



Law Offices of
The Griffin Firm, L.L.C

136 North Main Street • Anderson, SC 29621
Phone (864) 231-8870 • Fax (864) 231-7797
www.attorneyforthestars.com

April 25, 2012

Daniel E Shearouse
The Clerk of
Supreme Court of South Carolina
P O Box 11330
Columbia, SC 29211

Re Appellant Richard Freemantle V Respondent Joey Preston
Case Tracking No 2010181306

Dear Sir/ Madam

We would like to respectfully request a copy of the Hearing which was held on April 17, 2012 at 10 30am before the Supreme Court Justices regarding the above captioned matter Please find enclosed a check in the amount of Twenty Dollars (\$20 00) for the same

If you have any questions, please call us

With kind regards,

Sincerely,

Felicia Y Minyard,
Assistant to Charles R Griffin, Jr

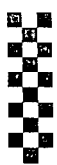
check # 5883
\$20 00

/fym
enclosure

RECEIVED

APR 26 2012

SC SUPREME COURT



FORM 1
MEDIA COVERAGE OF COURT PROCEEDINGS

STATE OF SOUTH CAROLINA)	
COUNTY OF Richland)	IN THE COURT South Carolina Supreme Court
)	
Richard Freemantle)	
)	
vs)	
)	
Joey Preston Anderson County, et al)	

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APR 17 2012

SC SUPREME COURT

Request for Electronic and Photographic Coverage
Of Judicial Proceedings

Pursuant to Rule 605, South Carolina Appellate Court Rules, the undersigned hereby requests permission to use equipment in order to record, photograph or televise all or portions of the proceedings in the above captioned case

Consistent with Rule 605 the undersigned desires to use the following equipment
Still digital camera, reporter's notebook

The proceedings that the undersigned desires to record, photograph or televise commence on April 17, 2012 at 10 30 a m

The personnel who will be responsible for the operation of this equipment are Sefton Ipock and Nikie Mayo

The undersigned hereby certifies that the operation of the equipment and the conduct of the personnel will be in conformity with Rule 605

This 16th day of April, 2012

Nikie Mayo, reporter

(Individual Signature)
Anderson Independent Mail
(Representing/Firm)

Sefton Ipock
(Photographer)

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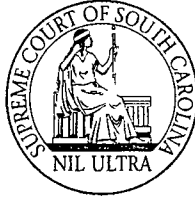
APPROVED

Photographer
Reporter
(Position)

Date April 17, 2012

1000 Williamston Road,
Anderson, SC 29621
(Address)
(864) 622 1708 office
(864) 376 2680 mobile
(864) 353 1373 mobile 2
(Telephone Number)

Presiding Judge **CHIEF JUSTICE**



The Supreme Court of South Carolina

DANIEL E SHEAROUSE
CLERK OF COURT

BRENDA F SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA SOUTH CAROLINA 29211

(803) 734 1080

FAX (803) 734 1499

April 6, 2012

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Davidson & Lindemann
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Kevin William Sturm, Esquire
Sturm & Cont, PA
P O Box 5448
Spartanburg, SC 29304

Re Freemantle, Richard v Preston, Joey

Dear Counsel

The record in the above case has been reviewed and the time allotment for oral argument for this case is as follows

Appellant	10 minutes
Respondents	10 minutes
Appellant in Reply	5 minutes

This case is scheduled for hearing on Tuesday, April 17, 2012 at 10 30 a m

Very truly yours,

Daniel E Shearouse, Clerk

By Debbie M Shearouse
Administrative Assistant

DES/dmh



**Roe Cassidy
Coates & Price PA**

D RANDLE MOODY II
(864) 349-2615
RMOODY@ROECASSIDY.COM

February 24, 2012

Via Facsimile (803) 734-1499 and U S Mail

The Honorable Daniel E Shearouse
Clerk, South Carolina Supreme Court
P O Box 11330
Columbia, South Carolina 29211

*Re Freeran v Preston, et al
Case No 2009-CP-04-4528
Appeal Tracking No 2010181306*

Dear Mr Shearouse

I have just been made aware that my children will be on Spring Break the entire week of April 1 – 7, 2012 and a family vacation has been planned for this time My apologies to the Court for not checking my calendar more thoroughly before responding regarding April conflicts

I thank you for your consideration of these matters and should you have any questions or concerns, please do not hesitate to contact me

