifications, which I think was what  
9           was said in the transcript, but then go into  
10          executive session, come out and rule that we're  
11          going to make a ruling on it?

12          **MR. SMITH:** My point exactly, which is why  
13          we're here, why -- why we did not, I think, waste  
14          time and resources finding an answer that we knew we  
15          would get, which is, We don't do qualifications; we  
16          need an order from a judge.

17          **THE COURT:** But that was appealable. And I've  
18          got to read -- I apologize to you, if I'd known how  
19          important it was, I promise you, I would have read  
20          it before I walked out here. I've got to read this  
21          Bluffton case y'all talked about.

22          Did I cut you off?

23          **MR. SMITH:** Not at all, Your Honor. Thank you  
24          for the Court's time today. Thank you very much.

25          **THE COURT:** Anybody else want to chime in up

1           here inside the rail?

2           Now, folks, as you all know, I told you I'm off  
3           next week. I will do my dead level best to get you  
4           a prompt decision. I have some commitments that I  
5           made in anticipation of not having to work, and I  
6           have to honor those. But it may be the next week  
7           before I can really stick my nose in the books, in  
8           the computers and get you the answer you need, but I  
9           will try to rule, at least in some sort of summary  
10          fashion, as quickly as I can. And, hopefully, I can  
11          do that during the next week.

12          All right. Thank y'all so much and be careful.

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END OF PROCEEDINGS

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## C E R T I F I C A T E

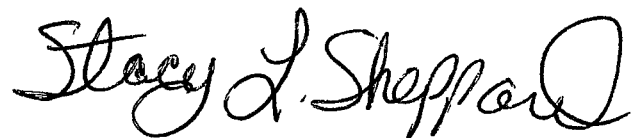
STATE OF SOUTH CAROLINA

COUNTY OF MCCORMICK

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh 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 the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for McCormick County, South Carolina, on the 6th of January, 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

March 5, 2018



Stacy L. Sheppard, RPR  
Certified Court Reporter

1 State of South Carolina ) In the Court  
2 County of McCormick ) Of Common Pleas  
3 J.R. JONES, et al., ) Case No.: 2016-CP-35-00134  
4 Plaintiffs, )  
5 vs. ) Transcript of Record  
6 South Carolina Republican )  
7 Party, et al, )  
8 Defendants. )  
9

10 October 16th and 18th, 2017

11 McCormick, South Carolina

12 BEFORE:

13 The Honorable Lawton McIntosh, Judge

14  
15 APPEARANCES:

16 E. Charles Grose, Junior, Esquire  
17 William Hunter Alexander, Esquire  
18 Attorneys for the Plaintiffs

19 Robert E. Tyson, Junior, Esquire  
20 Lisle Traywick, Esquire  
21 George P. Callison, Junior, Esquire  
22 Kari Smith Bowers, Junior, Esquire, Present on  
23 October 18, 2017  
24 Attorneys for the Defendants  
25

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5

6

## 7 EXHIBITS

8 NO. DESCRIPTION ID EVDS.

9 NONE

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1                                   OCTOBER 16, 2017

2       Thereupon, the following proceedings were had,

3                   THE COURT: This is number 24. Motion for summary  
4       judgment. Jones versus South Carolina Republican Party.  
5       I received an e-mail from Mr. Bowers this morning saying  
6       that he will not be here and he has no objection with the  
7       case going forward. Anybody have a problem with the case  
8       going forward?

9                   MR. GROSE: We are prepared to go forward.

10                  MR. TYSON: No, sir, Your Honor. No problem going  
11       forward.

12                  THE COURT: This is a motion for summary judgment?

13                  MR. TYSON: Yes, sir, Your Honor.

14                  THE COURT: Be glad to hear it.

15                  MR. TYSON: Good morning, Your Honor. My name is  
16       Robert Tyson, and with me is Lisle Traywick from the  
17       Sowell, Gray, Robinson law firm. We represent Sheriff  
18       Clark Sterns in this matter.

19                  I think it's helpful if we give you a little  
20       timeline on how we got here today. It's an election  
21       dispute. It's October of 2017 and the challenge was from  
22       the election in November of 2016 so we are nearly a year  
23       behind. Let me go further back behind that. Mr. Sterns  
24       filed to run for Sheriff online his qualifications as  
25       part of the nominations process as set out by the



1 statute. He did that on March the 17th, 2016. Then  
2 shortly thereafter we have the primary in June of 2016  
3 and Mr. Sterns beating two candidates in the Republican  
4 primary and became the Republican nominee for Sheriff  
5 here in the county. At that time they ran an election.  
6 They had the general election and Mr. Sterns won the  
7 election overwhelmingly. He one by a vote of 57 percent  
8 to 40 percent.

9 After that Mr. Jones the next day, he was the  
10 Democratic nominee and the plaintiff in this case, he  
11 wrote on Facebook that he might even call Mr. Sterns, he  
12 congratulated him and he said I wish you well and look  
13 forward to working with you in the county's best  
14 interest. Something happened after that and the  
15 plaintiff filed a challenge with the County Election  
16 Commission challenging the qualifications of Mr. Sterns  
17 as Sheriff.

18 Shortly thereafter the County Election Commission  
19 held a hearing as required by the statute and the protest  
20 was denied. The proper procedure we argued would have  
21 been to then have appealed that if you felt like you  
22 wanted to continue on. No appeal was taken of the  
23 election commission's ruling. Move forward a few more  
24 weeks and we had a complaint filed here in Circuit Court  
25 in early December. I think it was December the 2nd or

1 December the 3rd of 2016, again challenging the  
2 qualifications of Mr. Sterns as Sheriff. Nothing happens  
3 for a month and then after the first of the year  
4 plaintiffs' counsel then files an injunction and a TRO  
5 and so we had a hearing shortly thereafter over - the TRO  
6 was not needed at that time so it was just an injunction  
7 so we came before Judge Keesley who took testimony and  
8 then denied the plaintiffs' motion for an injunction and  
9 issued an order on January the 19th.

10 Since then nothing has happened and that's where we  
11 are today. Mr. Sterns was sworn in as Sheriff I think  
12 January the 20th or 21st and has been the Sheriff for  
13 McCormick County since then with no issues, no one  
14 contesting whether he had the authority to act as  
15 Sheriff.

16 So our motion is in two parts. One for failure to  
17 prosecute, and then in the alternative a motion for  
18 summary judgment. Failure to prosecute is as I said  
19 nothing has happened. No discovery has been done. No  
20 depositions have been taken. In fact, since that day  
21 that we were here when we had a hearing we haven't been  
22 back before the court at all. The case has been put on  
23 the trial roster, in fact, I think three, four, maybe  
24 five times and plaintiffs' counsel has asked for a  
25 continuance.

