

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**  
OCT 08 2019  
SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Doyet A. Early, Circuit Court Judge

Appellate Case No. 2019-000648  
Civil Action No. 2018-CP-40-02425

Jefferson Davis, Jr. .... Appellant,

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reams, Stephen D. Kirkland, Palmetto Promise Institute, Palmetto Family Council, Palmetto Family Action, South Carolinians for Responsible Government, SCRG Foundation, Access Opportunity South Carolina, Friedman Foundation for Educational Choice, Inc., Cato Institute, South Carolina Educational Credit for Exceptional Needs Children Fund, South Carolina Education Oversight Committee, South Carolina Dept. of Revenue, South Carolina Dept. of Labor, Licensing and Regulation, First Impressions, Inc. d/b/a/ Richard Quinn & Associates, First Tuesday Strategies, LLC, Bill Wilson, Jason Bedrick, Jim DeMint, Randy Page, Tony Denny, Phillip Cease, Melanie Barton, Doris Cubitt, Susan Thomas, John McCormick, Nate Leupp, Institute of Management Consultants USA & John Doe(s) 1-40 ..... Respondents.

**INITIAL BRIEF OF RESPONDENTS PHILLIP CEASE AND SOUTH CAROLINIANS FOR RESPONSIBLE GOVERNMENT**

SWEENEY WINGATE & BARROW, P.A.

Mark V. Gende  
Brandon R. Gottschall  
1515 Lady Street  
Columbia, SC 29201  
(803) 256-2233

*Attorneys for Respondents Phillip Cease and South Carolinians for Responsible Government*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES ..... ii

COUNTER-STATEMENT OF THE ISSUES ON APPEAL..... 1

STATEMENT OF THE CASE ..... 1

STATEMENT OF THE FACTS..... 2

ARGUMENT ..... 2

CONCLUSION ..... 6

TABLE OF AUTHORITIES

|   | <b>Page(s)</b> |
|---|----------------|
| <b>Cases</b>  |                |
| <i>Krych v. Hvass</i> , 83 F. App'x 854, 855 (8th Cir. 2003).....   | 5              |
| <i>Hunt v. Hedgepath</i> , No. 8:18-cv-2684-TMC-JDA, 2018 WL 6031317, at *3 (D.S.C. Oct. 22, 2018).....   | 5              |
| <i>Hunt v. Hedgepath</i> , No. 8:18-cv-2684-TMC-JDA, 2018 WL 6031317, at *3 (D.S.C. Oct. 22, 2018).....   | 5              |
| <i>Dupont v. County of Jasper</i> , No. 2008-CP-27-223, 2011 WL 12565700 (S.C. Ct. of Common Pleas, Jasper County, Hon. Carmen T. Mullen, June 14, 2011)..... | 6              |

### COUNTER-STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court properly dismiss Mr. Davis' claims against Phillip Cease and South Carolinians for Responsible Government because Mr. Davis failed to serve the Amended Complaint within the time frame required by the trial court's prior order?
2. Was the dismissal of Mr. Davis' claims against Phillip Cease and South Carolinians for Responsible Government also supported by the additional sustaining ground that the Amended Complaint fails to make any factual allegations against Phillip Cease or South Carolinians for Responsible Government that injured or affected Mr. Davis and also fails to allege any basis upon which Palmetto Family Council and Palmetto Family Alliance could be liable for the alleged wrongdoing of others?
3. Was the dismissal of Mr. Davis' claims against Phillip Cease and South Carolinians for Responsible Government further supported by the additional sustaining ground that the claims Mr. Davis attempts to assert are fatally deficient?
4. Did the trial court properly dismiss Mr. Davis' claims against Phillip Cease and South Carolinians for Responsible Government with prejudice because Mr. Davis failed to comply with a prior order of the court, failed timely to serve Phillip Cease and South Carolinians for Responsible Government, has already been given an opportunity to amend his Complaint and *still* failed to assert viable claims or to allege facts capable of supporting them, and has identified no new facts in his post-dismissal filings that could remedy his deficient claims?

### STATEMENT OF THE CASE

In the interest of economy and efficiency, Phillip Cease ("Cease") and South Carolinians for Responsible Government ("SCRG") adopt and incorporate by reference the Statement of the Case found in the brief of co-Respondents Cato Institute and Howard S. Rich.

Cease and SCRG further add that Cease filed his Motion to Dismiss on January 15, 2019, and SCRG filed its motion on January 17, 2019. *See* Cease's Mot. To Dismiss (R. \_\_\_), SCRG's Mot. To Dismiss (R. \_\_\_). In their motions, Cease and SCRG argued that dismissal was warranted because the Amended Complaint (a) fails to state facts sufficient to constitute causes of action and that Appellant failed to make any factual allegations against Cease or SCRG with the degree of

specificity necessary to assert valid and plausible claims for relief; (b) asserts causes of action seeking redress for political activity protected by the constitutions of the United States of America and the State of South Carolina; and (c) asserts causes of action barred by the statute of limitations. *See* Cease Mot. to Dismiss (R. \_\_\_); SCRG Mot. to Dismiss (R. \_\_\_).

