THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2019-001605

Lucas Marchant, ...Respondent,

v.

John Doe and John Doe d/b/a Democrats for Marchant, Defendants,

Of which John Doe is the .....Appellant.

INITIAL BRIEF OF APPELLANT

Samuel D. Harms
S.C. Bar No: 13537
Double Aught Injury Lawyers
33 Market Point Drive
Greenville, SC 29607
(864) 453-0000
Attorney for Appellant

RECEIVED
APR 20 2020
SC Court of Appeals

TABLE CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

I. Does the court of common pleas have subject matter jurisdiction over the plaintiff's ethics complaint, or alternatively, did the court of common pleas lose jurisdiction over the ethics complaint 10 days after the complaint was filed by the plaintiff?

II. Does defendant John Doe 2 have a federal constitutional right to anonymous political speech and a right to anonymous distribution of political speech?

III. Does defendant John Doe 2 have a state constitutional right to anonymous political speech and a right to anonymous distribution of political speech?

IV. Should the cause of action for declaratory relief be dismissed by the court?

V. Should the cause of action for defamation in the amended complaint be dismissed by the court?

VI. Should the defendant's motion for a protective order been granted by the trial court?

VII. Should the plaintiff's subpoena to Facebook be quashed by the court?

VIII. Are the orders of the trial court immediately appealable?

STATEMENT OF THE CASE

The plaintiff, Lucas Marchant, was an independent candidate for the office of 13th Judicial Circuit Solicitor. (Complaint). On October 16, 2018, Lucas Marchant filed a campaign ethics complaint in the Greenville County Court of Common Pleas. (Complaint). The plaintiff filed the ethics complaint against two defendants: John Doe and John Doe d/b/a Democrats for Marchant. Since both defendants are named John Doe in the ethics complaint, and to avoid confusion, this brief uses the description John Doe 1 to refer to the first defendant to file an answer, and uses the description John Doe 2 to refer to the second defendant to file an answer to the ethics complaint (John Doe 1 Answer); (John Doe 2 Answer). This brief is filed by John Doe 2.

On October 17, 2018, the day after the ethics complaint was filed, but before the action was commenced by serving the complaint on either defendant, the plaintiff issued a subpoena to Facebook, Inc. ("Facebook"). (Cover Letter and SC and CA Subpoenas). The plaintiff did not serve the subpoena on any defendant as required by the South Carolina Rules of Civil Procedure. On January 2, 2019, John Doe 1 filed a motion to quash the subpoena issued to Facebook. (Motion to Quash). On January 18, 2019, the plaintiff filed an amended ethics complaint. (Amended Complaint). The amended complaint dropped the request for an injunction and added a cause of action for defamation. On January 24, 2019, Judge Perry H. Gravely heard oral arguments on John Doe 1's motion to quash the subpoena to Facebook. (Hearing Transcript 01/24/2019). That same day, on January 24, 2019, the trial court issued an order denying John Doe 1's motion to quash the subpoena. (Order 01/24/2019).

On February 25, 2019, John Doe 1 filed an answer to the complaint. (John Doe 1 Answer) and a Notice of Appeal (John Doe 1 Notice of Appeal). On April 4, 2019, the attorney for John Doe 1 was relieved as counsel by the court. (Consent Order 04/04/2019). On May 2, 2019, the Court of Appeals issued an order dismissing the appeal of John Doe 1 because the underlying order was not immediately appealable. (Order 05/02/2019). The remittitur was sent on May 21, 2019. (Remittitur).

On May 10, 2019, John Doe 2 filed an answer and a motion to dismiss, a motion for a protective order, and motion to quash the subpoena to Facebook. (John Doe 2 Answer, Motion to Dismiss/Protective Order/Quash). On June 25, 2019, Judge Edward W. Miller heard oral arguments on John Doe 2's motion to dismiss, motion for a protective order, and motion to quash the subpoena to Facebook. (Hearing Transcript 05/25/2019). On August 28, 2019, the trial court issued an order denying John Doe 2's motion to dismiss, motion for a protective order, and motion to quash the subpoena to Facebook. (Order 08/28/2019). On September 23, 2019, John Doe 2 filed the Notice of Appeal appealing the January 24, 2019 and August 28, 2019 orders of the trial court. (Notice of Appeal).

FACTS

The plaintiff, Lucas Marchant, was a candidate for the office of 13th Judicial Circuit Solicitor. (Complaint). He ran as an independent, petition candidate who had collected the required signatures to have his name appear on the November 6, 2018 general election ballot. *Id.* On October 16, 2018, Lucas Marchant filed a campaign ethics complaint in the Greenville County Court of Common Pleas against defendants

John Doe and John Doe d/b/a Democrats for Marchant. (Complaint). The ethics complaint was filed within 50 days before the November 6, 2018 election. The plaintiff could have waited 3 weeks, until the day after the election, and filed the ethics complaint with the State Ethics Commission. The *Greenville News* published a news article about the allegations in the complaint.

The ethics complaint, in the facts section, alleges that the plaintiff is a candidate for the office of 13th Circuit Solicitor. (Complaint para. 5). The complaint further alleges that the defendants set up a Facebook page called "Democrats for Marchant," and that the defendants are "attempting to polarize the Solicitor's race and trick people into avoiding voting for Plaintiff." (Complaint para. 11, 13). The complaint alleges that John Doe 1 and John Doe 2 worked together as a "group" (plaintiff's phrase) to run Democrats for Marchant (an alleged committee) (Complaint para. 11, 12). The ethics complaint has two causes of action. (Complaint). The first cause of action is a request for injunctive relief and alleges that the "Defendants' actions violate South Carolina laws related to ethics, elections ...." (Complaint para. 19) The plaintiff asked the court to enjoin the defendants from "[d]efrauding the public with false messages regarding campaign activity." (Complaint para. 21). The second cause of action is a request for declaratory relief. The plaintiff asked the court to declare that the defendants' alleged conduct "violate[s] South Carolina Code Ann. § 8-13-1324 (2019) as they are anonymous campaign contributions." (Complaint para. 23). The complaint also asks the court to declare the "Defendants have violated ... other laws related to elections," and that the "Defendants have fraudulently sought to influence an election." (Complaint para. 24-25). The only two causes of action in the ethics complaint allege violations of

the state's campaign ethics laws. There are no causes of action that do not involve an alleged violation of the campaign ethics laws.

The State Ethics Commission has exclusive jurisdiction over any allegation of a violation of the campaign ethics laws, including allegations against candidates, individuals, "a group of persons which, to influence the outcome of an elective office, receives contributions or makes expenditures," or "a noncandidate committee, or a committee that is not a campaign committee for a candidate but that is organized for the purpose of influencing an election." S.C. Code Ann. § 8-13-1300(6) and (6)(b) (2019) (emphasis added); S.C. Code Ann. § 8-13-320(7) and (9) (2019); S.C. Code Ann. § 8-13-1372(B) (2019); S.C. Code Ann. § 8-13-130 (2019). For complaints filed in the court of common pleas against a candidate for solicitor within 50 days before an election, South Carolina Code Ann. § 8-13-320(9)(b)(1) (2019) requires the court of common pleas to dismiss the ethics complaint within 10 days if the court does not issue a mandamus order or injunction within those 10 days. In this case, the trial court did not grant a mandamus order or injunction within 10 days, and therefore, the court of common pleas was required to dismiss the ethics complaint on October 26, 2018. The court of common pleas never had subject matter jurisdiction in this case because the plaintiff did not file the complaint against a candidate. In the alternative, on October 27, 2018, the court of common pleas lost subject matter jurisdiction over the complaint. Subject matter jurisdiction is with the State Ethics Commission.

On October 17, 2018, the day after the ethics complaint was filed, but before the action was commenced by serving the complaint on either defendant, the plaintiff issued a subpoena to Facebook, Inc. ("Facebook") (Cover Letter and SC and CA Subpoenas).

The plaintiff did not serve the subpoena on any defendant as required by the South Carolina Rules of Civil Procedure. The subpoena to Facebook requests information from Facebook such as the names of the persons that established or operated the "Democrats for Marchant" Facebook account and all email addresses for the persons that established or operated the Facebook account. (SC Subp. P. 1; CA Subp. Attachment 3). The subpoena to Facebook requests information that would reveal or unmask the identity of John Doe 2. (Cover Letter and SC and CA Subpoenas). In addition, the subpoena requests the internet protocol (IP) addresses used to "[p]ublish statements [or] comment using the Democrats for Marchant account/profile." (Supboena Exhibit). The request would unmask the identity of anyone who posted a comment on the Facebook page.

On January 18, 2019, the plaintiff filed an amended ethics complaint. (Amended Complaint). The trial court did not issue any order allowing the plaintiff to amend his ethics complaint. The amended complaint no longer had a request for injunctive relief, but instead, the plaintiff added a cause of action for defamation. The amended complaint continues to allege that the plaintiff was a candidate for the office of solicitor, that the defendants set up a Facebook page called "Democrats for Marchant," and that the defendants are "attempted to polarize the Solicitor's race and trick people into avoiding voting for Plaintiff." (Amended Complaint para. 6, 12, 14). The amended complaint continues to refer to John Doe 1 and John Doe 2 as a "group" and alleges that they had a committee Democrats for Marchant. (Amended Comp. para. 12-13). The amended complaint asks the court to declare that the defendants' alleged conduct "violated South Carolina Code Ann. § 8-13-1324 (2019) as they are anonymous

campaign contributions." (Amended Complaint para. 21). The amended complaint also asks the court to declare the "Defendants have violated ... other laws related to elections," and that the "Defendants have fraudulently sought to influence an election." (Amended Complaint para. 22-23). The defamation action alleges that the defendants "made multiple false statements about the Plaintiff intended to ... deter third parties from ... voting for him." (Amended Complaint para. 24). In short, the amended complaint is a campaign ethics complaint with an additional defamation cause of action alleging the defendants' violations of the ethics laws caused people to not vote for the plaintiff. The amended complaint is still just an ethics complaint. The defamation cause of action does not allege "actual malice" by the defendants, but instead, it just pleads "malice." (Amended Complaint para. 27).