1           Now, granted plaintiffs' former counsel, maybe still  
2           counsel Mr. Smith is a representative and so he asked, he  
3           had a legislative privilege and so several of those cases  
4           were - several of those were continued for those reasons.  
5           But as Your Honor knows election disputes, election  
6           challenges are supposed to be heard in an expedited  
7           manner. We have a case in the Supreme Court, the Cole  
8           case in 2011 and it says just that, that election  
9           contests are to be expedited and the reason for that  
10          makes good sense. You have an election where the will of  
11          the people have spoken and if there's a challenge to  
12          that, it needs to be handled in an expedited manner. So  
13          then you have whoever has been elected or who's ever run  
14          for office if the challenge is successful but you get an  
15          answer quickly on that. That's just the opposite of  
16          what's happened here.

17          Your Honor, in 2012 we had the Anderson case and  
18          that was the one before the Supreme Court where all of  
19          the candidates were kicked off the ballot because they  
20          had failed to qualify, they failed to file their  
21          statement of economic interest and we had kind of that  
22          uproar over how to deal with that. But one of the  
23          arguments that was made at the Supreme Court case, the  
24          argument was let's not worry about that right now. Let's  
25          not kick people off the ballot now. Let's wait until we

1 have the election and then see whether it's a problem.

2 So essentially one of the parties, and I can't  
3 remember which one it was, I think it was the Republican  
4 Party, but they were kicking the can down the road to see  
5 if there might be a qualification issue but we really  
6 don't have to worry about it until that candidate wins  
7 and the court ruled specifically on that and said no.  
8 That makes no sense. If you know of a challenge, if  
9 there is a challenge to the qualifications of a  
10 candidate, you bring it pre-election and so the policy  
11 obviously is so you wouldn't waste the public's time or  
12 the candidates' time to go on and go through this  
13 election and then have an election and then hope that the  
14 issue goes away.

15 So our Supreme Court has spoken on that and they  
16 said that challenges to criteria or qualifications of a  
17 candidate should be heard pre-election. Again, that's  
18 exactly the opposite of what happened here. We just went  
19 through the timeline. We waited. Mr. Jones lost the  
20 election and then he or someone else decided for him he  
21 needed to bring a challenge based on my client's  
22 qualifications.

23 And, Your Honor, the policy again as stated by the  
24 Supreme Court says that's not how a democracy should  
25 work. The voters should vote, the winners are the

1 winners and if there is a legitimate challenge, you bring  
2 it at the appropriate time. We believe that's not  
3 happened in this case.

4 And, Your Honor, it talks about expediting the  
5 appeal and we have got a number of cases that say that  
6 and the reason is again to uphold that policy. Here it  
7 is a year later and the challenge we are here in court  
8 today trying to figure out is whether somebody that was  
9 elected last November whether that was proper or not and  
10 our court has said that's not the way to go and if you  
11 want to make those challenges, you do it in an expedited  
12 manner and you do it in a hurry.

13 And so, Your Honor, that's the first part of our  
14 motion to dismiss is this failure to prosecute. Failure  
15 to do anything. We are also on the trial roster and so  
16 that's what brought us all here together too. But that  
17 failure to prosecute is we believe justification for  
18 dismissing the case.

19 Just briefly on the summary judgment motion, if Your  
20 Honor wants to not dismiss it for failure to prosecute,  
21 we would suggest that you have the authority to do it on  
22 summary judgment. Your Honor, do you have a copy of our  
23 motion?

24 THE COURT: I have the file here.

25 MR. TYSON: I just wanted to make sure you have it

1 as I just briefly talk about this. Your Honor, we  
2 believe it's moot. The challenge as to Mr. Sterns'  
3 certification, he's now certified. We have attached it  
4 as an exhibit to the motion. He was certified by the  
5 South Carolina Criminal Justice Academy as meeting all of  
6 the qualifications and thus he is as it says, pleased to  
7 inform you you have successfully completed all of the  
8 requirements to achieve certified one law enforcement  
9 officer certification status. So he's now certified. So  
10 whatever, any challenge or any complaint about whether he  
11 was certified is now moot. I don't know what the remedy  
12 would be. I don't know how you could go back and say he  
13 wasn't. He was. He's now certified and meets the  
14 statute. It's hard to -- and you've got the cases that  
15 we cited there -- there's no practical effect on the  
16 existing controversy because he is certified and so we  
17 believe that makes it moot.

18 Your Honor, the issue has been just the statute and  
19 whether he meets the qualifications and the statute is  
20 23-11-110 and that's a qualifications statute, and it  
21 says, it gives you, it's kind of like all of the  
22 qualifications statutes, either for Sheriff or coroner or  
23 what not, it says, it gives you the standard that you  
24 have got to be a citizen, you have got to be a resident  
25 and then you have got to decide how you meet one of these

1 criteria. In this one Mr. Sterns has, it's 5(B), he has  
2 a two year associate degree and three years of experience  
3 as a certified law enforcement officer.

4 The statute further says though, and this is where  
5 our problem comes up, the statute is poorly written, it  
6 says for purposes of this section a certified law  
7 enforcement officer is a person who has been issued a  
8 certificate as a law enforcement officer pursuant to  
9 section 23-23-10. And, Your Honor, if you can imagine,  
10 when you go to 23-23-10 it doesn't define certified law  
11 enforcement officer. It defines law enforcement officer  
12 and what it says is, and this is 23-23-10(D), no, (E),  
13 excuse me, it says law enforcement officer means an  
14 appointed officer or employee hired by and regularly on  
15 the payroll of the state. Well, the Sheriff was elected  
16 so he's not an appointed officer or an employee so it  
17 doesn't apply to him. So the certification statute that  
18 is spelled out and it says to go to the statute is clear,  
19 it doesn't apply to him.

20 Your Honor, you go back and 23-23-10(B) and it says  
21 further, nothing in this chapter, and then goes on to  
22 some language, hereinafter may - anything in this chapter  
23 be construed to affect any Sheriff or other law  
24 enforcement officer elected under the provisions of the  
25 constitution of the state. So it further states that

1       these qualifications that are here that are laid out are  
2       not for a Sheriff who is in office.

3               Now, to me that's kind of hard to understand and  
4       comprehend just practically speaking. If you have got  
5       qualifications for Sheriff and that's what you're  
6       spelling out, why the statute is not written any better.  
7       I think the plaintiff has the problem with the statute  
8       and need be across the street or need to be down in  
9       Columbia across the street at the General Assembly. But  
10      it says nothing shall be construed to affect any Sheriff  
11      or law enforcement officer. So I don't think that this  
12      court has the ability or using the statute to determine  
13      whether this certified law enforcement officer provision  
14      which is not defined is applicable. We don't think it  
15      is. But even if Your Honor was to rule that it is, that  
16      it does meet this. He would be an appointed officer or  
17      an employee hired by and regulated on behalf of the  
18      State. There is also a provision in (B) that allows for  
19      that official, that law enforcement officer to meet the  
20      criteria within one year after taking the position.