#### STATEMENT OF THE FACTS

In the interest of efficiency, Cease and SCRG adopt and incorporate by reference the Statement of the Facts found in the brief of co-Respondents Cato Institute and Howard S. Rich.

#### ARGUMENT

Cease and SCRG further adopt and incorporate by reference the Arguments found in the brief of co-Respondents Cato Institute and Howard S. Rich, including but not limited to arguments regarding Appellant's untimely amendment of the Complaint, which arguments are also applicable to Cease and SCRG. Cease and SCRG further incorporate any applicable arguments asserted by other co-Respondents.

To those arguments, Cease and SCRG add the additional sustaining ground that dismissal was appropriate based on the statute of limitations

Cease and SCRG further add that Cease is mentioned only in six paragraphs of the Amended Complaint, and SCRG is mentioned only in ten paragraphs (most of which simply mention SCRG in relation to other named defendants). None of these paragraphs allege any action or omission by Cease or SCRG damaging or injuring Mr. Davis.

As to Phillip Cease, the Amended Complaint alleges:

- Paragraph 28: that Cease is President and Board Member of Defendant SCRG, a former Board Member of Defendant SCRG Foundation and Defendant AOSC and a citizen of the State of South Carolina, *see* Amend. Compl. ¶ 28 (R. \_\_\_);

- Paragraph 45: that after discussions with Cease and others, Davis was troubled that he was involved with “bad people,” *see* Amend. Compl. ¶ 45 (R. \_\_\_\_);
- Paragraph 49: that Davis’s suspicions that he did not want to work with Cease and others were confirmed, *see* Amend. Compl. ¶ 49 (R. \_\_\_\_);
- Paragraph 63: that Cease and others described political smear campaigns, and that unspecified “Defendants” ran a political ‘smear campaign’” against Davis and others, even though Davis was not a politician “in any way,” *see* Amend. Compl. ¶ 63 (R. \_\_\_\_);
- Paragraph 134: that Cease provided an audit from the Department of Revenue (“DOR”) to legislators to tarnish Davis’ reputation, *see* Amend. Compl. ¶ 134 (R. \_\_\_\_);
- Paragraph 135: that the DOR made the “fraudulent” audit report available through FOIA so Cease and/or others could distribute it as part of a civil conspiracy, *see* Amend. Compl. ¶ 135 (R. \_\_\_\_).

These allegations are devoid of any factual allegation that could support *any* claim against Cease or SCRG, either directly or vicariously. The only specific acts that can be gleaned from these paragraphs as to Cease are (a) that Cease and others had unspecified discussions with Davis that Davis found troubling; (b) that Davis did not want to work with Cease and others; (c) that Cease and others discussed political “smear campaigns” with Davis (after which unspecified “Defendants” ran an vague “political smear campaign” against Davis); and (d) that Cease provided unspecified legislators with an audit, performed by the Department of Revenue and released as part of a FOIA request, “to tarnish Davis’ reputation.” Notably, though, while Davis alleges that the audit was somehow used as part of a “smear campaign,” the audit found *favorably* for Davis with the issuance of “no change” letters. *See* Amend. Compl. ¶¶ 102, 103 (R. \_\_\_\_).

Likewise, as to SCRG, the Amended Complaint alleges:

- Paragraph 6: that SCRG is directed and funded by Defendant Rich, *see* Amend. Compl. ¶ 6 (R. \_\_\_\_);
- Paragraph 12: that SCRG is a non-profit, a 501(c)(4) organization, and has an office in Richland County, *see* Amend. Compl. ¶ 6 (R. \_\_\_\_);