The plaintiff also propounded discovery requests to John Doe 2. (Cover letter, interrogatories, requests for production). The interrogatories request information that would reveal the identity of John Doe 2. For example, interrogatory number 8 states: "List your full legal name, address, social security number, date of birth, and place of employment." (Interrogatory No. 8). Also, the requests for production seek information that would unmask the identity of John Doe 2. For example, request for production number 1 states: "Please provide a copy of the front and back of your current drivers' license." (Requests for Production No. 1).

STANDARD OF REVIEW

"Subject matter jurisdiction is a question of law for the court. Questions of law may be decided with no particular deference to the trial court." *Doe ex rel. Legal*

Guardian v. Barnwell Sch., 369 S.C. 659, 633 S.E.2d 518 (Ct.App.2006) (internal citations omitted). The appellate court reviews a motion to dismiss under Rule 12(b)(6), SCRCP using the same standard of review as the trial court: whether the allegations in the complaint, which must be accepted as true, state a cause of action. *Chesnut v. AVX Corp.*, 413 S.C. 227, 776 S.E.2d 82 (2015). "The rulings of a trial judge in matters involving discovery will not be disturbed on appeal absent a clear showing of an abuse of discretion.... An abuse of discretion occurs when there is no evidence to support the trial judge's factual conclusion or when the ruling is based upon an error of law." *Evening Post Publ'g Co. v. Berkeley County Sch. Dist.*, 392 S.C. 76, 708 S.E.2d 745, (2011) (internal citations omitted).

ARGUMENTS

The court of common pleas does not have subject matter jurisdiction over the plaintiff's complaint. In addition, the trial court should have granted defendant John Doe 2's Rule 12(b)(6) motion to dismiss the complaint. The trial court should have granted John Doe 2's motion for a protective order and motion to quash the subpoena issued to Facebook. Finally, the trial court should also have granted John Doe 1's motion to quash the subpoena issued to Facebook.

PART ONE: SUBJECT MATTER JURISDICTION

I. The court of common pleas does not have subject matter jurisdiction over the plaintiff's ethics complaint, or alternatively, the court of common pleas lost jurisdiction over the ethics complaint 10 days after the complaint was filed by the plaintiff.

A. SUMMARY ARGUMENT

Defendant John Doe 2 moved the trial court to dismiss the plaintiff's complaint pursuant to Rule 12(b)(1), SCRCP for lack of jurisdiction over the subject matter. (Motion to Dismiss). The trial court denied the defendant's motion and held that the court has jurisdiction over the plaintiff's complaints. (Court Order 08/28/2019). The trial court's decision was an abuse of discretion and was based on an error of law. The appellate court may decide the issue of subject matter jurisdiction with "no particular deference to the trial court." *Doe ex rel. Legal Guardian v. Barnwell Sch.*, 369 S.C. 659, 633 S.E.2d 518 (Ct.App.2006).

For this issue, the defendant has two alternative arguments. The first argument is that the court of common pleas never had subject matter jurisdiction over the plaintiff's ethics complaint. In the alternative, the second argument is that the court of common pleas lost jurisdiction over the ethics complaint 10 days after the complaint was filed by the plaintiff. The plaintiff's complaint was filed against John Doe 1 and John Doe 2. The complaint does not allege that John Doe 1 or John Doe 2 are candidates for elective office. The plaintiff's complaint discusses the alleged conduct of John Doe 1 and John Doe 2 as a "group" working together with Democrats for Marchant (an alleged committee). The complaint alleges John Doe 1 and John Doe 2 made illegal, anonymous contributions to Democrats for Marchant for the purpose of influencing an election, and the contributions were not disclose to the State Ethics Committee as required by the ethics laws. It does not allege any campaign ethics violations by any candidate for office or by Lucas Marchant (a candidate for office).

The State Ethics Commission has exclusive jurisdiction over any allegation of a violation of the campaign ethics laws, including allegations against candidates,

individuals, "a group of persons which, to influence the outcome of an elective office, receives contributions or makes expenditures," or "a noncandidate committee, or a committee that is not a campaign committee for a candidate but that is organized for the purpose of influencing an election." S.C. Code Ann. § 8-13-1300(6) and (6)(b) (2019) (emphasis added); S.C. Code Ann. § 8-13-320(7) and (9) (2019); S.C. Code Ann. § 8-13-1372(B) (2019); S.C. Code Ann. § 8-13-130 (2019). However, for candidates for the office of solicitor, in the 50 days before an election, the relevant statute says the court of common pleas has jurisdiction for 10 days if the plaintiff's complaint makes allegations "concerning a candidate for elective office during the fifty-day period before an election in which he is a candidate," and it alleges a "violation of this chapter by a candidate." S.C. Code Ann. § 8-13-320(9)(b)(1) (2019). It is the primary position of John Doe 2 that the plaintiff's complaint is not a complaint "concerning a candidate for elective office during the fifty-day period before an election in which he is a candidate" that alleges a "violation of this chapter by a candidate," and thus, the court of common pleas never had subject matter jurisdiction over the plaintiff's complaint. The only candidate mentioned in the complaint is Lucas Marchant, and the ethics complaint obviously never alleges that the plaintiff violated the ethics laws. The ethics complaint alleges John Doe 1 and John Doe 2, a "group," made illegal contributions to the committee Democrats for Marchant (which failed to disclose the contributions) and this was to "influence the outcome of an election" (Complaint paras. 11, 12, 25). The complaint specifically used the words "a group" to describe the defendants. *Id.* In the alternative, if the appellate court construes the phrases "concerning a candidate for elective office during the fifty-day period before an election in which he is a candidate," and a "violation of this chapter

by a candidate" to cover the allegations in the plaintiff's complaint, then the position of John Doe 2 is that the court of common pleas only had jurisdiction over the complaint for 10 days, and then jurisdiction reverted back to the State Ethics Commission.

The South Carolina Supreme Court has issued a decision that is directly on point. *Rainey v. Haley*, 404 S.C. 320, 745 S.E.2d 81 (2013). In *Rainey*, the Supreme Court held that the State Ethics Commission has exclusive jurisdiction over campaign ethics violations, unless the complaint involves an allegation against a candidate for the state senate or state house of representatives. *Rainey v. Haley*, 404 S.C. 320, 745 S.E.2d 81 (2013); *Ford v. State Ethics Com'n*, 344 S.C. 642, 545 S.E.2d 821 (2001); S.C. Code Ann. § 8-13-1300(6) and (6)(b) (2019); S.C. Code Ann. § 8-13-320(7) and (9) (2019); S.C. Code Ann. § 8-13-1372(B) (2019); S.C. Code Ann. § 8-13-130 (2019). The circuit courts have no jurisdiction over ethics violations or complaints; however, the court of common pleas has limited jurisdiction for a 10-day period during the 50 days before an election if the complaint alleges an ethics violation by a candidate for elective office. *Id.*; *see* S.C. Code Ann. § 8-13-320(9)(b)(1) (2019) (complaints against candidates for office other than the state senate or house of representatives); *see also* S.C. Code Ann. § 8-13-530(4) (2019) (complaints against candidates for the state house of representatives). After the 10-day period, subject matter jurisdiction reverts to the State Ethics Commission (or state senate or house of representatives) for a determination of the alleged conduct. *Rainey v. Haley*, 404 S.C. 320, 745 S.E.2d 81 (2013).

The court of common pleas does not have jurisdiction to consider the plaintiff's complaint. As to the amended complaint, it was filed by the plaintiff when the court of

common pleas did not have jurisdiction over the complaint, so the attempted amendments are null and void as a matter of law. The defendant asks the Court of Appeals to dismiss the complaint and amended complaint for lack of subject matter jurisdiction. If the Court of Appeals holds that the court of common pleas never had jurisdiction, then the dismissal should be dated October 16, 2018 *nunc pro tunc*. If the Court of Appeals holds that the court of common pleas had jurisdiction for 10 days, then the dismissal should be dated October 26, 2018 *nunc pro tunc*. If the court dismisses the complaint and amended complaint *nunc pro tunc* for lack of subject matter jurisdiction, then the plaintiff cannot propound any discovery requests in the case and the subpoena is quashed by operation of the dismissal of the complaint. This will resolve all issues on appeal.