With highest regards,

Sincerely,

RECEIVED

FEB 27 2012

S.C. SUPREME COURT

ROE CASSIDY COATES & PRICE, P A

D Randle Moody, II

D Randle Moody, II

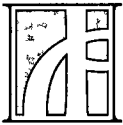
less

- cc The Honorable Tanya A Gee
Charles R Griffin, Jr (via e-mail)
Chuck Allen (via e-mail)
Candy Kern-Fuller (via e-mail)
Andrew F Lindemann (via e-mail)
James W Logan, Jr (via e-mail)
Kevin William Sturm (via e-mail)

1052 North Church Street
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Greenville SC 29603

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f 864 349 0303



Roe Cassidy
Coates & Price PA

D RANDLE MOODY II
(864) 349 2615
RMOODY@ROECASSIDY.COM

February 23, 2012

Via Facsimile (803) 734-1499 and U S Mail

The Honorable Daniel E Shearouse
Clerk, South Carolina Supreme Court
P O Box 11330
Columbia, South Carolina 29211

RECEIVED

FEB 27 2012

S C SUPREME COURT

Re Freeman v Preston et al
Case No 2009-CP-04-4528
Appeal Tracking No 2010181306

Dear Mr Shearouse

I am in receipt of your letter of February 17 2012 regarding scheduling conflicts for the April term (April 3, 4, 5, 17 and 18) Please be advised that I have a complicated arbitration involving the dissolution of a medical practice scheduled for April 5, 2012 I am also scheduled to speak at an annual law firm and client seminar in San Diego April 18 -22, 2012 Accordingly, I would request that this matter be scheduled for April 17 or continued to another term

I thank you for your consideration of these matters and should you have any questions or concerns, please do not hesitate to contact me

With highest regards,

Sincerely,

ROE CASSIDY COATES & PRICE, P A

D Randle Moody, II

cc The Honorable Tonya Gee
Charles R Griffin, Jr (via e-mail)
Chuck Allen (via e-mail)
Candy Kern-Fuller (via e-mail)
James W Logan, Jr (via e-mail)
Kate A Rice (via e-mail)
Kevin William Sturm (via e-mail)

1052 North Church Street
Greenville SC 29601

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Greenville SC 29603

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f 864 349 0303

W. Wyatt House



UPSTATE LAW GROUP, L L C
ATTORNEYS AND COUNSELORS AT LAW

Candy M Kern-Fuller, Managing Member
Candy@upstatelawgroup.com

Howard E. Sutter, III, Esq., Member
Trey@upstatelawgroup.com

February 22, 2012

Via Facsimile (803)734-1499 & U S Mail

Mr Daniel E Shearouse
Clerk of Court
The South Carolina Supreme Court
P O Box 11330
Columbia, SC 29211

Re Freemantle, Richard v Preston, Joey

Dear Mr Shearouse

This letter is in response to your letter dated February 17, 2012 regarding any scheduling conflicts for the April term I currently have a Family Court Hearing scheduled on April 5, 2012 in Pickens County Family Court though I realize this matter takes precedence under SCRAP 601 The other dates listed in April provide no conflict at this time

Thank you in advance for your attention to this matter Should you have any questions, please do not hesitate to contact our office

S.C. SUPREME COURT

FEB 22 2012

RECEIVED

Sincerely,

Candy M Kern-Fuller, Esq

CKF/pc

cc Charles R Griffin, Esq (Via fax only)
D Randle Moody, II, Esq (Via fax only)
Joseph O Smith, Esq (Via fax only)
Donald L Chuck Allen, Esq (Via fax only)
James W Logan, Esq (Via fax only)
Kate A Rice, Esq (Via fax only)
Kevin William Sturm, Esq (Via fax only)
The Honorable Tanya Gee

DAVIDSON & LINDEMANN, P A

ATTORNEYS AND COUNSELLORS AT LAW

William H Davidson II
Andrew F Lindemann *
James M Davis Jr †
Robert D Garfield
Michael B Wren

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Telephone (803) 806-8222
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www dml-law com

Lawrence S Kerr M D †
Kate A Swedlow
Daniel C Plyler
Joel S Hughes
Justin T Bagwell

Of Counsel

Kenneth P Woodington

February 21, 2012

Also admitted in North Carolina
† Certified Mediator

Writer s Email alindemann@dml law com

The Honorable Daniel E Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

RE Richard Freemantle, *et al* v Joey Preston, *et al*
SCCA Tracking Number 2010181306
Civil Action Number 2009-CP-04-4528
Claim Number 59885
Our File Number 103 8296

Dear Mr Shearouse

I am in receipt of the Supreme Court's recent order certifying review of this appeal pursuant to Rule 204(b), SCACR Please be advised that Kate A Rice is no longer with our law firm I would therefore request that the Court's records be changed to show myself as counsel of record in place of Ms Rice We are continuing to represent the Respondents Ron Wilson, Bill McAbee, Larry Greer, Michael Thompson, and Gracie Floyd

