

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge  
Case No.: 2018-cp-40-02425

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MAR 23 2021

SC Court of Appeals

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Appellate Case No. 2019-000648

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Jefferson Davis, Jr., .....Appellant

v.

Ellen Weaver, Chad Connelly, Oran P. Smith, Neil J. Mellen, Howard S. Rich, Rick Reames, 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 Department of Revenue, South Carolina Department of Labor, Licensing and Regulations, 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

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**RESPONDENT STEPHEN D. KIRKLAND'S RETURN TO APPELLANT'S MOTION TO STRIKE**

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Appellant Jefferson Davis, Jr., moved this Honorable Court for an order striking sections of all Respondents' Initial Briefs, and portions of the Record on Appeal, that are unrelated to the subject of Appellant's appeal. Pursuant to Rule 212(e) of the South Carolina Appellate Court Rules, Respondent Stephen D. Kirkland files the following in response to Appellant's Motion to Strike, dated March 9, 2020.

As a reminder, on October 30, 2018, Judge Benjamin ordered Appellant to name and serve each John Doe referenced in his complaint. (R. 8). Judge Benjamin’s order further stated Appellant had “15 days to appropriately amend the pleadings.” (R. 8). This Order was interpreted by Judge Early to require Appellant to amend **and serve** the amended complaint on the newly named defendants within fifteen days. Appellant failed to comply with the Order pursuant to Judge Early’s interpretation and the court dismissed the case against the newly named defendants. Appellant appealed Judge Early’s order.

In his Motion to Strike, Appellant argues Respondents have expanded the Record on Appeal and their arguments to matters that were not addressed by the circuit court and, accordingly, those additional arguments and matters included in the Record on Appeal should be stricken. Respondent Kirkland disagrees and requests this Court deny Appellant’s motion.

Pursuant to Rule 220(c) of the South Carolina Appellate Court Rules, the Court “may affirm any ruling, order, decision[,] or judgment upon any ground(s) appearing in the Record on Appeal.” A respondent may raise on appeal any additional reasons the appellate court should affirm the circuit court’s ruling—regardless of whether those reasons were presented to or ruled upon by the circuit court—and the appellate court may rely on them or any other reason appearing in the record to affirm the circuit court’s judgment. *I’On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 420–21, 526 S.E.2d 716, 723–24 (2000).

Here, Respondent Kirkland has a right to raise additional sustaining grounds on appeal, regardless of whether the circuit court ruled on the additional grounds. Respondent Kirkland was one of the newly named defendants that Appellant failed to serve with the amended complaint within the fifteen day requirement. Respondent Kirkland moved to dismiss the amended complaint, arguing Appellant failed to state facts sufficient to constitute a cause of action against

Respondent Kirkland and Appellant did not properly serve the Amended Summons and Complaint. (R. 183, 313). Along with a memorandum in support of dismissal, Respondent Kirkland filed an affidavit indicating he was not served with the amended complaint as argued by Appellant.<sup>1</sup> Judge Early, in light of his ruling dismissing Respondent Kirkland for Appellant's failure to timely amend and serve, did not address the arguments in Respondent Kirkland's motion to dismiss. Nevertheless, Respondent Kirkland's motion to dismiss is part of the record below and part of the Record on Appeal.

Pursuant to Rule 220(c), the fact that Judge Early did not consider Respondent Kirkland's motion to dismiss will not prevent this Court from considering or ruling on the arguments in Respondent Kirkland's motion to dismiss. Because this Court may consider additional sustaining grounds, this Court should deny Appellant's motion and refuse to strike those matters on appeal relevant to the additional sustaining grounds.

This 19<sup>th</sup> day of March, 2020.