B. ADDITIONAL ARGUMENT

Subject matter jurisdiction is necessary for a court to hear and determine a case. *Eagle Container Co. v. County of Newberry*, 366 S.C. 611, 622 S.E.2d 733, (Ct.App.2005). The Supreme Court has clearly stated that: "[t]he jurisdiction of a court over the subject matter of a proceeding is determined by the Constitution, the laws of the state, and is fundamental. Lack of subject matter jurisdiction may not be waived, even by consent of the parties, and should be taken notice of by this Court." *Anderson v. Anderson*, 299 S.C. 110, 382 S.E.2d 897 (1989). Statutes may limit the circumstances under which a court can exercise jurisdiction. *Davis v. Sch. Dist. of Greenville Cnty.*, 374 S.C. 39, 647 S.E.2d 219 (2007). In *Davis*, the Supreme Court held that the circuit court lacked jurisdiction to review a school board's decision to transfer a

student to an alternative school because the applicable statute only allowed an appeal to the school board. In *Byrd v. Irmo High School*, 321 S.C. 426, 468 S.E.2d 861 (1996) the Supreme Court held that the circuit court did not have subject matter jurisdiction to hear the appeal of a student suspended for 10 days from high school because the relevant statute did not grant the circuit court jurisdiction to hear the matter.

The trial court cannot reacquire subject matter jurisdiction after the trial court has lost subject matter jurisdiction. In *Fielden v. Fielden*, 262 S.E.2d 43, 274 S.C. 219 (1980), the Supreme Court held that the family courts do not have subject matter jurisdiction over actions in contract. The *Fielden* decision has an important footnote that addresses an issue in the instant case:

> [t]his Court is aware of the May 16, 1979 Divorce Decree which incorporated the 1977 Separation Agreement. However, that event, which occurred subsequent to entry of the Order on appeal, cannot operate to cure the Family Court's lack of subject matter jurisdiction at the time that Order was issued.

Fielden, fn.1. The footnote makes it clear that after a trial court has lost subject matter jurisdiction, the trial court cannot reacquire subject matter jurisdiction by issuing a subsequent order that would give it subject matter jurisdiction. The *Fielden* holding is important in this case because the plaintiff attempted to amend the complaint when the trial court lacked subject matter jurisdiction. The amended complaint by the plaintiff is null and void as the court of common pleas did not have jurisdiction over the claim at the time of the filing of the amended complaint.

The Supreme Court has already held that the circuit courts do not have jurisdiction over ethics violations or complaints, except under limited circumstances, and for only 10 days. For campaign ethics complaints, the Supreme Court stated:

> South Carolina circuit courts are vested with original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law. In determining whether the Legislature has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute. The Legislature has established a comprehensive statutory scheme for regulating the behavior of elected officials, public employees, lobbyists, and other individuals who present for public service. To enforce the State Ethics Act, the Legislature statutorily created the State Ethics Commission .... [and] the State Ethics Commission is generally responsible for the handling of ethical violations by most public officials and employees.

Rainey v. Haley, 404 S.C. 320, 745 S.E.2d 81 (2013)(internal citations omitted). The Supreme Court held that the State Ethics Commission is the exclusive entity to handle ethical complaints filed against anyone not a candidate for the state senate or state senate. *Id.*

In this case, the trial court either never had jurisdiction over the complaint, or only had subject matter jurisdiction over the claim for 10 days - from October 16, 2018 to October 26, 2018. If the trial court did have jurisdiction for 10 days, then on October 27, 2018, the court lost subject matter jurisdiction over the plaintiff's claims. The South Carolina Code required the trial court to dismiss the complaint (mandatory "must" language in the statute) on or before October 26, 2018. S.C. Code Ann. § 8-13-320 (2019), Duties and powers of State Ethics Commission, states:

> (b)(1) No complaint may be accepted by the commission concerning a candidate for elective office during the fifty-day period before an election in which he is a candidate. During this fifty-day period, any person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction, or both. Within ten days, a rule to show cause hearing must be held, and the court must either dismiss the petition or direct that a mandamus order or an injunction, or

> both, be issued. A violation of this chapter by a candidate during this fifty-day period must be considered to be an irreparable injury for which no adequate remedy at law exists. The institution of an action for injunctive relief does not relieve any party to the proceeding from any penalty prescribed for violations of this chapter ...

S.C. Code Ann. § 8-13-320(9)(b)(1) (2019) (emphasis added).

There was an election on November 6, 2018. The plaintiff, within 50 days before the election, filed an action for an injunction and declaratory relief asking the court to issue a declaration that the defendants violated S.C. Code Ann. § 8-13-1324 (2019), a campaign ethics law:

> (A) A person shall not make an anonymous contribution to a candidate, committee, or ballot measure committee, and a candidate, committee, or ballot measure committee shall not accept an anonymous contribution from an individual except at a ticketed event where food or beverages are served or where political merchandise is distributed and where the price of the ticket is twenty-five dollars or less and goes toward defraying the cost of food, beverages, or political merchandise in whole or in part.

S.C. Code Ann. § 8-13-1324 (2019), Anonymous campaign contributions.

For ethics complaints, only the "appropriate supervisory office" has jurisdiction to determine if there has been an ethics violation. In this case, the appropriate supervisory office is the State Ethics Commission. The South Carolina Code defines the "appropriate supervisory office" as follows:

> (2) "Appropriate supervisory office" means:
>
> (a) the State Ethics Commission for all persons required to file reports under this chapter except for those members of or candidates for the office of State Senator or State Representative;

(b) the Senate Ethics Committee for members or staff, including staff elected to serve as officers of or candidates for the office of State Senator; and

(c) the House of Representatives Ethics Committee for members or staff, including staff elected to serve as officers of or candidates for the office of State Representative.

S.C. Code Ann. § 8-13-100 (2019), Definitions. The circuit courts are not mentioned as an appropriate supervisory office.

Also, in the code sections which describe hearings for ethics violations, the following definitions apply:

As used in this article:

(1) "Appropriate supervisory office" means:

(a) the State Ethics Commission for all candidates for public office in this State except for members or staff, including staff elected to serve as officers of or candidates for the office of State Senator or State Representative;

(b) the Senate Ethics Committee for members or staff, including staff elected to serve as officers, of or candidates for the office of State Senator, and the House of Representatives Ethics Committee for members or staff, including staff elected to serve as officers, of or candidates for the office of State Representative;

(c) the State Ethics Commission for all committees, except legislative caucus committees, supporting or opposing a ballot measure or supporting or opposing a candidate;

S.C. Code Ann. § 8-13-1300 (2019), Definitions. The circuit courts are not mentioned as an appropriate supervisory office.

The circuit courts are not mentioned as an entity that can determine if there has been a violation of the ethics laws. S.C. Code Ann. § 8-13-1372 (2019), Technical violations of rules on campaign reports, states:

> (A) The appropriate supervisory office, in its discretion, may determine that errors or omissions on campaign reports are inadvertent and unintentional and not an effort to violate a requirement of this chapter and may be handled as technical violations which are not subject to the provisions of this chapter pertaining to ethical violations. Technical violations must remain confidential unless requested to be made public by the candidate filing the report. In lieu of all other penalties, the appropriate supervisory office may assess a technical violations penalty not to exceed fifty dollars.
>
> (B) A violation other than an inadvertent or unintentional violation must be considered by the appropriate supervisory office for appropriate action.

Id. (emphasis added). In addition, S.C. Code Ann. § 8-13-130 (2019), Levying enforcement or administrative fees on persons in violation; use of fees and costs, states:

> The State Ethics Commission, Senate Ethics Committee, and House of Representatives Ethics Committee may levy an enforcement or administrative fee on a person who is found in violation, or who admits to a violation, pursuant to Title 2 or Title 8.

Id. (emphasis added).

In this case, the court of common pleas never had jurisdiction over the plaintiff's ethics complaint because the complaint does not allege a violation of an ethics laws by a candidate. Alternatively, if the appellate court determines that the court of common pleas did have jurisdiction over the plaintiff's complaint, the court of common pleas did not issue a mandamus order or an injunction on or before October 26, 2018. Therefore, the court was required to dismiss the plaintiff's complaint on October 26, 2018. The dismissal is mandatory ("must") and it is the responsibility of the trial court (not any party) to dismiss the complaint. As such, on October 27, 2018, the court of common pleas lost subject matter jurisdiction over the plaintiff's claims.

As to the January 18, 2019 amended complaint, the amended complaint is null and void because the court of common pleas never had jurisdiction over the original complaint. If the court did have jurisdiction, the attempted amendments were made after the 10-day window ending October 26, 2018. The court no longer had jurisdiction to receive any amended complaint after October 26, 2018. There is no trial court order allowing the plaintiff to amend his complaint. In *Fielden v. Fielden*, 262 S.E.2d 43, 274 S.C. 219 (1980), the Supreme Court makes it clear that after a trial court has lost subject matter jurisdiction, the trial court cannot reacquire subject matter jurisdiction by issuing a subsequent order that would give it subject matter jurisdiction. The defendant asks the Court of Appeals to dismiss the complaint and amended complaint for lack of subject matter jurisdiction on the *nunc pro tunc* dates discussed in the summary argument, *supra*. This will resolve all issues on appeal.