By copy of this letter, I am also advising all counsel of record of this change in counsel

If you have any questions or require a formal motion to effect this change in counsel, please advise. Thank you for your assistance with this matter

RECEIVED

FEB 23 2012

SC SUPREME COURT

Sincerely,

DAVIDSON & LINDEMANN, P A



Andrew F Lindemann

AFL/

The Honorable Daniel E Shearouse
February 21, 2012
Page Two

cc Charles R Griffin, Jr , Esquire
The Griffin Firm, LLC
136 North Main Street
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Logan, Jolly & Smith, LLC
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DAVIDSON & LINDEMANN, P A

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Lawrence S Kerr M D †
Kate A Swedlow
Daniel C Plyler
Joel S Hughes
Justin T Bagwell

Of Counsel
Kenneth P Woodington

February 24, 2012

Also admitted in North Carolina
† Certified Mediator

Writer's Email alindemann@dml-law.com

Via Facsimile Only -- 734-1499

The Honorable Daniel E Shearouse
Clerk of Court
South Carolina Supreme Court
Post Office Box 11330
Columbia, South Carolina 29211

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FEB 24 2012

S.C. SUPREME COURT

RE Richard Freemantle, et al v Joey Preston, et al
SCCA Tracking Number 2010181306
Civil Action Number 2009-CP-04-4528
Claim Number 59885
Our File Number 103 8296

Dear Mr Shearouse

I am in receipt of the preliminary notice of the scheduling of oral argument in the above appeals for the Supreme Court's April term of court Please be advised that I am currently scheduled to be in a date certain trial in Greenville County for the entire week of April 16, 2012 While I know that oral argument in the Supreme Court is given priority by rule, I did want to advise the Court of this scheduling conflict I am also scheduled to be out-of-state for a family vacation on April 4th and 5th Therefore, if possible, I would appreciate it if oral argument could be scheduled on April 3rd

Thank you for your consideration of these request

Sincerely

DAVIDSON & LINDEMANN, P A



Andrew F Lindemann

AFL/

The Honorable Daniel E Shearouse
February 24, 2012
Page Two

cc Charles R Griffin, Jr , Esquire
The Griffin Firm, LLC
136 North Main Street
Anderson, South Carolina 29621

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200 East Main Street
Easley, South Carolina 29640



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

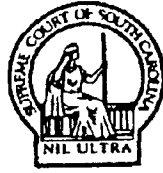
P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To Kevin William Sturm Esquire
From Daniel E. Shearouse
Date February 17, 2012
RE April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

Court will meet the days of April 3, 4, 5, 17, and 18. Please notify this office in writing prior to February 24, 2012, as to any scheduling conflicts for the April term and any changes or additions of counsel that should be made to the record for the purpose of argument. If you do have a scheduling conflict, please advise as to the specific nature of the conflict.

Freemantle, Richard v. Preston, Joey



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

PO BOX 11330
COLUMBIA S C 29211
PHONE NO 734 1080

To Kate A Rice Esquire
From Daniel E Shearouse
Date February 17 2012
RE April Preliminary List

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Freemantle, Richard v. Preston, Joey



The South Carolina Supreme Court

DANIEL E SHEAROUSE
CLERK OF COURT
BRENDA F SHEALY
DEPUTY CLERK

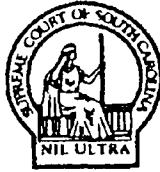
PO BOX 11330
COLUMBIA S C 29211
PHONE NO 734 1080

To James W Logan Jr Esquire
From Daniel E Shearouse
Date February 17 2012
RE April Preliminary List

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Freemantle, Richard v Preston, Joey



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

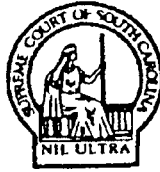
P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To Donald L. Chuck Allen Esquire
From Daniel E. Shearouse
Date February 17, 2012
RE April Preliminary List

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Freemantle, Richard v. Preston, Joey



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To D Randle Moody II Esquire
Joseph O Smith Esquire
From Daniel E Shearouse
Date February 17 2012
RE April Preliminary List

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Freemantle, Richard v Preston, Joey



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To Charles R. Griffin, Jr., Esquire
From Daniel E. Shearouse
Date February 17, 2012
RE April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Freemantle, Richard v. Preston, Joey



The South Carolina Supreme Court

DANIEL E. SHEAROUSE
CLERK OF COURT
BRENDA F. SHEALY
DEPUTY CLERK

P.O. BOX 11330
COLUMBIA, S.C. 29211
PHONE NO. 734 1080

To Candy M. Kern-Fuller Esquire
From Daniel E. Shearouse
Date February 17, 2012
RE April Preliminary List

Pursuant to the provisions of Rule 216 of the South Carolina Appellate Court Rules, this is to advise that the following case(s) will probably be reached for hearing at the April 2012 term of the South Carolina Supreme Court. Our records indicate that you are counsel of record in one or more of these case(s).

