

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

**RECEIVED**  
OCT 09 2019  
SC Court of Appeals

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

Respondents.

Consultants USA & John Doe(s) 1-40.....

**INITIAL BRIEF OF RESPONDENTS PALMETTO FAMILY COUNCIL AND PALMETTO FAMILY ALLIANCE**

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### COUNTER-STATEMENT OF THE ISSUES ON APPEAL

1. Did the trial court properly dismiss Mr. Davis' claims against Palmetto Family Council and Palmetto Family Alliance 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 Palmetto Family Council and Palmetto Family Alliance also supported by the additional sustaining ground that the Amended Complaint fails to make any factual allegations against Palmetto Family Council and Palmetto Family Alliance 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 Palmetto Family Council and Palmetto Family Alliance 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 Palmetto Family Council and Palmetto Family Alliance with prejudice because Mr. Davis failed to comply with a prior order of the court, failed timely to serve Palmetto Family Council and Palmetto Family Alliance, 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, Palmetto Family Council ("PFC") and Palmetto Family Alliance ("PFA") adopt and incorporate by reference the Statement of the Case found in the brief of co-Respondents Cato Institute and Howard S. Rich.

PFC and PFA further add that they filed their joint Motion to Dismiss on December 26, 2018. *See* PFC and PFA's Mot. To Dismiss (R. \_\_\_\_). PFC and PFA filed a joint memo in support of dismissal on February 11, 2019. *See* PFC and PFA's Mem. In Supp. (R. \_\_\_\_). In their motion and memorandum, PFC and PFA argued that dismissal was warranted for numerous reasons, including: Mr. Davis' failure to properly serve PFC or PFA; Mr. Davis' failure to make specific factual allegations regarding PFC or PFA; the absence of any claims upon which relief could be granted; and Mr. Davis' failure to timely complete the amendment of his complaint by serving it

on the new defendants within the time period allowed by Judge Benjamin. *See* PFC and PFA’s Motion to Dismiss at 1-2 (R. \_\_\_\_); PFC and PFA’s Mem. In Supp. at 1-9 (R. \_\_\_\_).

### STATEMENT OF THE FACTS

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

### ARGUMENT

PFC and PFA 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 as to Mr. Davis’ failure to timely amend, which are also applicable to PFC and PFA. PFC and PFA further incorporate any applicable arguments asserted by other co-Respondents.

PFC and PFA further add that they are mentioned only in nine paragraphs of the Amended Complaint, most of which simply mention PFC and PFA in relation to other named defendants. None of these paragraphs allege any action or omission by PFC and PFA damaging or injuring Mr. Davis, and in fact from the Amended Complaint it is impossible to tell whether any wrongdoing is alleged against PFC or PFA whatsoever.

As to PFC and PFA, the Amended Complaint alleges:

- Paragraph 3: that Chad Connelly is a Board Member of PFC, PFA, and others.
- Paragraph 4: that Oran P. Smith is a current/former board member and Executive Director PFC, PFA and others, and a “Senior Fellow at PFC.
- Paragraph 6: that Howard S. Rich funds and directs the operations and activities of Defendants PFC, PFA, and others.
- Paragraph 8: that Stephen D. Kirkland, CPA, CMC is the Board Chairman of PFC and a Board Member of Palmetto Family Alliance.
- Paragraph 10: that PFC is a South Carolina non-profit, an IRS approved 501(c)(3), and has an office in Richland County.
- Paragraph 11: that PFA is a South Carolina non-profit, an IRS approved 501(c)(4), and has an office in Richland County.

- Paragraph 26: that Randy Page is a board member of PFC and PFA.
- Paragraph 124: that PFC and PFA were advocating for a different version of school choice and “actively opposed the efforts of ... Davis, Palmetto Kids FIRST and his group.”
- Paragraph 125: that PFC and PFA’s opposition was known to Defendants Kirkland and Reames.

These allegations are devoid of any factual allegation that could support *any* claim against PFC or PFA, either directly or vicariously. The only specific acts that can be gleaned from these paragraphs are the vague allegations that PFC and PFA advocated for a different version of school choice and opposed efforts of Davis, Palmetto Kids FIRST and his group. From the Complaint, it is impossible even to tell whether these acts are alleged to be some form of wrongdoing, much less how these acts support any of the listed causes of action in the Complaint.

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 PFC or PFA, to identify to whom such statements were made, and to identify any injury or harm from same; (4) fails to identify any non-public information which PFC or PFA publicized; (5) fails to identify any duty owed by PFC or PFA or breach of such duty; (6) fails to allege intentional or reckless acts by PFC or PFA 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 PFC or PFA, 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"); *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 PFC or PFA respectfully request this Court affirm the trial court's Order dismissing Mr. Davis' claims against them.

Respectfully submitted,

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

A handwritten signature in black ink, appearing to read "Mark S. Barrow", is written over a horizontal line.

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Martin S. Driggers, Jr.

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Hartsville, South Carolina

October 9, 2019

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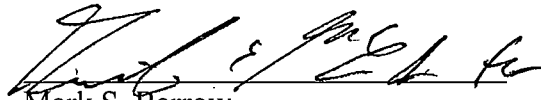
Respondents.

Consultants USA & John Doe(s) 1-40 .....

**PROOF OF SERVICE**

I certify that I have served a copy of Respondents Palmetto Family Council and Palmetto Family Action’s Initial Brief on Appellant, Jefferson Davis, Jr., by depositing a copy of the same in the United States Mail, Postage Prepaid, on October 9, 2019, addressed to Jefferson Davis, Jr., 403 McCarter Avenue, Greenville, South Carolina 29615.

October 9, 2019



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October 9, 2019

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**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

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OCT 09 2019  
SC Court of Appeals

RE: Jefferson Davis, Jr. v. Palmetto Family Council, et al.  
Civil Action No.: 2018CP4002425/2019-000648  
Our File: 4513-11974

Dear Ms. Kitchings:

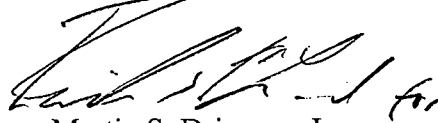
Enclosed please find the original and one (1) copy of Respondents Palmetto Family Council and Palmetto Family Alliance's Initial Brief, along with a Proof of Service in connection with the above-referenced matter. Please file the originals and return the remaining clocked copies to our courier.

By copy of this letter to counsel of record, 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,

SWEENY WINGATE & BARROW, P.A.

  
Martin S. Driggers, Jr.

MSD/smt  
Enclosures

CC: Counsel of Record via electronic mail