PART TWO: FEDERAL AND STATE CONSTITUTIONAL RIGHTS

In the trial court, defendant John Doe 2 asserted Doe's constitutional rights to anonymous political speech and the anonymous distribution of political speech guaranteed to Doe in the U.S. Constitution. (Motion to Dismiss; Hearing Tr. 06/25/19). The trial court held: "The Defendant does not have a constitutional right to speech at issue in this case." (Order 08/28/2019 pp. 6-7). The trial court also held "that John Doe 2 does not have a federal constitutional right to anonymous political speech or a federal constitutional right to anonymous distribution of political speech." (Order 08/28/2019 p. 7). Defendant John Doe also asserted in the trial court Doe's state constitutional right to anonymous political speech and the anonymous distribution of political speech

guaranteed to Doe in Art. 1, Sec. 2 of the South Carolina Constitution. (Motion to Dismiss; Hearing Tr. 06/25/19). The trial court held "that John Doe 2 does not have a state constitutional right to anonymous political speech, or a state constitutional right to anonymous distribution of political speech, and ... S.C. Const. Art. 1, Sec. 2 does not protect the speech of John Doe 2 in this case." (Order 08/28/2019 p. 7). The court further held "[t]here is no additional protection based on a state constitutional claim under S.C. Const. Art. 1, Sec 2." (Order 08/28/2019 p. 7). In addition, in the trial court, John Doe 1 asserted John Doe 1's constitutional right to anonymous political speech. (John Doe 1 Motion to Quash; Hearing Transcript 01/24/2019). The trial court found that John Doe 1 did not establish any constitutional right that would defeat the plaintiff's right to the information sought in the subpoena to Facebook. (Order 01/24/2019). The trial court's decisions were an abuse of discretion and were based on an error of law. The Court of Appeals should recognize John Doe's rights to anonymous political speech and the anonymous distribution of political speech under both the federal and state constitutions; and based on those rights, grant John Doe 2's motion for a protective order, grant John Doe 2's motion to quash the subpoena issued to Facebook, prevent the plaintiff from unmasking the identity of John Doe 2, and dismiss the plaintiff's defamation action and request for declaratory relief.

II. Defendant John Doe 2 has a federal constitutional right to anonymous political speech and a right to anonymous distribution of political speech.

Defendant John Doe 2 has a federal constitutional right to anonymous political speech and a right to anonymous distribution of political speech. It is the position of John Doe 2 that Doe's constitutional rights prevent the plaintiff or the court from

unmasking the identity of John Doe 2 (or any other John Doe). In addition, Doe's constitutional rights prevent the trial court from enjoining the defendant's political speech or from declaring that the defendant's political speech violates the law. John Doe 2's constitutional rights also prevent the trial court from proceeding with a defamation action against John Doe 2. The plaintiff, a politician, is attempting to use the power of the government and the courts to silence the speech of John Doe 2 and the other John Does who would be unmasked if Facebook responds to the subpoena issued to Facebook (everyone who posted on the Facebook page Democrats for Marchant). The speech in this case is about a politician running for a powerful public office. If the plaintiff had been elected solicitor, he would have the legal authority to initiate criminal charges against individuals, including John Doe 2.

There is a long tradition in the United States of anonymous political speech. Alexander Hamilton, James Madison, and John Jay, under the pseudonym "Publius," wrote *The Federalist Papers* to encourage the States to ratify the U.S. Constitution (https://en.wikipedia.org/wiki/The_Federalist_Papers; last visited June 21, 2019). The right to anonymous political speech was fully recognized by the U.S. Supreme Court in 1995 in the case of *McIntyre v. Ohio Elections Comm'n*, 514 U.S. 334, 115 S.Ct. 1511, (1995):

> Under our Constitution, anonymous pamphleteering is not a pernicious, fraudulent practice, but an honorable tradition of advocacy and of dissent. Anonymity is a shield from the tyranny of the majority. ... It thus exemplifies the purpose behind the Bill of Rights, and of the First Amendment in particular: to protect unpopular individuals from retaliation—and their ideas from suppression—at the hand of an intolerant society. The right to remain anonymous may be abused when it shields fraudulent conduct. But political speech by its nature will sometimes have unpalatable

> consequences, and, in general, our society accords greater weight to the value of free speech than to the dangers of its misuse. See *Abrams v. United States*, 250 U.S. 616, 630-631, 40 S.Ct. 17, 22 (1919) (Holmes, J., dissenting).

Id. "[T]here are times and circumstances when States may not compel members of groups engaged in the dissemination of ideas to be publicly identified." *Talley v. California*, 362 U.S. 60, 65, 80 S.Ct. 536 (1960).

In addition, the U.S. Supreme Court in *United States v. Rumely*, 345 U.S. 41, 73 S.Ct. 543 (1953), recognized the constitutional right to anonymous distribution of political speech. The right to anonymous political speech allows people to comment on candidates for political office without the fear of intimidation or reprisals from government officers. *Publius v. Boyer-Vine*, 237 F.Supp.3d 997 (E.D. Cal. 2017).

In *Doe v. State*, a Texas appellate court held the right to anonymous political speech prevented the prosecution of John Doe who distributed a political flyer that described an incumbent candidate for Dallas City Council as "Pinocchio." *Doe v. State*, 112 S.W.3d 532 (Tex. Crim. App. 2003). The Texas court held that the anonymous "distribution of political leaflets that advocate controversial viewpoints is the essence of First Amendment expression." *Id.* at 534.

The Supreme Court of Pennsylvania issued a decision in a defamation action with similar facts and procedural history to the instant case. *Melvin v. Doe*, 836 A.2d 42, 575 Pa. 264 (Pa. 2003). In the *Melvin* case, a Pennsylvania Superior Court Judge filed a defamation action against John Doe because Doe published the following statement about the judge on an internet webpage:

> Despite being prohibited from engaging in political activity, a couple of Judges have been keeping themselves pretty busy recently with politics. Judge Joan Orie Melvin has been

> lobbying the Ridge administration on behalf of a local attorney seeking the appointment by Governor Ridge to fill the vacancy on the Allegheny County Court of Common Pleas created by the mandatory retirement earlier this month by Judge Robert Dauer, now a Senior Judge. Dauer has also been actively pushing for this attorney's appointment. The last GS99 heard, this attorney is on the Governor's short-list of candidates. Let's hope that the Gov does the right thing and appoints somebody better qualified. Shame on Orie-Melvin and Dauer—this is exactly the kind of misconduct by our elected officials that the residents of Allegheny County will not stand for anymore.... and a good reason why Judges should be held accountable for their actions and remembered at the polls at retention time.

Melvin v. Doe, 789 A.2d 696, 697 (Pa. Super. Ct. 2001) (the internet statement is found in the Superior court's decision, not the Supreme Court's decision). The Supreme Court of Pennsylvania held that John Doe had a constitutional right to anonymous political speech. *Melvin v. Doe*, 836 A.2d at 50.

The First Amendment right to speak anonymously survives even after John Doe's liability has been established by a judgment of the court. In *Signature Mgmt. Team, LLC v. Doe*, the court entered a judgment against an anonymous blogger in a copyright infringement case. The blogger filed a motion to maintain protection of his anonymity. The Sixth Circuit addressed the issue and set forth a balancing test. *Signature Mgmt. Team, LLC v. Doe*, 876 F.3d 831 (6th Cir. 2017). On remand to the district court, the district court issued an order granting John Doe's motion to maintain protection of his anonymity. *Signature Mgmt. Team, LLC v. Doe*, 323 F.Supp.3d 954 (E.D. Mich. 2018). The district court held "Doe has a compelling interest in remaining anonymous because he engages in substantial protected speech that unmasking will chill." *Signature Mgmt. Team, LLC* v. Doe, 323 F.Supp.3d at 960.

The South Carolina Supreme Court has not squarely addressed the issue of the right to anonymous speech or the right to the anonymous distribution of political speech in the context of a civil defendant being sued for defamation. However, in the case of *State v. Brockmeyer*, 406 S.C. 324, 751 S.E.2d 645 (2013) the Supreme Court discussed the right to anonymous speech in a criminal case, but it avoided any rulings on the asserted right to anonymous speech for a variety of reasons, and most important, it did not adopt any analysis to be used by the lower courts. The *Brockmeyer* case is very different than the present case and it is not controlling on the Court of Appeals. First, the *Brockmeyer* case involves a criminal defendant involved in a criminal proceeding. In the present case, the matter is a civil case and involves a claim for defamation. Second, in *Brockmeyer*, the issue concerned an anonymous blogger who was not a party to the case. In the present case, John Doe 2 is a party to the case and is exposed to civil liability and monetary damages. Third, in *Brockmeyer*, the speech was not political. In the present case, the speech was political and concerned a candidate for public office. Fourth, in *Brockmeyer*, the issue involved a subpoena in a criminal case issued pursuant to Rule 13, SCRCrimP. In the present case, the subpoena was issued in a civil case pursuant to Rule 45, SCRCP. In a criminal case, there are already protections for individuals built into Rule 13, SCRCrimP. For example, an attorney can only issue a subpoena for a witness' production of documents at a court proceeding. Also, some requests for production require an order of the court. Rule 13, SCRCrimP(a)(2), Issuance of Subpoena for Personal or Confidential Information About a Victim ("only by court order"). The rules for the issuance of a subpoena in a civil case give attorneys more authority, and as such, the Court of Appeals needs to adopt an

analysis that protects the constitutional rights of civil defendants and third-parties in a defamation case.

In *Brockmeyer*, "[b]oth parties urge[d] the Court to adopt a four-part standard for evaluating a subpoena that seeks the identity of an anonymous Internet user who is not a party to the underlying litigation." *Brockmeyer*, 751 S.E.2d at 652. The Supreme Court did not adopt the four-part standard. John Doe 2 specifically asks the Court of Appeal to not adopt the four-part standard referenced in *Brockmeyer*. The defendant argues that the standard referenced in *Brockmeyer* does not adequately protect the constitutional rights of John Doe 2 because there is no balancing test that considers the constitutional rights of John Doe 2. In addition, the standard referenced in *Brockmeyer* does not require the plaintiff to provide the court with any evidence that he has a prima facie case, but instead, the plaintiff can just claim he needs the constitutionally protected information. Finally, the standard referenced in *Brockmeyer* does not give the anonymous speaker notice that the plaintiff is asking a court to violate a person's constitutional rights. The defendant asks the Court of Appeals to adopt a standard that guarantees notice to the anonymous speaker and the opportunity to be heard before the anonymous speaker's identity is unmasked by through a subpoena or a discovery request.