21              So if Your Honor were to rule that, okay, Mr. Tyson,  
22      I hear you but the Sheriff has to fall under the statute  
23      somewhere. If he does fall under the statute, then the  
24      statute also then provides that he's got one year to meet  
25      the criteria of the statute. He's done that. So our



1 argument is that it doesn't apply. It's not applicable.  
2 But if Your Honor was to read it, then it's written in a  
3 manner such that he or she has time to meet the  
4 qualifications and thus that's why we believe that just  
5 as matter of law that the matter should be dismissed.

6 Your Honor, we thank you for taking the time to hear  
7 this. We hope we can get an expedited resolution of this  
8 case. We thought it was going to be done earlier. It  
9 hasn't. As I mentioned we are on the trial roster so I  
10 don't know if we can talk about how you --

11 THE COURT: This week?

12 MR. TYSON: Yes, sir.

13 THE COURT: Well, obviously this needs to be  
14 disposed of before you can go forward this week.

15 MR. TYSON: That's right. But if by chance I would  
16 just say again if not, we would like to have an expedited  
17 ruling. If you were to not look favorably upon our  
18 motion, then we would like to be back in this court if  
19 we're gonna have to argue about this.

20 THE COURT: Let me ask you, the process to appeal an  
21 adverse ruling, you said you came before the Republican  
22 Party, county party election commission -- Who was it  
23 you went before initially?

24 MR. TYSON: After the election several days later  
25 the plaintiff filed a protest with the McCormick County

1 Election Commission.

2 THE COURT: Then the appeal from there would be to  
3 the State Election Commission?

4 MR. TYSON: Correct.

5 THE COURT: What would be the effect of failing to  
6 appeal or appealing that adverse ruling?

7 MR. TYSON: We believe the case is over with. We  
8 argued in the injunction that this court doesn't have  
9 jurisdiction. We believed that the case was done. That  
10 our statute sets up a process if you are challenging  
11 under the election statute, this is the process you  
12 follow. You don't then get to lose, decide not to appeal  
13 and then come back over here and try to get another bite  
14 at the apple. So the process should have gone, if  
15 there's an election dispute, they go County Election  
16 Commission, State Election Commission, and then onto the  
17 Supreme Court.

18 THE COURT: All right, sir. Thank you, sir. Mr.  
19 Grose.

20 MR. GROSE: Thank you, Your Honor. I'm here with  
21 Will Alexander who is also appearing in this matter with  
22 me to answer one of the questions raised earlier. James  
23 Smith is still involved and we are working on making  
24 junction with him.

25 To address the last thing that Your Honor asked

1 about is what's the effect of having gone to the election  
2 commission without getting into a lot of details of that  
3 you should have in the file in front of you the order of  
4 January 19th, 2017 from Judge Keesley. He's already  
5 ruled on that and that issue is not part of the motion  
6 here today.

7 Secondly, there's two grounds in Mr. Sterns' motion  
8 for summary judgment and motion to dismiss. The first  
9 one is failure to prosecute and I believe that the  
10 defendants have already explained to Your Honor why that  
11 has to be denied.

12 I would like to hand up a packet of materials. The  
13 first one, this case, before this term of court this case  
14 as I interpret the record has been on the trial docket  
15 three times and Mr. Smith wrote on May 1st explaining  
16 that he couldn't be there because of the exemption for  
17 being in the General Assembly. The same thing on June  
18 6th. On July 14th he wrote because he was in the  
19 National Guard. Those three letters are in the packet  
20 that I just handed up. There is also a Supreme Court  
21 order 2013-06-2101 from former Chief Justice Toal as well  
22 as the order 2017-05-1901 from current Chief Justice  
23 Beatty. Both of those orders deal with lawyer  
24 legislators and I have attached in that packet code  
25 sections 25-1, 2260 and 2-1-150 which deal with members

1 of the General Assembly and members of the military.

2 So with regards to that motion I think those orders  
3 and those statutes actually prohibit Your Honor from  
4 being able to dismiss it because it wasn't called in  
5 those terms of court. Of course, I have just gotten  
6 involved in this case. I don't know where it was on the  
7 trial roster. Today it's number 2 on the trial roster  
8 with an indication that the first case on the trial  
9 roster has some how been resolved effectively making us  
10 number 1. We are here. We are prepared to go to trial.  
11 We expect Your Honor to call this case this week and you  
12 will be able to make a decision on the merits.

13 THE COURT: No. My understanding, Mr. Grose, is I  
14 have another case that's number 1 on the roster. Is that  
15 not right?

16 MR. GROSE: Well, it's number 1 on the -- Well, it's  
17 number 2 on the non jury roster for today.

18 THE CLERK: The first one was dismissed.

19 MR. GROSE: And number 1 has been dismissed or  
20 resolved.

21 THE COURT: I have a jury trial starting up this  
22 afternoon at 2:00 is my understanding.

23 MR. GROSE: Well, this is going to be very short.  
24 We can, any time you want to call it this week, it's on  
25 the roster this week. We are here. We are prepared to

1 go forward. They have argued for expedition and we are  
2 here. We have no problem with that. And, in fact, when  
3 you see Judge Keesley's order --

4 THE COURT: That's what I'm looking for. I haven't  
5 put my hands on it.

6 MR. GROSE: If you can't find it, I have a copy I  
7 can either e-mail to you or hand it up to you.

8 THE COURT: I got it. I got it.

9 MR. GROSE: You will also note in that order that  
10 when he denied the motion, he also - he denied it so that  
11 there could be a hearing on the merits but he also  
12 indicated that the plaintiffs he believed were likely to  
13 be successful on the merits.

14 The second issue that's in their motion has to do  
15 with mootness and they have provided a letter from  
16 September from the Criminal Justice Academy indicating  
17 that Mr. Sterns has now been certified as a law  
18 enforcement officer in South Carolina. That does not -  
19 that does not remedy the problem in this case. That does  
20 not make Mr. Sterns qualified to be a Sheriff in South  
21 Carolina. And this is getting into the merits but they  
22 got into the merits and we have to deal, I think, with  
23 what's going to be presented at the hearing on the issue  
24 of mootness.

