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The State of South Carolina In the Court of Appeals

APPEAL FROM
THE COURT OF COMMON PLEAS FOR THE FIFTH JUDICIAL CIRCUIT,
COUNTY OF RICHLAND

J. Mark Hayes, II, Circuit Court Judge

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Appellate Case No. 2020-000619
Civil Action No. 2017-CP-40-06621

JUN 19 2020
SC Court of Appeals

R. WAYNE TODD, derivatively on behalf of
SCANA CORPORATION,

Plaintiff,

v.

KEVIN MARSH, GREGORY ALIFF,
JAMES BENNETT, JOHN CECIL,
SHARON DECKER, MAYBANK HAGOOD,
LYNN MILLER, JAMES ROQUEMORE,
MACEO SLOAN, ALFREDO TRUJILLO,
JIMMY ADDISON, and STEVE BYRNE,

Defendants,

And

SCANA CORP.,

Nominal Defendant.

TERESA PARLER, derivatively on behalf of
SCANA CORPORATION,

Plaintiff,

v.

KEVIN MARSH, GREGORY ALIFF,
JAMES BENNETT, JOHN CECIL,
SHARON DECKER, MAYBANK HAGOOD,
LYNN MILLER, JAMES ROQUEMORE,
MACEO SLOAN, ALFREDO TRUJILLO,
JIMMY ADDISON, and STEVE BYRNE,

Defendants,

And

SCANA CORP.,

Nominal Defendant,

Of Which SCANA CORPORATION, KEVIN MARSH, GREGORY
ALIFF, JAMES BENNETT, JOHN CECIL, SHARON DECKER,
MAYBANK HAGOOD, LYNN MILLER, JAMES ROQUEMORE,
MACEO SLOAN, ALFREDO TRUJILLO, JIMMY ADDISON, and
STEVE BYRNE are *Appellants,*

And

TERESA PARLER, derivatively on behalf of SCANA CORPORATION is
the *Respondent.*

**APPELLANTS' RETURN TO MOTION TO DISMISS AND
OPPOSED MOTION TO ADDRESS APPELLATE JURISDICTION IN
THE PARTIES' SCACR 208 BRIEFS**

Defendants and Nominal Defendant SCANA Corporation, Appellants in the
above-captioned matter, move the Court for an order directing the parties to address
appellate jurisdiction in their briefs under SCACR 208 in lieu of filing returns and
replies under SCACR 240(e)-(f) to Respondent Teresa Parler's Motion to Dismiss. In

the alternative, Appellants incorporate by reference the Jurisdictional Statement in the Initial Appellants' Brief as their return in opposition to the Motion to Dismiss under SCACR 240(e).

On Monday, June 8, Appellants electronically filed and served their Initial Brief, which includes a Jurisdictional Statement explaining why this Court has jurisdiction under S.C. Code Ann. § 14-3-330(1)-(2). As that Initial Brief explains, the trial court's order denying the motion to dismiss this non-shareholder plaintiff's derivative action for lack of shareholder derivative standing is appealable because it both involves the merits and denies SCANA the substantial right to control its own litigation, or at least to have that litigation controlled by a current shareholder. This Court also has jurisdiction because, in nature and effect, the trial court's order is like other orders held appealable under § 14-3-330 that effectively deny a party its choice of counsel or deny a party its right to choose its own defendants. *See* Appellants' Initial Brief 7-13. As the Initial Brief makes clear, the reasons why this Court has jurisdiction are intertwined with the substance of the trial court's unprecedented ruling.

The day after the deadline for the Initial Appellants' Brief, Respondent served a four-page motion to dismiss the appeal that did not acknowledge or respond to Appellants' Jurisdictional Statement. Rather than engage in duplicative motions practice in response to a motion that could have been filed many weeks ago, it would serve the interests of economy and provide the Court with a fuller understanding of the merits that inform the jurisdictional issues if the parties address these

jurisdictional questions in their SCACR 208 briefs. Respondent opposes the motion to address appellate jurisdiction in the parties' SCACR 208 briefs.

In the alternative, and to avoid unnecessary filings, Appellants incorporate by reference the Jurisdictional Statement in the Initial Appellants' Brief, pages 7-13, as their return in opposition to Respondent's Motion to Dismiss for purposes of SCACR 240(e).