The defendant asks the Court of Appeals to adopt the four-prong analysis used by the Pennsylvania Supreme Court in defamation actions brought against anonymous speakers. The Pennsylvania Supreme Court has adopted the following four-prong analysis, which borrows from the procedures adopted by other state courts:

> The trial court must address the following four factors before ordering the disclosure of the identity of an anonymous or

> pseudonymous speaker: first, the reviewing court must ensure that the John Doe defendant receives proper notification of a petition to disclose his identity and a reasonable opportunity to contest the petition; second, the party seeking disclosure must present sufficient evidence to establish a prima facie case for all elements of a defamation claim, within the plaintiff's control, such as would survive a motion for summary judgment; third, a petitioner must submit an affidavit asserting that the requested information is sought in good faith, is unavailable by other means, is directly related to the claim and is fundamentally necessary to secure relief; and fourth, the court must expressly balance the defendant's First Amendment rights against the strength of the plaintiff's prima facie case. ... The four requirements are necessary to ensure the proper balance between a speaker's right to remain anonymous and a defamation plaintiff's right to seek redress.

Kuwait & Gulf Link Transp. Co. v. Doe, 2014 PA Super 96, 92 A.3d 41, 49 (Pa. Super. Ct. 2014) (internal citations and quotations omitted). The Pennsylvania Supreme Court's decisions in *Pilchesky v. Gatelli*, 12 A.3d 430, 2011 PA Super 3 (Pa. Super. Ct. 2011) and *Kuwait & Gulf Link Transp. Co. v. Doe*, 2014 PA Super 96, 92 A.3d 41 (Pa. Super. Ct. 2014) have excellent, detailed discussions of how other courts have decided the issue of anonymous political speech in the context of a defamation claim. The defendant cannot find any cases that address the issue of the anonymous distribution of political speech in the context of a defamation claim. The defendant asks the Court of Appeals to apply the analysis used by the Pennsylvania Supreme Court to the present case.

If the Court of Appeals adopts the four-prong analysis used by the Pennsylvania Supreme Court, under the first prong, the trial court must ensure that the John Does received proper notification by Lucas Marchant of a petition to disclose the identities of the John Does and a reasonable opportunity to contest the petition. In the present case,

the subpoena requests the internet protocol (IP) addresses used to "[p]ublish statements [or] comment using the Democrats for Marchant account/profile." (Supboena Exhibit). The request would unmask the identity of anyone who posted a comment on the Facebook page. There may be a lot of people who need to receive a notice of the petition. The *Greenville News* published a news article about the allegations in the plaintiff's complaint. The *Greenville News* article may have provided some people with limited information about the issues raised by the complaint; however, the newspaper article was not an official legal notice. Some of the people who posted comments on the Facebook page may not read the *Greenville News* or not live in Greenville County as the 13th Judicial Circuit also includes Pickens County. Facebook would need time to provide notice of the petition to everyone who commented on the Facebook page, and Lucas Marchant would have to provide a report to the trial court on the progress by Facebook to notify everyone affected by the subpoena. The order of the trial court notes that: "Counsel for the Plaintiff states he was aware the Facebook subscriber whose identity he seeks would be informed of the subpoena by Facebook and given the opportunity to object." (Order 08/28/2019 p. 10). After notice of the petition, the trial court would have to provide a reasonable amount of time for the John Does to file an objection to the petition before the subpoena could be issued by the plaintiff. This step would cause plaintiffs to limit the scope and breath of any subpoena issued by the plaintiff that seeks to unmask the identity of an anonymous speaker.

Under the second prong, Lucas Marchant must present sufficient evidence to establish a prima facie case for all the elements for the issuance of an injunction, the issuance of a declaratory judgement, and a defamation claim, within the plaintiff's

control, such as would survive a motion for summary judgment. In this case, Lucas Marchant filed with the trial court the comments made on the Facebook page. In reviewing the comments, all the comments are speech protected by the federal and state constitutions, and there are no defamatory comments. In the plaintiff's amended complaint, he does not set forth any comments made by any person that are defamatory. The plaintiff has not provided any evidence to the court that he suffered any economic loss. As such, the plaintiff's evidence could not survive a motion for summary judgment.

Under the third prong, Lucas Marchant must submit an affidavit asserting that the requested information is sought in good faith, is unavailable by other means, is directly related to the claim and is fundamentally necessary to secure relief. In this case, the plaintiff did not file the required affidavit and the case would need to be remanded to the trial court for the filing of the affidavit. The plaintiff would have to decide if he can sign an affidavit which states he needs the IP addresses of everyone who posted a comment on the Facebook page.

Under the fourth prong, the court must expressly balance the defendant's First Amendment rights against the strength of the plaintiff's prima facie case. In this case, the defendant's First Amendment rights are strong because the comments concern a candidate for public office, the candidate is seeking the office of 13th Circuit Solicitor and the solicitor has the legal authority to commence criminal prosecutions against individuals, including John Doe 2. John Doe 2 needs to be able to speak without the fear of intimidation or reprisals from government officers that may otherwise silence the speech. The plaintiff's prima facie case is weak. The plaintiff cannot demonstrate that

any of the comments were defamatory, or that the plaintiff suffered any economic loss because of the comments. The balancing test weighs heavily in favor of the court not granting the plaintiff's petition to unmask the identity of John Doe 2 (or any John Doe).

Under the four-prong analysis suggested *supra*, the plaintiff's petition to unmask the identity of John Doe 2 would be denied by the court. For the reasons set forth *supra*, the U.S. Constitution protects the anonymous political speech and the anonymous distribution of political speech by John Doe 2 in this case. The court should dismiss the complaint of the plaintiff.

III. Defendant John Doe 2 has a state constitutional right to anonymous political speech and a right to anonymous distribution of political speech.

In additional to the federal constitutional rights of John Doe 2, the defendant has a right to freedom of speech guaranteed by the South Carolina Constitution, and that right includes the right to anonymous political speech and a right to the anonymous distribution of political speech. S.C. Const. Art. I, Sec. 2 Religious freedom; freedom of speech; right of assembly and petition, states:

> The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances.

Id.

State courts may grant their citizens more protections under the state constitution than are granted in the U.S. Constitution. William J. Brennan, Jr, *State Constitutions and the Protection of Individual Rights*, Harvard Law Review, 90 Harv. L. Rev. 489

(1977). The defendant cannot find a South Carolina Supreme Court that is directly on point. However, several state courts have held that their respective state constitutions grant more free speech rights to their citizens than the United States Constitution. *State v. Henry*, 302 Or. 510, 732 P.2d 9 (Or. 1987) (obscenity law found unconstitutional when applied against an adult bookstore owner); *New Jersey Coalition Against War in the Middle East v. J.M.B. Realty Corp.*, 138 N.J. 326, 650 A.2d 757 (N.J. 1994) (protestors had a constitutional right to distribute issue-oriented literature at a shopping mall); *Lloyd Corp. v. Whiffen*, 315 Or. 500, 849 P.2d 446 (Or. 1993) (initiative petitioners had the constitutional right to use the common areas of a shopping mall); *Batchelder v. Allied Stores Intern., Inc.*, 388 Mass. 83, 445 N.E.2d 590 (Mass. 1983) (candidate had a constitutional right to solicit nominating signatures and distribute campaign literature in the common area of a shopping mall); *Mazdabrook Commons Homeowners' Assn v. Khan*, 210 N.J. 482, 46 A.3d 507 (N.J. 2012) (homeowners' association's rules were unconstitutional because they prohibited residents from posting political signs in the windows of their homes.); *Trusz v. Ubs Realty Investors, LLC*, 319 Conn. 175, 123 A.3d 1212 (Conn. 2015) (employee speech made in the performance of official duties is protected by state constitution).

In the present case, defendant John Doe 2 asks this court to recognize that the South Carolina Constitution's "freedom of speech or of the press" clause protects the anonymous political speech and anonymous distribution of political speech by John Doe 2. More specifically, the defendant asks this court to prohibit candidates for public office (and politicians) from using the powers of the court to issue injunctions against individuals who anonymous discuss the candidate or political issues (or distribute the

political speech of others). In addition, the defendant asks this court to prohibit candidates for public office (and politicians) from using the powers of the court to declare as unlawful the anonymous political speech of individuals. Finally, the defendant asks this court to prohibit candidates for public office (and politicians) from using the power of the courts to bring defamation actions against individuals who anonymously discuss the candidate or political issues (or distribute the political speech of others). The defendant asks that the court recognize that the state constitutional protections are important and prevent candidates and politicians from discovering the identity of the anonymous speakers. The defendant asks the court to formulate a balancing test that provides John Doe 2 more protections than the balancing tests based on the U.S. Constitution. The defendant asks the court to adopt a multi-prong analysis that is more protective of the rights of John Doe 2 than the four-prong analysis in *Kuwait & Gulf Link Transp. Co. v. Doe*, 2014 PA Super 96, 92 A.3d 41 (Pa. Super. Ct. 2014). For example, the defendant asks the court to require the plaintiff to post a bond, in an amount set by the court, to compensate the defendant if Doe's identity is unmasked by the plaintiff, but the defendant prevails in the defamation action or request for declaratory relief. Once the identity of John Doe 2 is unmasked, the damage cannot be reversed, and the plaintiff should have to post a bond to compensate the defendant if the defendant prevails on the defamation claim or the request for declaratory relief. John Doe 2 believes the posting of a bond will make candidate for public office pause and think before they file defamation lawsuits against anonymous speakers discussing political issues. In addition, the court could adopt a blanket rule that candidate for political office cannot use the power of the courts to unmask anonymous speakers discussing political

issues. Lastly, the court could hold that in South Carolina the identity of John Doe 2 cannot be unmasked until after a judgment is entered against John Doe 2. If a judgment is entered against John Doe 2, then the plaintiff could petition the court to reveal the identity of John Doe 2, and the trial court would then apply an analysis to determine if the identity of John Doe should be revealed to the plaintiff. If this procedure is followed, the identity of John Doe 2 can only be revealed if the plaintiff is successful in his claims. John Doe 2 asks the court to grant Doe more protections under the state constitution than the federal constitution.