25 The state constitution in Article 5 Section 24 gives

1 the General Assembly the authority to set the  
2 qualifications for Sheriffs and other officers. Section  
3 23-11-110 sets forth the qualifications for the Sheriff  
4 and the one that is in issue in this case is whether or  
5 not Mr. Sterns meets the qualifications that are outlined  
6 by the statute and I don't think that there is any  
7 dispute because there is sort of a sliding scale based on  
8 what your educational background is. Mr. Sterns has a  
9 two year degree so under 23-11-110(A)(5)(B) he has to  
10 obtain a two year associate degree and three years  
11 experience as a certified law enforcement officer and  
12 then, of course, the statute refers to Section 23-23-10  
13 with regards to what it is meant to be a certified law  
14 enforcement officer.

15 In Section 23-23-10(A) it then goes forward to set  
16 sort of what the policy is for training for a law  
17 enforcement officer in South Carolina and the rests of  
18 the chapter has to be read with 23-23-10, and it requires  
19 that you have the certification from the Criminal Justice  
20 Academy.

21 In fact, when you go back and you look at the  
22 legislative history of this going back to the '80s, maybe  
23 even the early '90s there was just a requirement that a  
24 Sheriff have a certain number of years experience in law  
25 enforcement. It did not state that that experience had

1 to be in South Carolina. Mr. Sterns has over 30 years  
2 experience in law enforcement in the State of Virginia  
3 but he has never been until last month has never been a  
4 certified law enforcement officer in South Carolina and,  
5 in fact, attached you should also have in the file a  
6 document that's captioned exhibits to the complaint and  
7 one of the exhibits to the complaint is testimony under  
8 oath by Mr. Sterns acknowledging that at the time of that  
9 testimony which was in 2016 he did not have the  
10 certification to be a law enforcement officer in South  
11 Carolina.

12 Now that he has it, if he has the certification, if  
13 he's able to get those three years experience, he would  
14 be eligible to run in 2020. But when Mr. Sterns filed to  
15 run for office he didn't have the three years experience  
16 as a South Carolina law enforcement officer. He didn't  
17 have it when he ran in the primary. He didn't have it on  
18 the date of the general election. He didn't have it at  
19 the time this lawsuit was filed. And he doesn't have it  
20 today. He's taken steps towards getting it but he  
21 doesn't have those three years experience.

22 So based on his sworn testimony which is in the file  
23 and there's also an affidavit from him I think that's  
24 also in the file basically stating, setting forth the  
25 same information, the letter that they have attached to

1       the motion does not make this lawsuit moot. And so we  
2       believe that the Court should deny the motion to dismiss  
3       and we believe that Your Honor should convene a hearing  
4       on the merits this week.

5               THE COURT: Let me ask you, Mr. Grose, do you  
6       disagree with Mr. Tyson when he says that you go before  
7       the County Election Commission, then you appeal that to  
8       the State Election Commission, and from there you go to  
9       the Supreme Court?

10              MR. GROSE: I do disagree with that. In fact,  
11       Mr. Tyson argued, and I can give you the entire  
12       transcript from the County Election Commission, Mr. Tyson  
13       argued before the election commission that it was not the  
14       appropriate forum to be in front of and so he's now  
15       taking a different argument today and, in fact, Mr. Tyson  
16       has made that argument in front of Judge Keesley in  
17       January of this year and that this court didn't have  
18       jurisdiction and Judge Keesley has already denied that.  
19       So that's really not -- I understand he's making that  
20       position and he probably has to keep making it to  
21       preserve a record but that is not an issue that's before  
22       Your Honor today because that's already been ruled upon.

23              THE COURT: All right, sir. Thank you, sir.  
24       Anything in response, Mr. Tyson?

25              MR. TYSON: Yes, sir. Just briefly. Your Honor, on



1       the failure to prosecute, I appreciate this exhibit that  
2       was handed up to you and it's accurate. Mr. Smith asked  
3       for continuances of the trial and the order says that the  
4       order supersedes this, issued by the General Assembly,  
5       who have time or unable to appear in any court,  
6       deposition or administrative hearing during a legislative  
7       session. So he gets a pass for getting off for coming to  
8       trial but my point was he hasn't done anything. This is  
9       the first that we have heard that they want to try a case  
10      in a couple of days. We didn't know that. There is no  
11      discovery. There is nothing done. So that was the point  
12      that we were making. Not whether there was a question  
13      about whether he had protection or not from being on the  
14      trial roster. The point is he hasn't prosecuted the case  
15      and thus we believe it should be dismissed for those  
16      reasons.

17           THE COURT: What do you feel like, assuming that  
18      this case goes forward, what kind of discovery could you  
19      really engage in at this juncture that would either - if  
20      the statutes are what they say they are or they're not?

21           MR. TYSON: I think the main question, Your Honor,  
22      is that we would want to know is, it goes to this  
23      argument of waiver. Mr. Grose just stood up and said  
24      that he filed the application in March. We had the  
25      primary. We had the election. As I mentioned to you in

1       our argument, they had an obligation that if they were  
2       going to challenge his criteria, if they were going to  
3       challenge his qualifications, they were on notice and so  
4       I think we would with simple discovery we would want to  
5       ask would be whether the Democratic Party was on notice  
6       of that or whether the plaintiff was on notice of that.  
7       We have a newspaper article that says that he is on  
8       notice but I need to ask him that under testimony to make  
9       sure of that.

10       So I don't think that it would be very voluminous at  
11       all. I just don't think we need to get there. I believe  
12       they have waived their argument. I believe by not making  
13       that argument prior to the election they took a chance,  
14       rolled the dice and then unfortunately Mr. Jones was  
15       defeated overwhelmingly and now he's trying to have his  
16       day in court.

17       As to just the last argument on the jurisdiction at  
18       the election commission, I did make the argument. I  
19       didn't think the election commission had jurisdiction. I  
20       lost there so there is no judicial estoppel whatsoever to  
21       make that argument. That's where we were. Once I lost,  
22       I had a motion to dismiss based on jurisdiction. They  
23       denied it and then it continued forward and ruled and  
24       denied the protest. So then it's got to go forward. The  
25       appeal must be from the election commission needs to go

1 to the State Election Commission. When we came back over  
2 here when they filed a complaint here, that's when we are  
3 saying you can't have it both ways. Just because you  
4 failed to file your appeal doesn't come back and get you  
5 over here.

6 And you're right. I wasn't implying that, if I did  
7 imply to the Court, that I didn't mention the ruling. I  
8 apologize. I was responding to your question about the  
9 process that it goes. But clearly the judge said in his  
10 order as to the defendants' challenge the Court lacks  
11 subject matter jurisdiction. The Court finds that it  
12 does have jurisdiction and there were a bunch of  
13 questions about that, whether it was exclusive, whether  
14 they could and whether they couldn't so we have made that  
15 argument. We believe that the process should have been  
16 from here to here. Now we are back over here. We  
17 believe that it should be kicked out for reasons that we  
18 have mentioned, that it's failure to prosecute it  
19 altogether and then like I said I think it's moot given  
20 that we are certified and then using the statutory scheme  
21 I just laid out to you we believe that as a matter of law  
22 we should prevail.