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Freemantle, Richard v. Preston, Joey

The Supreme Court of South Carolina

Richard Freemantle,
individually and on behalf of
himself and all others similar
situated, Appellant,

v


Joe Preston, in his official
capacity and individually, while
administrator of Anderson
County, Anderson County, a
political subdivision of the state
of South Carolina, Anderson
County Council, the Legislative
and Executive body of
Anderson County, Ron Wilson,
in his official capacity and
individually, Bill McAbee, in
his official capacity and
individually, Larry Greer, in his
official capacity and
individually, Michael
Thompson in his official
capacity and individually,
Gracie Floyd, in her official
capacity and individually, Respondents

The Honorable J Cordell Maddox, Jr
Anderson County
Trial Court Case No 2009-CP-04-04528

ORDER

Pursuant to Rule 204(b) of the South Carolina Appellate Court Rules,
this appeal is hereby certified for review by the South Carolina Supreme
Court Upon receipt of this order, the Court of Appeals is hereby directed to
forward the case file, all records and briefs and any exhibits on file to this
Court

IT IS SO ORDERED


CJ
FOR THE COURT

Columbia, South Carolina

February 16, 2012

cc Charles R Griffin, Jr , Esquire
Candy M Kern-Fuller, Esquire
D Randle Moody, II, Esquire
Joseph O Smith, Esquire
Donald L Chuck Allen, Esquire
James W Logan, Jr , Esquire
Kate A Rice, Esquire
Kevin William Sturm, Esquire
The Honorable Tanya Gee



The South Carolina Court of Appeals

TANYA A GLE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 1169
COLUMBIA SOUTH CAROLINA 29111
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29701
TELEPHONE (803) 734 1890
FAX (803) 734 1839
WWW.SCCOURTS.ORG

November 21, 2011

Charles R. Griffin, Jr, Esquire
136 N Main St
Anderson, SC 29621

Re Freemantle, Richard v Preston, Joey
2010181306

Dear Mr Griffin

We have received your Final Brief of Appellant in the above case. However, the name, address and phone number of the counsel submitting the document must be included on the cover of the brief.

Within ten days of the date of this letter, please arrange for a representative from your office to come to the Court of Appeals filing desk on the 1st floor of the Edgar A Brown Building to make the required corrections. **We request that you notify this office when someone will be arriving to make the corrections so the documents will be available without delay.**

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc Candy M. Kern-Fuller, Esquire
D. Randle Moody, II, Esquire
Joseph O. Smith, Esquire
Donald L. Chuck Allen, Esquire
James W. Logan, Jr., Esquire
Kate A. Rice, Esquire
Kevin William Sturm, Esquire



**Law Offices of
The Griffin Firm, L.L.C**

136 North Main Street • Anderson, SC 29621
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November 9, 2011

Ms Jeanette F Barber
The Clerk of
The South Carolina
Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Appellant Richard Freemantle V Respondent Joey Preston
Case Tracking No 2010181306

Dear Ms Barber

Please find enclosed the original and fifteen copies of the Final Brief of Appellant regarding the above captioned matter along with Certificate of service for the same

If you have any questions, please call us

With kind regards,

Sincerely,

A handwritten signature in cursive script, appearing to read "Felicia Y Gilreath".

Felicia Y Gilreath,
Assistant to Charles R Griffin, Jr

/fyg
enclosures

RECEIVED

NOV 10 2011

SC Court of Appeals

October 19 2011

The Honorable Tanya A Gee
Clerk, South Carolina Court of Appeals
1015 Sumter Street
South Carolina 29211

*Re Freeman v Preston, et al
Case No 2009-CP-04-4528
Appeal Tracking No 2010181306*

Dear Ms Gee

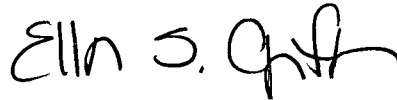
Enclosed please find the original (unbound) and sixteen (16) copies of the Joint Final Brief of Respondents in the above-referenced appeal. Kindly file the enclosed briefs in your usual manner and return one clocked copy of the same to me in the stamped self-addressed envelope provided herein.

If you have any questions or concerns please do not hesitate to call. Thank you.