40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401-3531  
*dmackelcan@cskl.law*  
*swilson@cskl.law*  
Ph: 843-727-0307

COPELAND, STAIR, KINGMA & LOVELL, LLP

By: 

DOUGLAS W. MACKELCAN  
State Bar No.: 76332  
SKYLER C. WILSON  
State Bar No.: 102865

*Attorneys for Respondent Stephen D. Kirkland*

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<sup>1</sup> Respondent Kirkland's affidavit was excluded from the Record on Appeal and the subject of a motion to supplement the record pending before this Court.

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**PROOF OF SERVICE**

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I certify that I have served **RESPONDENT STEPHEN D. KIRKLAND'S RETURN TO APPELLANT'S MOTION TO STRIKE**, upon the parties below by depositing a copy of it in the United States Mail, postage prepaid, on March 19<sup>th</sup>, 2020, addressed to Appellant, as follows; and to Appellant and all counsel of record via electronic mail, as follows:

Jefferson Davis, Jr.  
403 McCarter Avenue  
Greenville, SC 29615  
[jdavis@apogeetax.com](mailto:jdavis@apogeetax.com)  
*Pro se Plaintiff*

Mark S. Barrow, Esq.  
Martin S. Driggers, Jr., Esq.  
Sweeny, Wingate & Barrow, PA  
115 Cargill Way, Suite B  
Hartsville, SC 29550  
[msb@swblaw.com](mailto:msb@swblaw.com)  
[msd@swblaw.com](mailto:msd@swblaw.com)

*Counsel for Def. Palmetto Family Council;  
Palmetto Family Alliance; and  
Palmetto Family Action*

Miles E. Coleman, Esq.  
Nelson Mullins Riley & Scarborough, LLP  
P.O. Box 10084  
Greenville, SC 29603  
[Miles.coleman@nelsonmullins.com](mailto:Miles.coleman@nelsonmullins.com)  
*Counsel for Defendant SCRG Foundation n/k/a  
Enriching Students' Knowledge; Cato Institute;  
and Howard S. Rich*

Geoffrey K. Chambers, Esq.  
411 Walnut Street No. 10646  
Green Cove Springs, FL 32043  
[g.k.chambers@gmail.com](mailto:g.k.chambers@gmail.com)  
*Counsel for Defs. South Carolina Educational  
Credit for Exceptional Needs Childrens Fund;  
and Randy Page*

M. Dawes Cooke, Jr., Esq.  
Justin Paul Novak, Esq.  
Barnwell Whaley Patterson and Helms, LLC  
P.O. Drawer H  
Charleston, SC 29402  
[mdc@barnwell-whaley.com](mailto:mdc@barnwell-whaley.com)  
[jnovak@barnwell-whaley.com](mailto:jnovak@barnwell-whaley.com)  
*Counsel for Defs. South Carolina Educational  
Credit for Exceptional Needs Childrens Fund*

Michael B. Wren, Esq.  
William H. Davidson, II, Esq.  
P.O. Box 8568  
Columbia, SC 20202  
[mwren@dml-law.com](mailto:mwren@dml-law.com)  
[w davidson@dml-law.com](mailto:w davidson@dml-law.com)  
*Counsel for Defs. South Carolina Dept. of  
Revenue; and Rick Reames*

Jason P. Luther, Esq.  
General Counsel  
South Carolina Dept. of Revenue  
P.O. Box 12265  
Columbia, SC 29211  
[jason.luther@dor.sc.gov](mailto:jason.luther@dor.sc.gov)  
**Def. South Carolina Dept. of Revenue**

Benjamin Parker Mustian, Esq.  
141 Pelham Drive, Suite F #108  
Columbia, SC 29209  
[bpmlawsc@gmail.com](mailto:bpmlawsc@gmail.com)  
*Counsel for Def. First Impressions, Inc. d/b/a  
Richard Quinn & Associates*

Andrew Haselden, Esq.  
Houser, Newman & Besley, LLC  
P.O. Box 120009  
Columbia, SC 29211  
[ahaselden@hnblaw.com](mailto:ahaselden@hnblaw.com)  
*Counsel for Def. South Carolina Dept. of LLR  
and Doris Cubitt*