23 THE COURT: All right. Thank you, sir. Yeah. Mr.  
24 Grose.

25 MR. GROSE: Very briefly.

1 THE COURT: Yes, sir.

2 MR. GROSE: One of the things that he raised was  
3 that he wanted to ask the plaintiffs the issue about  
4 waiver. The first issue with waiver is if it is even a  
5 defense in this, and we don't think it is because we  
6 think any elector in McCormick County has standing to  
7 challenge this at any time, if it is, that's something  
8 that they have to present and prove during the hearing on  
9 the merits. And again that's not part of the motion.  
10 But I also have where they have asked questions, that  
11 they have sent requests to admit to all three of the  
12 plaintiffs on the waiver issue and the plaintiffs have  
13 responded to those and denies their request to admit. If  
14 they wanted to take depositions, they have had the same  
15 amount of time to notice those depositions and I think as  
16 Your Honor has observed there really isn't a lot to  
17 conduct in discovery. I think we're gonna be able to put  
18 on a case in a very brief period of time establishing the  
19 undisputed facts. I don't think the facts will be in  
20 dispute at that point and then Your Honor would have an  
21 opportunity to make a ruling based on the merits and so  
22 we would stand by our request that you deny their  
23 motion.

24 THE COURT: Thank you, gentlemen. Obviously this is  
25 new to me this morning. I know this motion is out there.

1 I didn't have any of the filings and so I'm going to look  
2 at it, issue an order. I'm not continuing the case. I'm  
3 not saying I'm not going to continue the case. I just  
4 want to take a look at it, get my arms wrapped around it  
5 and see where we go from there. All right. Thank you,  
6 gentlemen. Be ready just in case. All right?

7 MR. TYSON: Yes, sir. I'll put Mr. Bowers on notice  
8 too because he will want to participate.

9 THE COURT: Thank you, gentlemen.

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1                               OCTOBER 18, 2017

2                   BAILIFF: All rise.

3                   THE COURT: Good afternoon. First, let me, I think  
4                   you might have received already, I denied the motion on  
5                   the basis of failure to prosecute. I think clearly the  
6                   Supreme Court ruled on the statute on the service of the  
7                   National Guard would prohibit that from being a basis for  
8                   discharging this case. But let me go over my  
9                   understanding of what the status of the case is, if I  
10                  may, with everybody.

11                 First, do the plaintiffs agree that the essential  
12                 purpose of what they are seeking in the amended complaint  
13                 is writ of mandamus?

14                 MR. GROSE: Well, it's a declaratory --

15                 THE COURT: Declaratory judgment doesn't mean  
16                 anything one way or the other. So essentially the relief  
17                 that you're seeking is a mandamus.

18                 MR. GROSE: And it would have the effect of removing  
19                 Mr. Sterns from office.

20                 THE COURT: Sir.

21                 MR. GROSE: It would have the effect of removing  
22                 Mr. Sterns from office.

23                 THE COURT: I understand that. But the avenue by  
24                 which you are seeking that relief would be for me to  
25                 order someone to perform a ministerial act and I think

1           that goes probably back to the certification of the  
2           Sheriff as a certified candidate for Sheriff of McCormick  
3           County.

4           MR. GROSE:   Yes, sir.

5           THE COURT:   Right?

6           MR. GROSE:   Yes, sir.

7           THE COURT:   But that's the essential purpose of your  
8           complaint?

9           MR. GROSE:   Yes, sir.

10          THE COURT:   All right.   And let me make sure I  
11          understand.   The Sheriff applied, filed an affidavit with  
12          the local party.   This was the Republican Party; is that  
13          right?

14          MR. TYSON:   Yes, Your Honor.

15          THE COURT:   The Republican Party, certified him,  
16          certified by the State Election Commission, the election  
17          was held.   This was the general election.   It wasn't the  
18          primary, right?

19          MR. TYSON:   Correct, Your Honor.

20          THE COURT:   There was a challenge.   Was it the  
21          County Board of Canvassers?

22          MR. TYSON:   Yes, sir.

23          THE COURT:   And they upheld the election?

24          MR. TYSON:   They denied his protest.   Yes, sir.  
25          Upholding the election.

1           THE COURT: Right. Sure. Then the appeal. There  
2 was no appeal to the State Election Commission so that  
3 case stopped, right?

4           MR. TYSON: Yes, sir.

5           THE COURT: So the question that I have for the  
6 plaintiffs looking through, and I know we have experts  
7 from both the Republican and the Democratic parties here  
8 who know the election laws substantially better than I do  
9 but looking at it it appears to me that the process, I'm  
10 going to ask somebody to correct me if I'm wrong, the  
11 process is a candidate for local office or county wide  
12 office applies, the local party certifies them which  
13 may be considered to be a ministerial act, may not be,  
14 then that is sent to the State Election Commission,  
15 they're certified from there, ballots are approved,  
16 elections are held. If you want to challenge it, you  
17 have to, since it's a county wide office, you first go to  
18 the County Board of Canvassers, then based on the  
19 statutes that I have read if you are grieved by that, you  
20 appeal to the State Election Commission, and if you are  
21 grieved by that, you appeal to the State Supreme Court.  
22 Am I wrong in my reading of the statutes?

23           MR. TYSON: Your Honor, I think you are reading the  
24 statutes spot on. I mean, that's exactly what happened.  
25 The facts were a protest was timely filed.



1           THE COURT: I'm not asking factually. I'm asking  
2           legally at this point.

3           MR. TYSON: Yes, sir. So then a protest was held  
4           from there and then there's a time frame in the statute  
5           that says when you have to file the appeal, it goes to  
6           the State Election Commission, then it goes from there to  
7           the State Supreme Court.

8           THE COURT: Right.

9           MR. GROSE: And I would disagree in this sense, Your  
10          Honor, because our contention having looked at all of  
11          this is is that the County Board of Canvassers, what they  
12          can decide is whether or not the votes were counted right  
13          or votes had been allowed or disallowed. The issue here  
14          is really a matter for the courts to determine to declare  
15          what the statute means.

16          THE COURT: Do you have any cases that show you  
17          that? Let me put it another way. Is it your contention  
18          that under the statutory scheme that this took place that  
19          the only issues that can be raised to the County Board of  
20          Canvassers or State Election Commission and then up to  
21          the Supreme Court is just a counting of the votes?