With highest regards,

Sincerely,

ROE CASSIDY COATES & PRICE, P A



Ellen S Griffin
Paralegal to D Randle Moody, II

Enclosures (as stated above)

cc Charles R Griffin, Jr
Chuck Allen
Candy Kern-Fuller
James W Logan, Jr
Kate A Rice
Kevin William Sturm

RECEIVED

OCT 20 2011

SC COURT OF APPEALS



Law Offices of
The Griffin Firm, L L.C.

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Phone (864) 231-8870 • Fax (864) 231-7797
www.attorneyforthestars.com

September 20, 2011

Ms Jeanette F Barber
The Clerk of
The South Carolina
Court of Appeals
P O Box 11629
Columbia, SC 29211

RECEIVED

SEP 22 2011

SC Court of Appeals

Re Appellant Richard Freemantle V Respondent Joey Preston
Case Tracking No 2010181306

Dear Ms Barber

Please find enclosed the original Certificate of service for the Record on Appeal that we filed regarding the above captioned matter

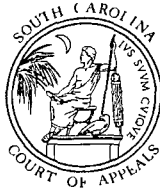
With kind regards,

Sincerely,

Felicia Y Gilreath,
Assistant to Charles R Griffin, Jr

/fyg
enclosures

Cc Candy M Kern-Fuller, Esq
D Randie Moody, II, Esq
Joseph O Smith, Esq
Donald L Chuck Allen, Esq
James W Logan, Esq
Kate A Rice, Esq
Kevin W Sturm, Esq



The South Carolina Court of Appeals

IANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

October 21 2011

Charles R Griffin, Jr, Esquire
136 N Main St
Anderson, SC 29621

Re Freemantle, Richard v Preston, Joey
Case Tracking # **2010181306**

Dear Mr Griffin

The following Order has been endorsed on your Motion to File Appendix to the Record on Appeal in the above entitled case on appeal

“Granted

John Cannon Few CJ
For the Court

By s/ V Claire Allen
Clerk

October 21, 2011 ”

Please be advised the Appendix to the Record on Appeal has been accepted and filed All Final Briefs must be served and filed no later than November 10 2011

In our letter dated September 20, 2011 you were requested to add attorney Josh O Smith as counsel of record for Respondents Joey Preston, Ron Wilson, Bill McAbee Larry Greer Michael Thompson and Gracie Floyd to the Record on Appeal As of today s date the name has not been added

Within ten days of the date of this letter, please arrange for a representative from your office to come to the Court of Appeals filing desk on the 1st floor of the Edgar A Brown Building 1205 Pendleton Street Columbia, SC to make the required corrections We request that you notify this office when someone will be arriving to make the corrections so the documents will be available without delay

Very truly yours,

V Claire Allen, Deputy
CLERK

TAG/laf

cc Candy M Kern Fuller Esquire
D Randle Moody, II, Esquire
Joseph O Smith Esquire
Donald L Chuck Allen Esquire
James W Logan, Jr , Esquire
Kate A Rice, Esquire
Kevin William Sturm, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HON J CORDELL MADDOX

CASE NO 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself and all others similarly
situated APPELLANT

VS

JOEY PRESTON, in His Official Capacities and Individually, While Administrator of Anderson
County, ANDERSON COUNTY, a political Subdivision of the State of South Carolina,
ANDERSON COUNTY COUNCIL, The Legislative and Executive Body of Anderson County,
RON WILSON, in His Official Capacities and Individually, BILL MCABEE, in His Official
Capacities and Individually, LARRY GREER, in His Official Capacities and Individually,
MICHAEL THOMPSON, in His Official Capacities and Individually, GRACIE FLOYD, in Her
Official Capacities and Individually, RESPONDENTS

MOTION TO FILE APPENDIX TO RECORD ON APPEAL

The undersigned, attorney for the Appellant, hereby moves the Court for an Order allowing the Appellant to file his Supplemental Record on Appeal. The grounds for this motion are that Appellant's attorney filed the Record on Appeal and, in error, omitted several documents which were to be included on the Record on Appeal. Appellant's counsel hereby certifies that this motion is made in compliance with rule 212 of the South Carolina Appellate court Rules.