Joseph M. McCulloch, Esq.  
Kathy R. Schillaci, Esq.  
McCulloch & Schillaci, Attorneys at Law  
P.O. Box 11623  
Columbia, SC 20201  
[joe@mccullochlaw.com](mailto:joe@mccullochlaw.com)  
[kathy@mccullochlaw.com](mailto:kathy@mccullochlaw.com)  
*Counsel for Def. First Tuesday Strategies, LLC*

Mark V. Gende, Esq.  
Brandon R. Gottschall, Esq.  
Sweeney, Wingate and Barrow, P.A.  
P.O. Box 12129  
Columbia, SC 29211  
[mvg@swblaw.com](mailto:mvg@swblaw.com)  
[brg@swblaw.com](mailto:brg@swblaw.com)

***Counsel for Defendants Phillip Cease; and  
South Carolinians for Responsible Government***

Joseph C. Chapelle, Esq.  
Barnes & Thornburg, LLP  
11 S. Meridian Street  
Indianapolis, IN 46204  
***Counsel for Defendant***

***EdChoice, Inc. (formerly and incorrectly  
identified as Friedman Foundation for  
Educational Choice, Inc.)  
Admitted pro hac vice***

J. Kenneth Carter, Jr., Esq.  
Ross C. DuRant, Esq.  
Turner, Padget, Graham & Laney, PA  
P.O. Box 1473  
Columbia, SC 29201  
[kcarter@turnerpadget.com](mailto:kcarter@turnerpadget.com)  
[rdurant@turnerpadget.com](mailto:rdurant@turnerpadget.com)

***Counsel for Defs. Defs Palmetto Promise  
Institute; Jim DeMint; and Oran P. Smith; and  
Ellen Weaver***

Alan G. Jones, Esq.  
Turner Padget Graham & Laney, P.A.  
P.O. Box 1509  
Greenville, SC 29602  
[agjones@turnerpadget.com](mailto:agjones@turnerpadget.com)

***Counsel for Def. Tony Denny***

This 19<sup>th</sup> day of March, 2020.

40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401-3531  
[dmackelcan@cskl.law](mailto:dmackelcan@cskl.law)  
[swilson@cskl.law](mailto:swilson@cskl.law)  
Ph: 843-727-0307

Christopher J. Daniels, Esq.  
Nelson Mullins Riley & Scarborough, LLP  
P.O. Box 11070  
Columbia, SC 29211

[Chris.daniels@nelsonmullins.com](mailto:Chris.daniels@nelsonmullins.com)

***Counsel for Defendant  
EdChoice, Inc. (formerly and incorrectly  
identified as Friedman Foundation for  
Educational Choice, Inc.)***

Jennifer F. Nutter, Esq.  
Hood Law Firm, LLC  
P.O. Box 1508  
Charleston, SC 29402

[jennifer.nutter@hoodlaw.com](mailto:jennifer.nutter@hoodlaw.com)

***Counsel for Def. Institute of Management  
Consultants, USA***

James H. Goldin, Esq.  
Nelson Mullins Riley & Scarborough, LLP  
1320 Main Street, 17<sup>th</sup> Floor  
Columbia, SC 29202

[jamey.goldin@nelsonmullins.com](mailto:jamey.goldin@nelsonmullins.com)

***Counsel for Def. Access Opportunity  
South Carolina***

COPELAND, STAIR, KINGMA & LOVELL, LLP

By: 

DOUGLAS W. MACKELCAN

State Bar No.: 76532

SKYLER C. WILSON

State Bar No.: 102865

***Attorneys for Respondent Stephen D. Kirkland***

LAW OFFICES

# COPELAND, STAIR, KINGMA & LOVELL, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

DOUGLAS W. MACKELCAN

DIRECT DIAL NUMBER  
(843) 266-8228

E-MAIL ADDRESS  
[dmackelcan@cskl.law](mailto:dmackelcan@cskl.law)