22          MR. GROSE: It would be counting votes or  
23          irregularities in the voting process, whether or not to  
24          count provisional votes and that sort of thing. I  
25          believe we sent by e-mail the Ravenell case from the

1       other day which was a challenge to the residency  
2       qualifications of a governor of South Carolina and that  
3       started in Common Pleas Court in Greenwood County and  
4       then the Supreme Court assumed jurisdiction of it so I do  
5       believe that when it comes to declaring what the statute  
6       means, which is one of the questions that has to be  
7       answered because they are trying to say that the statute  
8       for qualifications for Sheriff is ambiguous. We say it's  
9       not. The Anderson case from four years ago also declared  
10      what the statute means. So we think, you know, this goes  
11      to whether or not the Court has subject matter  
12      jurisdiction and we believe that the court does.

13           THE COURT: Well, let me ask you this: If the  
14      plaintiffs in this case filed a petition to the County  
15      Board of Canvassers which was denied which effectively  
16      found that he was qualified in effect, why is that not  
17      the law of the case that you're stuck with whether or not  
18      he's qualified or not?

19           MR. GROSE: Well, all they decided was whether the  
20      protest was denied or not denied. I don't think that  
21      they made that finding of fact. But even if they did,  
22      even if they did, any qualified elector of McCormick  
23      County to this day and tomorrow if it's not resolved  
24      today has standing to challenge it in this court.

25           THE COURT: I don't know if I agree with you on that

1 quite frankly. Who are the two attorneys, one for the  
2 Democratic Party and one for the Republican Party?

3 MR. BOWERS: Your Honor, Bush Bowers. I'm here for  
4 the South Caroline Republican Party.

5 THE COURT: Okay. Who is from the Democratic Party?

6 MR. GROSE: Mr. Anderson and I represent all of the  
7 plaintiffs.

8 THE COURT: You do?

9 MR. GROSE: Yes, sir.

10 THE COURT: All right. Since you told me your  
11 position, I know what it is now and I'm not ruling. I'm  
12 just asking. Mr. Bowers?

13 MR. BOWERS: Yes, Your Honor.

14 THE COURT: Do you feel that if a challenge is  
15 raised to the County Board of Canvassers and then up  
16 through that statutory process, that the issue cannot be  
17 the certification of the candidate as being a qualified  
18 candidate? Do you think it can be?

19 MR. BOWERS: If I understand you correctly, your  
20 question correctly, Your Honor, I don't think it can be  
21 because I think you framed it perfectly. It's the law of  
22 the case and you can appeal but they didn't appeal.

23 THE COURT: Let me phrase it another way. I think  
24 you are not understanding. It was poorly worded. If I  
25 were to challenge my law clerk's election to Sheriff and

1       if I were to bring a challenge before the County Board of  
2       Canvassers which is step one after the general election,  
3       may I raise in that challenge the issue of whether or not  
4       the local party and the State Election Commission  
5       properly certified him as being a qualified candidate?

6           MR. BOWERS: Absolutely. Yes, sir. And I say that  
7       not only based on my knowledge and understanding of the  
8       statute but also my understanding as a practitioner in  
9       this area and also as a former chair with the State  
10      Election Commission. I think that's absolutely the case.  
11      You can bring up any grounds or allegations. I have been  
12      part of county and/or other local election protests as  
13      one of the litigants and you can bring up any basis  
14      which you think is legitimate grounds for the election to  
15      be overturned.

16           THE COURT: All right. The reason I ask you back  
17      from the day when I was practicing I was involved in a  
18      challenge to the local Board of Canvassers. It didn't  
19      involve - it in part involved counting votes but it also  
20      involved a multiplicity of other issues unrelated to the  
21      regulators of the voting process or the counting of the  
22      votes, voting machines and that kind of thing. So I seem  
23      right now without ruling my belief is that your remedy is  
24      through the statutory appellate process, canvassers,  
25      State Election Commission and the Supreme Court. Okay?

1 With that being said, it appears to me on the other hand  
2 that there's not a real dispute that the Sheriff had a  
3 two year degree but he had not been certified by the  
4 State of South Carolina whether or not an exception  
5 exists for more than three years, nobody really denies  
6 that; is that correct?

7 MR. TYSON: I'm sorry. Your Honor, he has admitted  
8 and will that he was not certified in South Carolina.

9 THE COURT: For a three year period? Isn't it three  
10 years or whatever period it is. Three?

11 MR. TYSON: Yes, sir. You have got to be there for  
12 three years. He wasn't at the time of the election.

13 THE COURT: Okay. So the reason I'm asking these  
14 questions, it seems to me this is here for a trial but it  
15 seems to me I can make the decision based on stipulated  
16 facts if everybody is agreeable to me doing that, I don't  
17 see any testimony that would be beyond what everybody is  
18 agreeing to. Now, Mr. Grose?

19 MR. GROSE: I agree with that, Judge.

20 THE COURT: Okay. I just wanted to make sure.

21 MR. TYSON: Your Honor, the only, I guess,  
22 disagreement we would have with that, we have got an  
23 argument of waiver and the waiver argument would be that  
24 they waived their right to bring this protest. That is  
25 one of our defenses. They don't come with unclean hands

1 and part of that goes to the fact that they are required,  
2 and we have got a whole bunch of cases that say if you  
3 know a candidate is not qualified and you have notice of  
4 that, you are supposed to bring that challenge before the  
5 election, not wait to find out and then become a losing  
6 candidate and then say, oops, time out.

7 THE COURT: Let me ask you then, I don't mean to  
8 interrupt you.

9 MR. TYSON: No, sir.

10 THE COURT: Let me ask Mr. Grose. You're plaintiff.  
11 Are you in a position, there's probably a better way to  
12 ask it, to stipulate when he had knowledge of the alleged  
13 lack of qualifications of the defendant in this case, of  
14 the Sheriff?

15 MR. GROSE: After the general election.

16 THE COURT: After the general election. Do I need  
17 to take testimony on that limited issue?

18 MR. TYSON: Yes. I think so and the Democratic  
19 Party was the one who certified them and they looked at  
20 the same reports and we have got newspapers articles that  
21 say differently so I think just for the limited purpose  
22 of - I think that's a big --

23 THE COURT: Listen, this is an important matter for  
24 everybody and I'm sure to the community out here so  
25 I want to make sure that we have a full and fair hearing

1 but I don't see the need to go through the entire process  
2 because I believe that most of it can be done by  
3 stipulation. Do you have, Mr. Grose, are you in a  
4 position to agree to have a evidentiary hearing on the  
5 limited purpose of when knowledge of the alleged lack of  
6 proper certification was made known to one of the  
7 plaintiffs?