PART THREE: RULE 12(b)(6) MOTION TO DISMISS

Defendant John Doe 2 moved the trial court to dismiss the plaintiff's causes of action for declaratory relief and defamation pursuant to Rule 12(b)(6), SCRCP for failing to state facts sufficient to constitute a cause of action. (Motion to Dismiss). The trial court denied the defendant's motion to dismiss. (Court Order 08/28/2019). The trial court's decision was an abuse of discretion and was based on an error of law.

A. REQUEST FOR AN INJUNCTION

The complaint had a cause of action for an injunction. However, the amended complaint dropped the request for injunctive relief. The request for an injunction has been abandoned by the plaintiff.

B. REQUEST FOR DECLARATORY RELIEF

IV. The cause of action for declaratory relief should be dismissed by the court.

The plaintiff's cause of action for declaratory relief should be dismissed pursuant to Rule 12(b)(6), SCRCP. The defendant has the constitutional rights to anonymous political speech and the anonymous distribution of political speech. This issue is fully discussed in part two of the brief, *supra*, and the defendant incorporates those arguments verbatim into this section. If the court assumes that all the factual allegations in the amended complaint are true, the plaintiff's cause of action for declaratory relief fails because it would violate the defendant's constitutional rights. Therefore, the cause of action for declaratory relief should be dismissed by the Court of Appeals.

C. DEFAMATION ACTION

V. The cause of action for defamation in the amended complaint should be dismissed by the court.

The court should dismiss the plaintiff's cause of action for defamation in the amended complaint for failure to state facts sufficient to constitute a cause of action pursuant to Rule 12(b)(6), SCRCP.

A. The defendant has the constitutional rights to anonymous political speech and the anonymous distribution of political speech. This issue is fully discussed in part two of the brief, *supra*, and the defendant incorporates those arguments verbatim into this section. If the court assumes that all the factual allegations in the amended complaint are true, the plaintiff's cause of action for defamation fails because it would violate the defendant's constitutional rights. Therefore, the cause of action for defamation should be dismissed by the Court of Appeals.

B. The defamation cause of action should be dismissed by the court because the action is not properly plead in the amended complaint. Paragraph 27 of the amended complaints states: "The Defendants made the statements with malice." In *New York Times Company v. Sullivan*, 376 U.S. 254, 84 S. Ct. 710 (1964), the U.S. Supreme Court held that in defamation cases involving a public official or public figure, the actual malice standard requires a plaintiff to allege the publisher of the statement in question knew that the statement was false or acted in reckless disregard of its truth or falsity.

The plaintiff is a public figure who ran for political office according the amended complaint. The plaintiff's defamation cause of action does not recite the necessary elements to constitute a proper cause of action for defamation involving a public figure. The plaintiff's cause of action does not specifically allege there was "actual" malice and/or that the defendants knew that the statements were false or acted in reckless disregard of its truth or falsity. Instead, the complaint alleges only malice (but not actual malice).

The South Carolina Supreme Court has issued a decision that is directly on point. *Elder v. Gaffney Ledger*, 341 S.C. 108, 533 S.E.2d 899 (2000). In *Elder*, the court said: "The actual malice standard is not satisfied merely through a showing of ill will or 'malice' in the ordinary sense of the term." *Elder*, 341 S.C. at 114. In *Elder*, a public official was awarded $310,000 in a defamation action against a newspaper. The Supreme Court reversed the verdict because the evidence in the case established only malice, but not actual malice. The court differentiated between malice, and actual malice, and held that malice was insufficient. In the present case, the plaintiff only alleged "malice" in the amended complaint. Since the complaint alleges that the plaintiff

was a candidate for public office, the amended complaint had to allege "actual malice" to constitute a valid cause of action for defamation. As such, the action is not properly plead in the amended complaint, and the defamation action should be dismissed pursuant to Rule 12(b)(6), SCRCP.

PART FOUR: MOTION FOR A PROTECTIVE ORDER

VI. The defendant's motion for a protective order should have been granted by the trial court.

The plaintiff issued a subpoena to Facebook and propounded interrogatories and requests for production to John Doe 2 that would unmask the identity of John Doe 2. The defendant filed a motion for a protective order. (Motion Protective Order). The trial court denied the motion for a protective order. (Order 08/28/2019). It was an abuse of discretion based on an error of law for the trial court to deny the defendant's motion for a protective order.

The subpoena to Facebook requests information from Facebook such as the names of the persons that established or operated the "Democrats for Marchant" Facebook account and all email addresses for the persons that established or operated the Facebook account. (SC Subp. P. 1; CA Subp. Attachment 3). The interrogatories request information that would reveal the identity of John Doe 2. For example, interrogatory number 8 states: "List your full legal name, address, social security number, date of birth, and place of employment." (Interrogatory No. 8). Also, the requests for production seek information that would reveal the identity of John Doe 2. For example, request for production number 1 states: "Please provide a copy of the front and back of your current drivers' license." (Requests for Production No. 1).

The court of common pleas did not have subject matter jurisdiction over the plaintiff's complaint. As such, the court (nor any attorney) could issue any subpoenas or propound discovery requests. This issue is fully discussed in part one of the brief, *supra*, and the defendant incorporates those arguments verbatim into this section. Therefore, the Court of Appeals should issue a protective order that prohibits any discovery in the case. The defendant has the constitutional rights to anonymous political speech and the anonymous distribution of political speech. This issue is fully discussed in part two of the brief, *supra*, and the defendant incorporates those arguments verbatim into this section. The subpoena and discovery requests would unmask the identity of John Doe 2, and therefore, they violate the defendant's constitutional rights. Therefore, the Court of Appeals should issue a protective order that prevents any discovery that would reveal the identity of John Doe 2.

PART FIVE: MOTION TO QUASH SUBPOENA TO FACEBOOK

VII. The plaintiff's subpoena to Facebook should be quashed by the court.

John Doe 1 filed a motion to quash the subpoena issued by the plaintiff to Facebook. (John Doe 1 Motion to Quash; Hearing Transcript 01/24/2019). The trial court denied John Doe 1's motion to quash. (Order 01/24/2019). Defendant John Doe 2 also filed a motion to quash the subpoena to Facebook. (Motion to Quash; Hearing Transcript 06/25/2019). The trial court also denied John Doe 2's motion to quash. (Order 08/28/2019). It was an abuse of discretion based on an error of law to deny the motions to quash. Defendant John Doe 2 has two lines of argument. The first line of argument is that the subpoena requests disclosure of a protected matter. The second

line of argument is that the subpoena is invalid because it does not comply with the legal requirements for a subpoena.

A. The subpoena requests disclosure of a protected matter.

Rule 45(C)(3)(A), SCRCP states: "On timely motion, the court ... shall quash or modify the subpoena if it: ... (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies." In this case, the plaintiff seeks information from Facebook that would reveal or unmask the identity of John Doe 2. John Doe 2 has a constitutional right to anonymous political speech and anonymous distribution of political speech. These arguments are discussed in full in part one of the brief, *supra*, and are incorporated verbatim into this section for sake of brevity. The motion to quash should be granted by the Court of Appeals to protect the identity of John Doe 2.

B. The Legal Requirements of a Subpoena.

There are several defects with the subpoena issued to Facebook. that make the subpoena invalid, as follows:

1. The complaint had not been served on any defendant on the date the subpoena was issued by the plaintiff. There was no pending action at the time the subpoena was issued because the complaint had not yet been commenced. Rule 3(a)(1), SCRCP states:

> (a) Commencement of civil action. A civil action is commenced when the summons and complaint are filed with the clerk of court if:
>
> (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or ...

Id. The subpoena is dated October 17, 2018, one day after the filing of the complaint on October 16, 2018. However, on October 17, 2018, the complaint had not been

commenced by the plaintiff because he had not served any defendant. Rule 45(a)(1)(B), SCRCP requires the subpoena to: "state the title of the action, the name of the court in which it is pending, and its civil action number." An attorney may not issue a subpoena if there is no pending action. *In the Matter of Boyce*, 639 S.E.2d 44 (2006). *See also In re Lundgren*, 421 S.C. 300, 806 S.E.2d 125 (2017). For this reason alone, the subpoena should be quashed by the court. In the trial court's order dated August 28, 2019, the trial *sua sponte* held that: "To the extent it is necessary, the Court authorizes the issuance of a subpoena to Facebook for the identity of the Defendant and orders it *nunc pro tunc* to the date the subpoena was issued." The trial court's ruling was clearly erroneous and based on an error of law. The trial court cannot cure this defect with the subpoena by issuing an order after the fact, and there is no provision in the Rules of Civil Procedure to allow the trial court to issue a civil subpoena before an action is commenced.