RECEIVED

OCT 04 2011

SC Court of Appeals



Charles R. Griffin, Jr.
Attorney for Appellant
136 N Main Street
Anderson, SC 29621
864-231-8870
864-231-7797 (fax)

Dated October 3, 2011

GRANTED
JOHN CANNON FEW, C J
FOR THE COURT

By V. Claire Allen
(Clerk) (Deputy Clerk)

FILED
10/21/11

10/21/11

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HON J CORDELL MADDOX

CASE NO 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself and all others
similarly situated APPELLANT

VS

JOEY PRESTON, in His Official Capacities and Individually, While Administrator of
Anderson County, ANDERSON COUNTY, a political Subdivision of the State of South
Carolina, ANDERSON COUNTY COUNCIL, The Legislative and Executive Body of
Anderson County, RON WILSON, in His Official Capacities and Individually, BILL
MCABEE, in His Official Capacities and Individually, LARRY GREER, in His Official
Capacities and Individually, MICHAEL THOMPSON, in His Official Capacities and
Individually, GRACIE FLOYD, in Her Official Capacities and Individually,
RESPONDENTS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that she served the Motion to file Appendix
to Record on Appeal on the Respondents by mailing a copy of the same to the attorney's
of record for the Respondents via United States Postal Service at the addresses listed
below

D Randall Moody II
Roe Cassidy Coates & Price, PA
P O Box 10529
Greenville, SC 29603

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OCT 04 2011
SC Court of Appeals

Kate Rice
Attorney at Law
Davidson & Lindemann, PA
P O Box 8568
Columbia, SC 29202-8568

Chuck Allen
Allen Law Firm
1209 North Main Street
Anderson, SC 29621

James W Logan
Attorney at Law
Logan, Jolly & Smith LLP
1805 North Boulevard
Anderson, SC 29621

Candy Kern-Fuller
Attorney at Law
Upstate Law Group, LLC
200 E Main Street
Easley, SC 29640

Joseph O Smith, Esquire
Roe Cassidy Coates & Price, PA
P O Box 10529
Greenville, SC 29603

Kevin William Sturm
Sturm & Cont, PA
P O Box 5448
Spartanburg, SC 29304

THE GRIFFIN FIRM, LLC

BY



Felicia Gilreath

Dated October 3, 2011

2011 OCT 3 11 11 AM



**Law Offices of
The Griffin Firm, L.L.C.**

136 North Main Street • Anderson, SC 29621
Phone (864) 231-8870 • Fax (864) 231-7797
www.attorneyforthestars.com

October 3, 2011

Ms Jeanette F Barber
The Clerk of
The South Carolina
Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Appellant Richard Freemantle V Respondent Joey Preston
Case Tracking No 2010181306

Dear Ms Barber

Please find enclosed the original and six copies of the Motion to File Appendix to Record on Appeal and Proof of Service concerning the above captioned case along with a check in the amount of Twenty-Five (\$25 00) Dollars for the same

By copy of this letter, a copy of the same has been served on Candy M Kern-Fuller, D Randle Moody, II, Joseph O Smith, Donald L Chuck Allen, James W Logan, Kate A Rice, Kevin W Sturm

With kind regards,

Sincerely,

Felicia Y Gilreath,
Assistant to Charles R Griffin, Jr

/fyg
enclosures

Cc Candy M Kern-Fuller, Esq
D Randle Moody, II, Esq
Joseph O Smith, Esq
Donald L Chuck Allen, Esq
James W Logan, Esq
Kate A Rice, Esq
Kevin W Sturm, Esq

RECEIVED

OCT 04 2011

SC Court of Appeals



**Law Offices of
The Griffin Firm, L.L.C.**

136 North Main Street • Anderson, SC 29621
Phone (864) 231-8870 • Fax (864) 231-7797
www.attorneyforthestars.com

October 3, 2011

Ms Jeanette F Barber
The Clerk of
The South Carolina
Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Appellant Richard Freemantle V Respondent Joey Preston
Case Tracking No 2010181306

Dear Ms Barber

Please find enclosed the original and fifteen copies of the Appendix to the Record on Appeal regarding the above captioned matter along with Certificate of service for the same

If you have any questions, please call us

With kind regards,

Sincerely,

A handwritten signature in black ink, appearing to read "Felicia Y Gilreath".

Felicia Y Gilreath,
Assistant to Charles R Griffin, Jr

/fyg
enclosures

RECEIVED
OCT 04 2011
SC Court of Appeals



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29201
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www.sccourts.org

September 21, 2011

Charles R Griffin, Jr, Esquire
136 N Main St
Anderson, SC 29621

Re Freemantle, Richard v Preston, Ioey
2010181306

Dear Mr Griffin

We have received the Record on Appeal in the above case. However, you must provide proof you have served the record on each party who has served a brief.

Furthermore, our records show counsel of record for Respondents Joey Preston, Ron Wilson, Bill McAbee, Larry Greer, Michael Thompson and Gracie Floyd to be D Randall Moody II, Esquire and Joseph O Smith, Esquire. You must add Joseph O Smith, Esquire to all copies of the record.