40 Calhoun Street, Suite 400  
CHARLESTON, SC 29401

TELEPHONE (843) 727-0307

FAX (843) 727-2995

[www.cskl.law](http://www.cskl.law)

ATLANTA OFFICE

191 Peachtree Street, N.E.  
Suite 3600  
Atlanta, Georgia 30303-1740  
(404) 522-8220

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SC Court of Appeals


Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Jefferson Davis, Jr., v. Ellen Weaver, *et al.*  
Appellate Court Case No.: 2019-000648  
Richland County Case No.: 2018-CP-40-02425  
CSKL File No.: 01834-58192

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent Stephen D. Kirkland's Return to Appellant's Motion to Strike in this case, together with a Proof of Service. Please provide me with a clocked copy in the enclosed, self-addressed, stamped envelope. By copy of this letter, I am serving the same upon *pro se* Appellant and all counsel of record. If you have any questions, please feel free to contact me.

Sincerely,

  
DOUGLAS W. MACKELCAN *by*  
SKYLER C. WILSON *tjr*

SCW:tjr

Enclosures

cc: (w/encls)

Jefferson Davis, Jr. (*pro se* Pltf.)  
Miles Coleman, Esq.  
William Davidson, Esq.  
Christopher Daniels, Esq.  
Michael Wren, Esq.  
J. Kenneth Carter, Jr., Esq.  
Benjamin Mustian, Esq.  
M. Dawes Cooke, Jr., Esq.

Jason P. Luther, Esq.  
Mark Barrow, Esq.  
Geoffrey Chambers, Esq.  
Martin Driggers, Esq.  
Andrew Haselden, Esq.  
Joseph McCulloch, Esq.  
Ross Conard DuRant, Esq.

Jennifer Nutter, Esq.  
James Harold Goldin, Esq.  
Justin P. Novak, Esq.  
Alan G. Jones, Esq.  
Kathy R. Schillaci, Esq.  
Mark v. Gende, Esq.  
Brandon R. Gotschall, Esq.

[jdavis@apogeetax.com](mailto:jdavis@apogeetax.com); [miles.coleman@nelsonmullins.com](mailto:miles.coleman@nelsonmullins.com); [wdaavidson@dml-law.com](mailto:wdaavidson@dml-law.com);  
[chris.daniels@nelsonmullins.com](mailto:chris.daniels@nelsonmullins.com); [mwren@dml-law.com](mailto:mwren@dml-law.com); [kcarter@turnerpadget.com](mailto:kcarter@turnerpadget.com); [bpmlawsc@gmail.com](mailto:bpmlawsc@gmail.com);  
[mdc@barnwell-whaley.com](mailto:mdc@barnwell-whaley.com); [jason.luther@dor.sc.gov](mailto:jason.luther@dor.sc.gov); [msb@swblaw.com](mailto:msb@swblaw.com); [g.k.chambers@gmail.com](mailto:g.k.chambers@gmail.com);  
[msd@swblaw.com](mailto:msd@swblaw.com); [ahaselden@hnblaw.com](mailto:ahaselden@hnblaw.com); [joe@mccullochlaw.com](mailto:joe@mccullochlaw.com); [rdurant@turnerpadget.com](mailto:rdurant@turnerpadget.com);  
[jennifer.nutter@hoodlaw.com](mailto:jennifer.nutter@hoodlaw.com); [jamey.goldin@nelsonmullins.com](mailto:jamey.goldin@nelsonmullins.com); [jnovak@barnwell-whaley.com](mailto:jnovak@barnwell-whaley.com)  
[agjones@turnerpadget.com](mailto:agjones@turnerpadget.com); [kathy@mccullochlaw.com](mailto:kathy@mccullochlaw.com); [mvg@swblaw.com](mailto:mvg@swblaw.com); [brg@swblaw.com](mailto:brg@swblaw.com)

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40 Calhoun Street, Suite 400  
Charleston, SC 29401-3531

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