2. The subpoena was not served on either defendant. Rule 45(b), Service, SCRCP states:

> Unless otherwise ordered by the court, prior notice in writing of any commanded production of documents and things or inspection of premises before trial shall be served on each party in the manner prescribed by Rule 5(b) at least 10 days before the time specified for compliance.

An attorney issuing a subpoena must serve the opposing party 10 days before the production is due. *In the Matter of Margaret D. Fabri*, 418 S.C. 384 (2016). In this case, production was due on October 29, 2018, so a defendant had to be served on or before October 19, 2018 (3 days after the filing of the lawsuit). On October 19, 2018, no defendant had been served with the subpoena. The signature line on the subpoena states that "I certify that ... notice as required by rule 45(b)(1) has been given to all

parties." However, no notice was given to either defendant in this case. *In re Lundgren*, 421 S.C. 300, 806 S.E.2d 125 (2017)("attorney falsely certified in the subpoena that it was issued in compliance with Rule 45, SCRCP"). For this reason alone, the subpoena should be quashed by the court.

3. The subpoena does not indicate if the issuing attorney represents the plaintiff or the defendant. For a South Carolina subpoena, there is a field near the bottom of page 1 where attorneys must reveal if they represent the plaintiff or the defendant. In this case, that information is missing. The S.C. Supreme Court has held that an attorney must properly identify which party he represents when signing a subpoena. *In re Okpalaeke*, 648 S.E.2d 593 (2007) (custody dispute matter with three erroneously issued subpoenas). For this reason alone, the subpoena should be quashed by the court.

4. The subpoena was "ISSUED BY THE COMMON PLEAS COURT IN THE COUNTY OF GREENVILLE." Rule 45(a)(1) states: "Every subpoena shall: (A) state the name of the court from which it is issued." Subsection (2) states:

> A subpoena commanding attendance at a trial or hearing shall issue from the court for the county in which the hearing or trial is to be held. A subpoena for attendance at a deposition shall issue from the court for the county designated by the notice of deposition as the county in which the deposition is to be taken. If separate from a subpoena commanding the attendance of a person, a subpoena for production or inspection shall issue from the court for the county in which production or inspection is to be made. Provided, however, that a subpoena to a person who is not a party or an officer, director or managing agent of a party, commanding attendance at a deposition or production or inspection shall issue from the court for the county in which the non-party resides or is employed or regularly transacts business in person.

In this case, the subpoena was issued to a non-party. Therefore, the subpoena must be issued from the county in which the non-party resides or is employed or regularly transacts business in person. Facebook is not in Greenville County. According to the cover letter, it is in California (Cover Letter). So, the subpoena is issued from the wrong county. In addition, the subpoena was improperly issued to an out-of-state entity. *In re Lundgren*, 421 S.C. 300, 806 S.E.2d 125 (2017). For this reason alone, the subpoena should be quashed by the court.

5. The subpoena does not command Facebook to do anything and it is impossible to tell if the subpoena is for a trial appearance, or a deposition appearance, or for the production of documents, or to permit inspection of premises - or a combination of more than one. Rule 45(a)(1)(C) requires the subpoena to:

> command each person to whom it is directed to attend and give testimony or produce and permit inspection and copying of designated books, documents or tangible things in the possession, custody or control of that person, or to permit inspection of premises, at a time and place therein specified.

In this case, none of the 4 "command" check boxes on the subpoena are checked. (SC Subpoena). They are all blank. What is Facebook supposed to do in response to this subpoena? How can the defendant know what Facebook is required to do in response to this subpoena? Is Facebook supposed to appear at a deposition? The subpoena does not command any action by Facebook. For this reason alone, the subpoena should be quashed by the court.

6. The subpoena requires Facebook to travel more than 50 miles. Rule 45(C)(3)(A) states:

> The court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or

> production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:
>
> (ii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or ...

The cover letter to Facebook. lists an address in Menlo Park, California. The production is to be made at 506 Pettigru Street, Greenville, SC. There are more than 50 miles between those addresses. For this reason alone, the subpoena should be quashed by the court.

7. The documents requested in the California subpoena are not identical to the documents requested in the South Carolina subpoena. The subpoena in California asks for more information, and is broader, than the subpoena issued in South Carolina. The South Carolina subpoena asks for just "Basic account information (name, email address, and IP login locations) for the Facebook account: Democrats for Marchant (url: https://www.facebook.com/democratsformarchant/)." (SC Subpoena Exhibit 2).

However, the subpoena issued in California asks for more information and documents. For example, it asks for, "All user information used to establish and/or operate, including ... Names of the persons that established the account and any names of any owners ...The email addresses that were provided to establish the account ... The IP address used to edit, purchase advertising, or publish statements or comments." The defendant asks the Court of Appeals to compare the information

requested in the South Carolina subpoena to the information requested in the California subpoena and hold that the information requested in not identical.

South Carolina and California have both passed the Uniform Interstate Depositions and Discovery Act ("UIDDA"). In California, the Code of Civil Procedure - Cal. Civ. Proc. Code § 2029.300 (2019) states:

> (a) To request issuance of a subpoena under this section, a party shall submit the original or a true and correct copy of a foreign subpoena to the clerk of the superior court in the county in which discovery is sought to be conducted in this state. A request for the issuance of a subpoena under this section does not constitute making an appearance in the courts of this state.
>
> (b) In addition to submitting a foreign subpoena under subdivision (a), a party seeking discovery shall do both of the following:
>
> (1) Submit an application requesting that the superior court issue a subpoena with the same terms as the foreign subpoena.
>
> ...
>
> (d) A subpoena issued under this section shall satisfy all of the following conditions:
>
> (1) It shall incorporate the terms used in the foreign subpoena.

Cal. Civ. Proc. Code § 2029.300 (2019). In this case, the California subpoena was not issued "with the same terms" and it did not "incorporate the terms" used in the South Carolina subpoena. Instead, the California subpoena created new terms and asked for additional documents and information.

The UIDDA language adopted in California is similar to the UIDDA language adopted in South Carolina. In South Carolina, S.C. Code Ann. § 15-47-120 (2019), Issuance of subpoena, states:

> (B) When a party submits a foreign subpoena to a clerk of court in this State, the clerk, in accordance with the rules of court, promptly shall issue a subpoena for service upon the person to which the foreign subpoena is directed. The subpoena must incorporate the terms used in the foreign subpoena and contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

S.C. Code Ann. § 15-47-120(B) (2019). Since the California subpoena was not issued "with the same terms" and it did not "incorporate the terms" used in the South Carolina subpoena, the subpoena is invalid. The Supreme Court has held that an attorney may not improperly issue a subpoena to an out-of-state entity. *In re Lundgren*, 421 S.C. 300, 806 S.E.2d 125 (2017). For this reason alone, the subpoena should be quashed by the court.

PART SIX: THE IMMEDIATE APPEALABILITY OF THE TRIAL COURT'S ORDER

VIII. The orders of the trial court are immediately appealable.

A. INTRODUCTION

This part of the brief is filed in response to the Court of Appeal's request for arguments on the immediate appealability of the trial courts' orders. The South Carolina Supreme Court has held that a trial court's order is immediately appealable if the order permits discovery of a confidential matter. In this case, the order permits the discovery of a confidential matter - the identity of John Doe 2. As such, the trial court's order is immediately appealable.

Once the identity of John Doe 2 is revealed, the appellate courts have no remedy to correct the trial court, so the order of the trial court in effect determines the action and prevents an appealable judgment. In addition, the trial court's order affects a substantial

right of John Doe 2 - his constitutional rights to anonymous political speech and the anonymous distribution of political speech. The appellate court should determine that issue on the merits.

There are two decisions in the trial court's orders that are immediately appealable. First, the decision to deny the motion to quash the subpoena to Facebook. The subpoena to Facebook requests information that will reveal or unmask the identity of John Doe 2. (SC and CA Subpoena). Second, the decision to deny the motion for a protective order to prevent any discovery that reveals the identity of John Doe 2. The trial court's decision will require John Doe 2 to respond to the plaintiff's interrogatories that request John Doe 2's name and address, and to respond to plaintiff's requests for production of documents that request a copy of John Doe 2's driver's license. (Pls. Discovery Requests).

B. LEGAL ANALYSIS

The trial court's orders are immediately appealable because the orders permit the discovery of a confidential matter. In this case, the confidential matter is the identity of John Doe 2.

> [W]here the appealed order has the effect of revealing the very thing the appellant claims should remain confidential, an immediate appeal may well be warranted and permitted by the appellate courts.

Jean Hoefer Toal et al., *Appellate Practice in South Carolina*, p. 154, (3rd ed. 2016).

In *City of Columbia v. ACLU of S.C., Inc*, 323 S.C. 384, 475 S.E.2d 747 (1996), the South Carolina Supreme Court allowed an immediate appeal of an order involving the discovery of a confidential, internal police investigation report. The Court said: "The appealed order allows discovery of documents that respondents ultimately seek

disclosed as the subject of these FOIA actions. This order is directly appealable under S.C. Code Ann. § 14-3-330(2)(a) (2019) because it in effect determines the action and prevents an appealable judgment..." *Id.* at fn.2 (citing *Knight Publishing Co. v. University of South Carolina*, 295 S.C 31, 32, 367 S.E.2d 20, 21 (1988).