Within ten days of the date of this letter, please provide the proof of service for the Record on Appeal and arrange for a representative from your office to come to the Court of Appeals filing desk on the 1st floor of the Edgar A Brown Building, 1205 Pendleton Street, Columbia, SC to make the required corrections. **We request that you notify this office when someone will be arriving to make the corrections so the documents will be available without delay.**

Very truly yours,

V Claire Allen, Deputy
CLERK

TAG/laf

cc Candy M Kern-Fuller, Esquire
D Randle Moody, II, Esquire
Joseph O Smith, Esquire
Donald L Chuck Allen, Esquire
James W Logan, Jr, Esquire
Kate A Rice, Esquire
Kevin William Sturm, Esquire



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAUDE ALLEN
DEPUTY CLERK

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FAX (803) 734 1839
www.sccourts.org

August 22, 2011

Charles R. Griffin, Jr, Esquire
136 N Main St
Anderson, SC 29621

Re Freemantle, Richard v Preston, Joey
2010181306

Dear Mr Griffin

The following Order has been endorsed on your Motion to File Record on Appeal Out of Time in the above entitled case on appeal

“Granted

John Cannon Few C J
For the Court

By s/ Tanya A Gee
Clerk

August 22, 2011 ”

Please be advised the Record on Appeal must be served on the opposing parties and proof of service filed with this Court no later than September 21, 2011

Very truly yours,

Handwritten signature of Tanya A. Gee in cursive, with the word "CLERK" printed below it.

TAG/laf

cc Candy M Kern-Fuller, Esquire
D Randle Moody, II, Esquire
Joseph O Smith, Esquire

Donald L. Chuck Allen, Esquire
James W. Logan, Jr., Esquire
Kate A. Rice, Esquire
Kevin William Sturm, Esquire

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HON J CORDELL MADDOX

CASE NO 2009-CP-04-4528

GRANTED
JOYNT OPINION BY CJ
FOR THE COURT

By

RICHARD FREEMANTLE, individually and on behalf of himself and all others similarly
situated APPELLANT

8/22/11
FILED

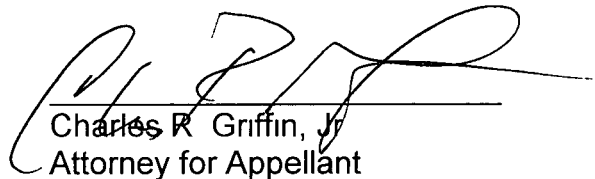
VS

JOEY PRESTON, in His Official Capacities and Individually, While Administrator of Anderson
County, ANDERSON COUNTY, a political Subdivision of the State of South Carolina,
ANDERSON COUNTY COUNCIL, The Legislative and Executive Body of Anderson County,
RON WILSON, in His Official Capacities and Individually, BILL MCABEE, in His Official
Capacities and Individually, LARRY GREER, in His Official Capacities and Individually,
MICHAEL THOMPSON, in His Official Capacities and Individually, GRACIE FLOYD, in Her
Official Capacities and Individually, RESPONDENTS

MOTION TO FILE RECORD ON APPEAL OUT OF TIME

The undersigned, attorney for the Appellant, hereby moves the Court for an Order allowing the Appellant to file his Record on Appeal out of time. The grounds for this motion are that Appellant's attorney has had an exceptionally busy schedule and was also involved in a car accident from which he has had to receive medical treatment for. Appellant's counsel hereby certifies that this motion is made in compliance with rule 240 of the South Carolina Appellate court Rules.

RECEIVED
AUG 08 2011
SC Court of Appeals



Charles R. Griffin, Jr.
Attorney for Appellant
136 N Main Street
Anderson, SC 29621
864-231-8870
864-231-7797 (fax)

Dated July 27, 2011



Law Offices of
The Griffin Firm, L L C

136 North Main Street • Anderson, SC 29621
Phone (864) 231-8870 • Fax (864) 231-7797

August 4, 2011

Ms Jeanette F Barber
The Clerk of
The South Carolina
Court of Appeals
P O Box 11629
Columbia, SC 29211

Re Appellant Richard Freemantle V Respondent Joey Preston
Case Tracking No 2010181306

Dear Ms Barber

Please find enclosed the original and six copies of the Motion to File Final Brief Out of Time and Proof of Service concerning the above captioned case along with a check in the amount of Twenty-Five (\$25 00) Dollars for the same

By copy of this letter, a copy of the same has been served on Candy M Kern-Fuller, D Randle Moody, II, Joseph O Smith Donald L Chuck Allen, James W Logan, Kate A Rice, Kevin W Sturm