- Paragraphs 26, 27, and 28: that Defendants Randy Page, Tony Denny, and Phillip Cease are a former Board Members of SCRG; *see* Amend. Compl. ¶¶ 26-28 (R. \_\_\_\_);
- Paragraph 41: that SCRG and others lacked a plan to implement newly passed legislation, *see* Amend. Compl. ¶ 41 (R. \_\_\_\_);
- Paragraph 42: that Davis offered to help with implementation and that SCRG was “grateful,” *see* Amend. Compl. ¶ 42 (R. \_\_\_\_);
- Paragraph 45: that after discussions with SCRG and others, Davis was troubled that he was involved with “bad people,” *see* Amend. Compl. ¶ 45 (R. \_\_\_\_);
- Paragraph 46: that Davis did not want to be involved with “bad actors” and informed SCRG that Davis would operate separately, *see* Amend. Compl. ¶ 45 (R. \_\_\_\_);
- Paragraph 48: that Davis informed SCRG that Palmetto Kids FIRST had lined up pledges, which Davis thought would please Defendants, *see* Amend. Compl. ¶ 48 (R. \_\_\_\_);
- Paragraph 49: that Davis’s suspicions that he did not want to work with SCRG and others were confirmed, *see* Amend. Compl. ¶ 49 (R. \_\_\_\_);
- Paragraph 63: that SCRG and others described “political smear campaigns” and that unspecified “Defendants” ran a political ‘smear campaign’” against Davis and others, even though Davis was not a politician “in any way,” *see* Amend. Compl. ¶ 63 (R. \_\_\_\_).

From these paragraphs, even fewer specific acts are alleged against SCRG than against Cease. Specifically, the only acts alleged as to SCRG are (a) that SCRG and others had unspecified discussions with Davis that Davis found troubling; (b) that Davis did not want to work with SCRG and others; and (c) that SCRG and others discussed political “smear campaigns” with Davis (after which unspecified “Defendants” ran an vague “political smear campaign” against Davis).

For the reasons set forth in the brief filed by co-Respondents Cato Institute and Howard S. Rich, these allegations fail to support any of the nine causes of action in Davis’ Complaint. Among other things, Davis’ Complaint fails to (1) allege any false statements by Cease or SCRG, to identify to whom such statements were made, and to identify any injury or harm from same (notably, again, as to Cease, Davis alleges only the distribution of an audit *favorable to Davis*); (4)

fails to identify any non-public information which Cease or SCRG publicized; (5) fails to identify any duty owed by Cease or SCRG or breach of such duty; (6) fails to allege intentional or reckless acts by Cease or SCRG that were so extreme or outrageous that they exceeded all possible bounds and which no reasonable person could be expected to endure; (7) fails to allege any reasonable expectation of benefit from any identifiable contract with any identifiable person; (8) fails to allege any unfair competition or deceptive acts in trade or commerce, or any resulting injury from same; (9) fails to allege any facts to support piercing any corporate veil; and (10) fails to allege facts supporting conspiracy, including acts separate from the other wrongful acts alleged in the Complaint.

In the absence of such allegations, no claim may lie against Cease or SCRG, and dismissal of Davis' claims is appropriate. *See generally* the authorities cited in the Brief of Cato Institute and Mr. Rich at Argument II.A; *see also Krych v. Hvass*, 83 F. App'x 854, 855 (8th Cir. 2003) (affirming dismissal of claims when the plaintiff "failed to state any claim whatsoever against Stender and Fitzloff-Meyer because he merely listed these individuals as defendants in his complaint and did not allege they were personally involved in the constitutional violations"); *B Black v. Lane*, 22 F.3d 1395, 1401 n.8 (7th Cir. 1994) ("The magistrate judge properly dismissed Greer, the Chief Administrative Officer at Menard. Although Greer is named as a defendant, there are no factual allegations involving him other than that he was charged with the administration of Menard and is responsible for all persons at Menard. This is not sufficient personal involvement for the imposition of liability."); *Hunt v. Hedgepath*, No. 8:18-cv-2684-TMC-JDA, 2018 WL 6031317, at \*3 (D.S.C. Oct. 22, 2018) (recommending dismissal of *pro se* plaintiff's claims because "Plaintiff has made no specific allegations in the body of his Complaint against these two Defendant, which is required to state a claim" and "[i]n the absence of substantive allegations of

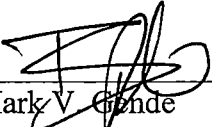
wrongdoing against these named Defendants, the Court is unable to liberally construe any type of plausible cause of action arising from the Complaint against them”); *Dupont v. County of Jasper*, No. 2008-CP-27-223, 2011 WL 12565700 (S.C. Ct. of Common Pleas, Jasper County, Hon. Carmen T. Mullen, June 14, 2011) (dismissing County from lawsuit because “the Complaint contains no substantive allegations against the County of Jasper”).

**CONCLUSION**

For the foregoing reasons, Respondents SCRG and Phillip Cease respectfully request this Court affirm the trial court’s Order dismissing Mr. Davis’ claims against them.

SWEENEY, WINGATE & BARROW, P.A.

October 8, 2019.