In *Knight Publishing Co. v. University of South Carolina*, 295 S.C 31, 367 S.E.2d 20 (1988), the South Carolina Supreme Court allowed an immediate appeal of an order permitting the discovery of confidential information. The University of South Carolina resolved by public vote that information regarding a discretional fund was not part of the public record, and therefore, the University argued that the information was not subject to disclosure under the Freedom of Information Act. The court specifically noted that: "This appeal is from an order allowing discovery of certain documents and ordering limited depositions." 295 S.C. 32. In *Knight*, the Supreme Court discussed the concept of the availability of an immediate appeal "because a decision on appeal would be without practical effect." *Id.* at fn.2. In this case, once the identity of John Doe 2 is revealed, "a decision on appeal would be without practical effect" in the words of the Court.

The *Knight* court cited *Jones v. Dillon-Marion Human Resources Dev. Comm'n*, 277 S.C. 533, 291 S.E.2d 195 (1982). In *Jones*, the Court said: "A case becomes moot when judgment, if rendered, will have no legal effect upon existing controversy. This is true when some event occurs making it impossible for reviewing Court to grant effectual relief." *Jones*, 277 S.C. 536. In this case, once the identity of John Doe 2 is revealed, it is "impossible for reviewing Court to grant effectual relief" on appellate review after the revelation.

The *Jones* Court cited *Mathis v. South Carolina State Highway Dept.*, 260 S.C. 344, 195 S.E.2d 713 (1973). In *Mathis*, the Court said: "There remains no actual controversy between the parties. We have held that this Court will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Mathis*, 260 S.C. 346. In this case, once the identity of John Doe 2 is revealed, then the appellate review of that revelation becomes an "academic question" in the language of the Court. The Court has no remedy that can again grant John Doe 2 anonymity.

The orders of the trial court are immediately appealable under both S.C. Code Ann. § 14-3-330(2)(a) and § 14-3-330(1) (2019). Section 14-3-330(2) states: "An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken ..." is immediately appealable. S.C. Code Ann. § 14-3-330(2)(a)(2019). In *McLaughlin v. Strickland*, 279 S.C. 513, 309 S.E.2d 787 (Ct.App.1983), the Court of Appeals allowed an immediate appeal of an order terminating the parental rights of a parent because it was a substantial right. In this case, the constitutional right to anonymous political speech and the constitutional right to anonymous distribution of political speech are both substantial rights, and the trial court's orders affect that right. An immediate appeal under § 14-3-330(2) is allowed in situations where a substantive right could not be vindicated on appeal after the end of the case. *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 529 S.E.2d 11 (2000).

The appellant also argues that the orders of the trial court are immediately appealable under Section 14-3-330(1), which states: "Any intermediate judgment, order

or decree in a law case involving the merits in actions commenced in the [C]ourt of [C]ommon [P]leas." S.C. Code Ann. § 14-3-330(1) (2019). A case involves the merits is one that "must finally determine some substantive matter forming the whole or part of some cause of action or defense." *Mid-State Distributors, Inc. v. Century Importers*, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993). In this case, the trial court orders finally determine the anonymity of John Doe 2 because once Facebook responds to the subpoena, John Doe 2's defense that Doe has a constitutional right to anonymous political speech is moot and lost forever. Doe can never get that defense back after the revelation by Facebook.

The Supreme Court of Pennsylvania issued a decision in a defamation action with similar facts and procedural history to the instant case. *Melvin v. Doe*, 836 A.2d 42, 575 Pa. 264 (Pa. 2003). The Supreme Court ruled that John Doe could immediately appeal the denial of Doe's motion for a protective order. The plaintiff propounded discovery seeking the identity of John Doe. John Doe filed a motion for a protective order alleging that Doe's comment was protected by the constitutional right to engage in anonymous political speech. The trial court denied the motion for a protective order, and John Doe appealed. The Supreme Court of Pennsylvania held that the denial of John Doe's motion for a protective order was immediately appealable because John Doe's constitutional right to anonymous political speech "falls within the class of rights that are too important to be denied review" by the appellate courts. *Melvin v. Doe*, 836 A.2d at 50. The court reasoned that once John Doe's identity is disclosed, Doe's First Amendment claim is irreparably lost as there are no means to later cure such disclosure. *Id.* at 50.

In this case, the orders of the trial court are immediately appealable pursuant to the decisions of the South Carolina Supreme Court. The Court of Appeals should follow the analysis in *Melvin v. Doe*, 836 A.2d 42, 575 Pa. 264 (Pa. 2003). Specifically, the identity of John Doe 2 is protected by the United States Constitution and the Constitution of the State of South Carolina. If the trial court's orders are not immediately appealable, then John Doe 2's identity will be revealed, and the revelation cannot be undone by the Court of Appeals after the revelation. Therefore, the orders are immediately appealable by the appellant. On the other hand, if the Court of Appeals allows an immediate appeal of the trial court's orders and issues a decision on the merits of the appeal, then the identity of John Doe 2 can remain confidential if John Doe 2 is successful on appeal. If John Doe 2 is not successful on the merits on appeal, then Doe's identity will be revealed, but Doe will then have lost on the merits.

CONCLUSION

The Court of Appeals should reverse the decision of the trial court. The court of common pleas does not have jurisdiction over the plaintiff's complaint. The Court of Appeals should dismiss the plaintiff's complaint, grant the defendant's motion for a protective order, and grant the defendant's motion to quash the subpoena issued to Facebook.

April 17, 2020

Samuel D. Harms
S.C. Bar No. 13537
Double Aught Injury Lawyers
33 Market Point Drive
Greenville, SC 29607
(864) 453-0000
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge

Appellate Case No. 2019-001605

Lucas Marchant, ...Respondent,

v.

John Doe and John Doe d/b/a Democrats for Marchant, Defendants,

Of which John Doe is the .....Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief of Appellant and Designation of Matter to be Included in the Record on Appeal on Lucas Marchant by emailing a copy of them on April 17, 2020, addressed to his attorney of record:

Joshua S. Kendrick
Josh@KendrickLeonard.com
Kendrick & Leonard, P.C.
P.O. Box 6938
Greenville, SC 29606

April 17, 2020

Samuel D. Harms
S.C. Bar No. 13537
Double Aught Injury Lawyers
33 Market Point Drive
Greenville, SC 29607
(864) 453-0000
Attorney for Appellant

DOUBLE AUGHT INJURY LAWYERS
BRYAN RAMEY SAMUEL HARMS

April 17, 2020

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

RE: Lucas Marchant, Respondent, v. John Doe and John Doe d/b/a Democrats for Marchant, Defendants, Of which John Doe is the Appellant.
Appellate Case No. 2019-001605

Dear Ms. Kitchings:

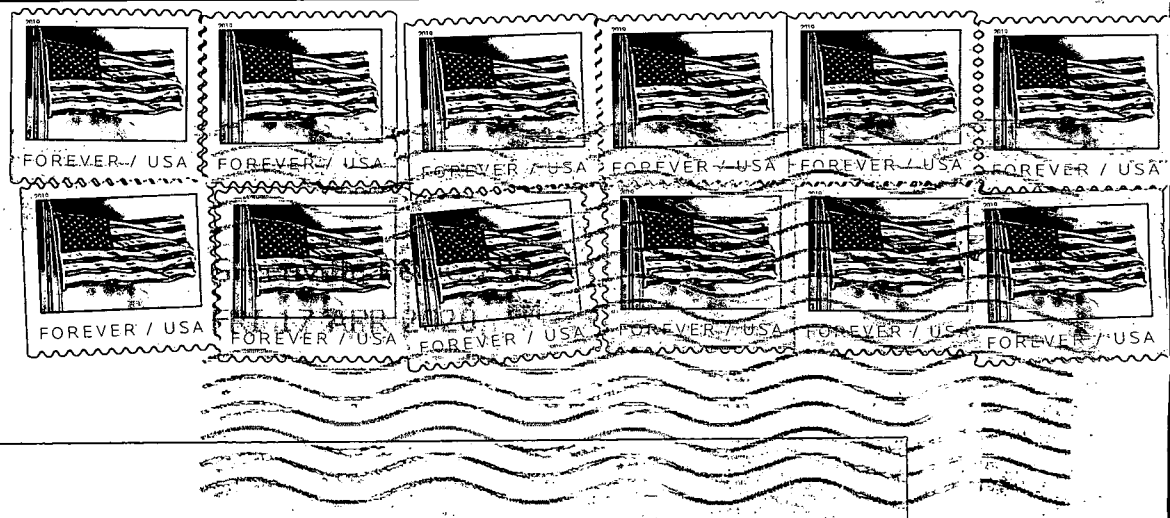
Enclosed for filing is the Initial Brief of Appellant in the above case. Also enclosed are the following:

1. Designation of Matter to be Included in the Record on Appeal
2. Proof of Service of the Initial Brief of Appellant and the Designation of Matter to be Included in the Record on Appeal on the Respondent.
3. An additional copy of the above referenced documents. Please stamp the copies and return them to me in the enclosed self-addressed stamped envelope.

Sincerely,

Samuel D. Harms
Double Aught Injury Lawyers
33 Market Point Drive
Greenville, SC 29607
(864) 453-0000
Attorney for Appellant

cc: Joshua S. Kendrick
Josh@KendrickLeonard.com
Kendrick & Leonard, P.C.
P.O. Box 6938
Greenville, SC 29606
(864) 760-4000
Attorney for Respondent



Double Aught
33 Market Point Dr
Greenville, SC 29607

RECEIVED
APR 20 2020
SC Court of Appeals

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