8 MR. GROSE: Your Honor, can I have just a moment?

9 THE COURT: Absolutely. Tell you what. Let me do  
10 this: Let me step out of here and y'all confer with each  
11 other and see if y'all can come up with some stipulation  
12 of facts, what you can and cannot agree to without me  
13 breathing down your neck, send word back when you're  
14 ready and I'll come back out here. Okay? Thank you.

15 (Short break.)

16 BAILIFF: All rise.

17 THE COURT: Please be seated. All right.  
18 Mr. Grose, were the parties able to stipulate as to facts  
19 and issues in this case and have you been able to  
20 determine whether or not you're able to agree to have a  
21 limited evidentiary hearing on the issue of knowledge?

22 MR. GROSE: I think we have agreed that we can  
23 stipulate to facts which will alleviate the need for an  
24 evidentiary hearing which will allow Your Honor to decide  
25 it as a matter of law.

1 THE COURT: Okay. Does everybody agree to that?

2 MR. TYSON: Yes, Your Honor.

3 MR. BOWERS: Yes, Your Honor.

4 THE COURT: Who wants to have the pleasure of  
5 putting the facts on the record? Does anybody want to  
6 have the pleasure of putting the facts on the record?

7 MR. GROSE: I'll take a stab at it. I think, we  
8 haven't written anything out, but I think what we have  
9 already talked about is is that it would stipulated that  
10 Mr. Sterns has a two year degree; that his experience in  
11 law enforcement was in Virginia; that prior to the  
12 general election he did not, was not certified as a law  
13 enforcement officer in South Carolina. The letter that's  
14 attached to their motion would be, I guess, the date of  
15 his certification in South Carolina. We have here J.R.  
16 Reed and we also have Alonzo Harrison. I'm sorry. J.R.  
17 Jones and Alonzo Harrison who is the chairman of the  
18 county Republican Party -- Democratic Party, I'm sorry,  
19 and their testimony would be that they learned of the  
20 lack of statutory qualifications after the general  
21 election and I think they want us to stipulate and we do  
22 that as of March 16th of 2016 Mr. Sterns' application and  
23 affidavit to run for Sheriff was filed and available  
24 online. Did I cover everything?

25 THE COURT: So you are arguing constructive notice



1 as opposed to actual notice?

2 MR. TYSON: That's right, Your Honor.

3 THE COURT: For my edification, it's online with the  
4 State Election Commission or the local Republican Party?

5 MR. TYSON: It's online with the State Election  
6 Commission so anyone who wants to go see what any  
7 candidate is filing, they go to the State Election  
8 Commission page, scroll down to whichever county you want  
9 and the I think the information is inserted as provided  
10 by the county party to the County Election Commission and  
11 then it gets put up but it's posted by the State Election  
12 Commission on their website.

13 THE COURT: Do you agree with that?

14 MR. GROSE: I agree with that with the exception  
15 about we would have arguments about what notice was  
16 established by that or not.

17 THE COURT: Sure. I understand. I know you're not  
18 conceding notice. I'm just asking you for availability  
19 for any citizen to go online and find this like on the  
20 public records.

21 MR. GROSE: Yes, sir.

22 THE COURT: All right. Gentlemen, that being said  
23 does the plaintiff agree to waive any further evidentiary  
24 hearing in this matter?

25 MR. GROSE: Yes, sir.

1           THE COURT: Do the defendants agree to waive any  
2 further evidentiary hearing in this matter?

3           MR. TYSON: Yes, sir, Your Honor.

4           MR. BOWERS: Yes, Your Honor.

5           THE COURT: Would you prefer to reduce those  
6 stipulations to writing, to give it to counsel so  
7 everybody is in agreement and then send them to me?

8           MR. TYSON: Yes, Your Honor.

9           THE COURT: Okay.

10          MR. GROSE: We can do that.

11          THE COURT: And again, let me make sure I  
12 understand. I can always look at it again. I have read  
13 your amended complaint and what I took from it is that  
14 essentially you're asking the Court to issue a writ of  
15 mandamus?

16          MR. GROSE: Yes, sir. As well as interpret the  
17 statute to the extent that --

18          THE COURT: Well, in the process of issuing a writ  
19 of mandamus would be to interpret the statute.

20          MR. GROSE: Yes, sir.

21          THE COURT: Okay. All right. Let me, with that  
22 being said, go back over my understanding of the process  
23 to make sure nobody is in disagreement. Our Sheriff or  
24 the Sheriff from Anderson County filed an application or  
25 paperwork with an affidavit saying I'm qualified which

1           was accepted at the local party level which was  
2           transferred to the State Election Commission and  
3           therefore - and then accepted at that level. A primary  
4           was held. The Sheriff was elected as the Republican  
5           candidate. The general election was held. He was  
6           elected Sheriff. The protest came after the general  
7           election to the County Board of Canvassers which was, the  
8           relief the plaintiffs sought was not forthcoming and was  
9           denied. The appeal - there was no further appeal to the  
10          State Election Commission nor to the South Carolina  
11          Supreme Court. Collateral action was filed in this  
12          matter seeking the present writ of mandamus. Is that  
13          a fair statement?

14                 MR. GROSE: Yes, sir. Although I think you said  
15          Anderson County instead of McCormick County.

16                 THE COURT: If I said Anderson County, it's because  
17          I'm an idiot from Anderson County. But procedurally.

18                 MR. GROSE: But we agree with that. Yes, sir.

19                 THE COURT: Do the defendants agree with that?

20                 MR. TYSON: Your Honor, the only thing that maybe  
21          this is more of a stipulation of facts rather than to the  
22          process but as the protest was filed it challenged the  
23          qualifications of the Sheriff. There was one line  
24          challenging qualifications and I think we just want to  
25          make sure you understand that's the exact same thing that

1           they're asking in the complaint.

2           THE COURT: I understand. And quite frankly I began  
3           to review the Ravenell case. I haven't read it all. I  
4           don't think that it quite frankly stands for the  
5           proposition that you say it does but I've certainly not  
6           ruled on that. But my immediate impression is that you  
7           have a legal remedy that is the appellate process to  
8           challenge the election including qualifications of the  
9           candidate at the local Board of Canvassers, then to the  
10          State Election Commission, then to the Supreme Court.

11          Now, if you want to brief the issue of whether or  
12          not the issue of qualification can be raised in that  
13          process, I'll be glad to look at it. Okay? But that  
14          seems to me that my feeling is you can raise that and  
15          that it is raised and ruled on and that number 1, there  
16          is a legal remedy available so the writ of mandamus is  
17          probably not an available remedy to you because there's  
18          no - if there's ever according to the research we have an  
19          available legal remedy, you have got to avail yourself of  
20          that before you can seek a writ of mandamus.