  
\_\_\_\_\_  
Mark V. Gonde  
Brandon R. Gottschall  
Sweeney, Wingate and Barrow, P.A.  
1515 Lady Street  
Post Office Box 12129  
Columbia, South Carolina 29211  
(803) 256-2233  
*Attorneys for Philip Cease and South Carolinians  
for Responsible Government*

THE STATE OF SOUTH CAROLINA  
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**PROOF OF SERVICE**

The undersigned hereby certifies he has served the foregoing **INITIAL BRIEF OF RESPONDENTS PHILLIP CEASE AND SOUTH CAROLINIANS FOR RESPONSIBLE GOVERNMENT**, by mailing a copy of same, postage prepaid and return address clearly indicated, to the following on this 8<sup>th</sup> day of October 2019.

Melanie Barton, Executive Director  
South Carolina Education Oversight Committee  
P.O. Box 11867  
Columbia, South Carolina 29211

Jefferson Davis, Jr., Appellant  
403 McCarter Avenue  
Greenville, South Carolina 29615

Ryan T. Adams, Esq.  
172 Meeting Street  
Charleston, South Carolina 29401

Mark S. Barrow, Esq.  
P.O. Box 12129  
1515 Lady Street  
Columbia, South Carolina 29211

Kelly S. Cannon, Esq.  
P.O. Box 12009  
Columbia, South Carolina 29211

Joseph K. Carter, Jr., Esq.  
P.O. Box 1473  
Columbia, South Carolina 29202

Geoffrey K. Chambers, Esq.  
411 Walnut Street, No. 10646 Green  
Cove Springs, Florida 32043

Miles E. Coleman, Esq.  
104 South Main Street, Suite 900  
Greenville, South Carolina 29601

M. Dawes Cooke, Jr., Esq.  
Justin P. Novak, Esq.  
P.O. Box H  
Charleston, South Carolina 29402

Christopher J. Daniels, Esq.  
P.O. Box 11070  
Columbia, South Carolina 29211

William H. Davidson, II, Esq. Michael B. Wren,  
Esq.  
P.O. Box 8568  
Columbia, South Carolina 29202

James M. Davis, Esq.  
P.O. Box 6923

Columbia, South Carolina 29260  
Martin S. Driggers, Jr., Esq.  
Pee Dee Regional Office  
115 Cargill Way, Suite B  
Hartsville, South Carolina 29550

Ross C. DuRant, Esq.  
1901 Main Street, 17th Floor  
Columbia, South Carolina 29201

William J. Farley, III, Esq.  
Douglas W. MacKelcan, III, Esq.  
40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401

James H. Goldin, Esq.  
P.O. Box 11070  
Columbia, South Carolina 29211

Williams H. Jordan, Esq. •  
1310 Gadsden Street  
Columbia, South Carolina 29201

Jason P. Luther, Esq.  
P.O. Box 12265  
Columbia, South Carolina 29211

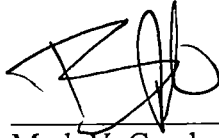
Joseph M. McCulloch, Jr., Esq.  
Kathy R. Schillaci, Esq.  
P.O. Box 11623  
Columbia, South Carolina 29211

Benjamin P. Mustian, Esq.  
P.O. Box 8416  
Columbia, South Carolina 29202

Jennifer F. Nutter, Esq.  
P.O. Box 1508  
Charleston, South Carolina 29402

Bettis C. Rainsford, Jr., Esq.  
One Tenth Street, Suite 700  
Augusta, Georgia 30901

(SIGNATURE PAGE TO FOLLOW)



---

Mark V. Gende  
Brandon R. Gottschall  
Sweeny, Wingate and Barrow, P.A.  
1515 Lady Street  
Post Office Box 12129  
Columbia, South Carolina 29211  
(803) 256-2233  
Attorneys for Philip Cease and South Carolinians  
for Responsible Government

October 8, 2019  
Columbia, South Carolina

# S·W·B

## SWEENEY WINGATE & BARROW P.A.

October 8, 2019

Reply to: Main Office

**Brandon R. Gottschall**  
(803) 256-2233 x7132  
brg@swblaw.com

### HAND DELIVERY

South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: Jefferson Davis, Jr. v. Phillip Cease, et al  
Civil Action No.: 2018CP4002425  
Claim No.:  
Our File: 6075-12350

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To Whom it May Concern:

Enclosed please find the original and 1 copy of the Respondents Phillip Cease and South Carolinians for Responsible Government's Designation of Matter for the Record on Appeal and Initial Brief of Respondents Phillip Cease and South Carolinians for Responsible Government, along with two Proofs of Service of the same in connection with the above-referenced matter. Please file the original and return the remaining clocked copy to me in the envelope provided.

By copy of this letter to opposing counsel, I am serving them with same.

Thank you for your assistance, and should you have any questions, please do not hesitate to contact me.

Yours truly,

**SWEENEY, WINGATE & BARROW, P.A.**



Brandon R. Gottschall

BRG/jln  
Enclosures  
w/enclosure