Dated: June 12, 2020

s/ John A. Massalon

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Respectfully submitted,

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***Counsel for Defendant-Appellant
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CERTIFICATE OF SERVICE

I, Benjamin P. Carlton, an attorney practicing with Richardson Plowden & Robinson, P.A., certify that on this day, pursuant to Section (c)(13) of the Supreme Court's Order in Appellate Case No. 2020-000447 (Apr. 14, 2020), I served this *Return and Opposed Motion* on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

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A copy of the sent email is enclosed with this Proof of Service.

Dated: June 12, 2020

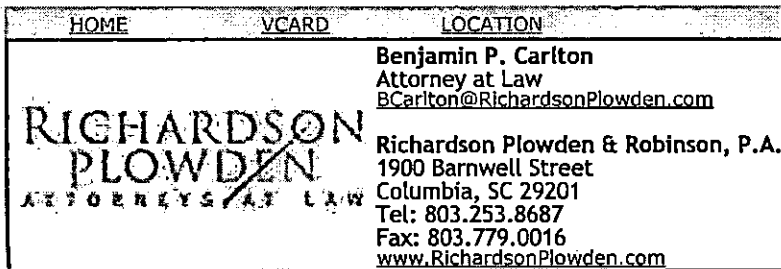
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Subject: Parler v. Marsh et al. - 2017-CP-40-00621; Appellate Case No. 2020-000619 (Court of Appeals) - Appellants' Return to MTD & Motion to Address Appellate Jurisdiction in the Parties' SCACR 208 Briefs
Date: Friday, June 12, 2020 2:20:00 PM
Attachments: Parler Return to MTD & Motion to Defer Jurisdictional Briefing (6-12-202....pdf
Parler - Ltr to Ct App re Return to MTD & Opposed Motion to Address Appe....pdf

Counsel,

Please find attached a copy of Appellants' Return to Motion to Dismiss and Opposed Motion to Address Appellate Jurisdiction in the Parties' SCACR 208 Briefs, in the above-referenced matter, which is being filed contemporaneously herewith in accordance with the Court's Amended Order, No. 2020-05-29-02, regarding "Operation of the Appellate Courts During the Coronavirus Emergency (As Amended May 29, 2020)." Also, please find attached a copy of the cover letter being mailed to the South Carolina Court of Appeals along with the corresponding motions filing fee.

Thank you and have a nice weekend,
Ben Carlton



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June 12, 2020

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: *R. Wayne Todd, derivatively on behalf of SCANA Corporation (Plaintiff) v. Kevin Marsh et al. (Defendants) and SCANA Corp. (Nominal Defendant).*

Teresa Parler, derivatively on behalf of SCANA Corporation (Plaintiff) v. Kevin Marsh et al. (Defendants) and SCANA Corp. (Nominal Defendant).

Appellate Case No.: 2020-000619
RPR File No.: 3637-66

Dear Ms. Kitchings:

Enclosed please find a copy of the Return to Respondent's Motion to Dismiss and Opposed Motion to Address Appellate Jurisdiction in the Parties' SCACR 208 Briefs (the "Filing") of Appellants SCANA Corporation, Kevin Marsh, Gregory Aliff, James Bennett, John Cecil, Sharon Decker, Maybank Hagood, Lynne Miller, James Roquemore, Maceo Sloan, Alfredo Trujillo, Jimmy Addison, and Steven Byrne, which was filed electronically with the Court of Appeals pursuant to the Appellate Court Filing System (OneDrive) created on April 9, 2020.

Also enclosed is a check in the amount of \$50.00 for the corresponding motions fee.

We have served this Filing via e-mail on all counsel of record pursuant to Section g(3) of the Order Regarding Operation of the Appellate Courts During the Coronavirus Emergency dated March 20, 2020, as amended May 29, 2020.

Should you have any questions regarding this matter, please do not hesitate to call.

Sincerely,


Benjamin P. Carlton

The Honorable Jenny Abbott Kitchings
June 12, 2020
Page 2

Enclosures

cc: Mark D. Chappell (via email)
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3637-0004 BPC

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