21          Now, I'm saying this to you because if anybody wants  
22          to file further filings other than what I have got, I'll  
23          take them. So on the basis of you stopping, using the  
24          law of the case, perfecting all of your appeals in this  
25          process, I think that you have a legal remedy you didn't

1           avail yourself of but you can't seek equitable remedy.

2           Now, I also have some real question about the  
3           ministerial nature of the acts involved and I would  
4           potentially agree with you that at the party level when  
5           you file your paperwork although it's probably not  
6           supposed to be a ministerial act, there is probably in  
7           the performance a ministerial stay approved and may be  
8           even done so at the state election level. But when you  
9           get beyond that, when you start going to the levels of  
10          the Board of Canvassers you have a right to hearing and  
11          you do have hearings, that certainly is a ministerial act  
12          and so my feeling is that you are barred by the law of  
13          the case; that you had a legal remedy and that you didn't  
14          perfect it and therefore not entitled to a equitable  
15          remedy even though it appears to me on the side of the  
16          Sheriff that under the reading of the statute he did not  
17          meet the certification requirements. Okay?

18          So now you seem to indicate that there is some other  
19          ambiguity or other parts of the statute that may allow  
20          him to qualify from other experience so that would be  
21          something that I want you to brief me on and certainly  
22          any of the issues I have raised. But that's where I'm  
23          going with it. I want to tell you so you will know what  
24          I'm looking at and if you want to present anything else  
25          that you think I need to hear about, then I will be glad

1 to do that as well.

2 MR. TYSON: I think there was some discussions  
3 yesterday about submitting briefs after the hearing and  
4 we would like to do that, Your Honor.

5 THE COURT: Please. How long do you think you will  
6 need? I'm not going to hold you to it but I would like  
7 to get some kind of time frame so my law clerk can start  
8 buzzing you on the phone when you don't get them to me on  
9 time. 30 days long enough?

10 MR. GROSE: I was going to suggest Monday.

11 MR. TYSON: Yeah. I would say --

12 THE COURT: I know that y'all want this done.

13 MR. TYSON: It's a year after the election. We are  
14 ready for it to be done, Your Honor. The law has pretty  
15 much been briefed in the injunction and we were ready for  
16 directed verdict today so we can get it here if not by  
17 Monday - I don't think we can do it by Monday but we'll  
18 do it by Monday a week if that suits you.

19 THE COURT: Sure.

20 MR. TYSON: Ten days.

21 THE COURT: Is that fair?

22 MR. GROSE: That's fair.

23 THE COURT: And in fairness to you I looked at the  
24 file and saw that there was an injunction that was denied  
25 by Judge Keesley but I have not read through it. I have

1       been involved with a trial this week so I have not read  
2       that. I have gandered through the file but I want to  
3       look at the pleadings and the law. All right. Anything  
4       else from the plaintiffs?

5               MR. GROSE: Not at this time, Your Honor.

6               THE COURT: So, Mr. Grose, you're gonna be  
7       responsible for getting those stipulations and sending  
8       them around?

9               MR. GROSE: Yes, sir.

10              THE COURT: Just turn those in with your brief.

11              MR. GROSE: Okay.

12              THE COURT: That will make it all compact. Anything  
13       further from the defendants?

14              MR. TYSON: So we will brief, let me make sure, we  
15       will brief the issues that support kind of where you were  
16       headed on this election commission just to give you that  
17       and then we will also brief any other issues including  
18       whether he meets the qualifications under the statute.

19              THE COURT: Right. And listen, this is an important  
20       issue. I'm gonna let you all fully brief it. I would  
21       hope that the issues are kind of narrowed down enough so  
22       that we don't have a war of briefs going on, single  
23       filing. But if you need an additional filing, just send  
24       me and my law clerk an e-mail and opposing counsel saying  
25       may we additionally brief this issue that was raised. We

1           weren't thinking about it, and it will be granted. I  
2           just want to make sure that I have it so I can keep track  
3           of what I'm doing in the case. Fair enough?

4           MR. TYSON: Fair enough.

5           MR. GROSE: Thank you, Your Honor. Fair enough.

6           THE COURT: Mr. Callison, you haven't said a word.  
7           You can't get away with it.

8           MR. CALLISON: I'll tell you what, I represent the  
9           County of McCormick as county attorney and what caught my  
10          attention was Mr. Tyson mentioned directed verdict and I  
11          would ask that the court dismiss McCormick County from  
12          this case. Actually McCormick County was named I think  
13          in conjunction with the preliminary injunction to  
14          prohibit the giving of the oath to the Sheriff. That was  
15          denied. The oath has been given. We have no --

16          THE COURT: I don't disagree with that. Anybody  
17          have a problem?

18          MR. GROSE: We have no objection to that.

19          MR. TYSON: No objection.

20          MR. BOWERS: No objection.

21          THE COURT: You have won your motion,  
22          Mr. Callison.

23          MR. CALLISON: I'm out then. There you go.

24          THE COURT: Gentlemen, thank you so much. Thank  
25          you.



1 MR. GROSE: Thank you, Your Honor.

2 MR. TYSON: Thank you, Your Honor.

3 WHEREUPON, THE HEARING WAS CONCLUDED.

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## 1 CERTIFICATE OF REPORTER

2 (STATE OF SOUTH CAROLINA)

3 (COUNTY OF LEXINGTON )

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5 I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R.,  
6 and Official Circuit Court Reporter for the Eleventh Judicial  
7 Circuit in and for the State of South Carolina, do hereby  
8 certify that I reported the proceedings in the before  
9 captioned case in the Court of Common Pleas in and for the  
10 State of South Carolina on the 16th and 18th day of October,  
11 2017.

12 I FURTHER CERTIFY that the forgoing 44 pages  
13 constitute a true and accurate record of said proceedings.

14 I FURTHER CERTIFY that I am neither related, counsel  
15 to, nor of interest to any party hereto.

16 IN WITNESS WHEREOF, I have hereunto set my hand at  
17 Lexington County, this 24th day of February, 2018.

18

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Steven E. LeBlanc, Sr., R.P.R.  
Eleventh Circuit Court Reporter  
State of South Carolina.

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM MCCORMICK COUNTY  
Court of Common Pleas  
R. Lawton McIntosh, Circuit Court Judge

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Case Number 2016-CP-35-00135

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J.R. Jones, South Carolina Democratic Party, and  
McCormick County Democratic Party, .....Appellants,

v.

South Carolina Republican Party, McCormick  
County Republican Party, Clarke Anderson Stearns, .....Respondents.

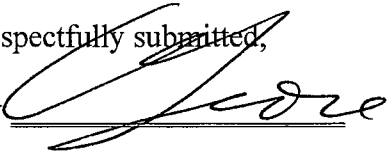
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**Rule 210, SCACR Certification**

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

Respectfully submitted,

By 

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June 20, 2018.