With kind regards,

Sincerely,

Felicia Y Gilreath,
Assistant to Charles R Griffin, Jr

/fyg
enclosures

Cc Candy M Kern-Fuller, Esq
D Randle Moody, II, Esq
Joseph O Smith, Esq
Donald L Chuck Allen, Esq
James W Logan, Esq
Kate A Rice, Esq
Kevin W Sturm, Esq

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AUG 08 2011
SC Court of Appeals

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HON J CORDELL MADDOX

CASE NO 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself and all others
similarly situated APPELLANT

VS

JOEY PRESTON, in His Official Capacities and Individually, While Administrator of
Anderson County, ANDERSON COUNTY, a political Subdivision of the State of South
Carolina, ANDERSON COUNTY COUNCIL, The Legislative and Executive Body of
Anderson County, RON WILSON, in His Official Capacities and Individually, BILL
MCABEE, in His Official Capacities and Individually, LARRY GREER, in His Official
Capacities and Individually, MICHAEL THOMPSON, in His Official Capacities and
Individually, GRACIE FLOYD, in Her Official Capacities and Individually,
RESPONDENTS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that she served the Motion to File Record on
Appeal Out of Time on the Respondents by mailing a copy of the same to the attorney's
of record for the Respondents via United States Postal Service at the addresses listed
below

Chuck Allen
Allen Law Firm
1209 North Main Street
Anderson, SC 29621

Candy Kern-Fuller
Attorney at Law
Upstate Law Group, LLC
200 E Main Street

Easley, SC 29640

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Attorney at Law
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Kevin William Sturm
Sturm & Cont, PA
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Spartanburg, SC 29304

Kate Rice
Attorney at Law
Davidson & Lindemann, PA
P O Box 8568
Columbia, SC 29202-8568

Joseph O Smith, Esquire
Roe Cassidy Coates & Price, PA
P O Box 10529
Greenville, SC 29603

THE GRIFFIN FIRM, LLC

BY



Felicia Gilreath

Dated August 4, 2011



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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1015 SUMTER STREET
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July 26, 2011

Charles R Griffin, Jr, Esquire
136 N Main St
Anderson, SC 29621

Re Freemantle, Richard v Preston, Joey
2010181306

Dear Mr Griffin

Our records indicate that the Record on Appeal was to be served on opposing counsel and proof of service filed with this Court no later than July 20, 2011. You must serve the record and file the proof of service with this Court along with a Motion to Serve and File Out of Time within ten (10) days of this letter. Otherwise, your appeal may be dismissed.

Very truly yours,

V Claire Allen, Deputy
CLERK

TAG/laf

cc Candy M Kern-Fuller, Esquire
D Randle Moody, II, Esquire
Joseph O Smith, Esquire
Donald L Chuck Allen, Esquire
James W Logan, Jr, Esquire
Kate A Rice, Esquire
Kevin William Sturm, Esquire



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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WWW SCCOURTS.ORG

July 8, 2011

Charles R Griffin, Jr, Esquire
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Candy M Kern-Fuller, Esquire
Upstate Law Group, LLC
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The Allen Law Firm
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Kate A Rice, Esquire
Davidson & Lindemann
P O Box 8568
Columbia, SC 29202

Kevin William Sturm, Esquire
Sturm & Cont, PA
P O Box 5448
Spartanburg, SC 29304

Re Freemantle, Richard v Preston, Joey
2010181306

Dear Counsel

All parties are advised that the originals of all records on appeal and final briefs filed with the appellate courts are scanned. Therefore, in accordance with the May 1, 2008 Amendments to the South Carolina Appellate Court Rules, DO NOT staple, spiral bind, velobind, or otherwise permanently bind the ORIGINALS of these documents. The original brief(s) and record on appeal should still have front and back covers in compliance with Rule 267(e) of the South Carolina Appellate Court Rules, but should not be bound. You may secure the originals with paper clips, binder clips, rubber bands, by placing them in large envelopes, or by any other similar means that will keep the pages together without binding or hole-punching. All COPIES of the record on appeal and final briefs should be bound as specified in the South Carolina Appellate Court Rules.

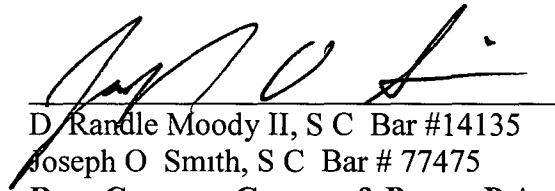
If you have any questions, please do not hesitate to contact this office.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

Respectfully Submitted,



D. Randle Moody II, S C Bar #14135
Joseph O Smith, S C Bar # 77475
ROE, CASSIDY, COATES & PRICE, P A
1052 North Church Street
Greenville, South Carolina 29601
(864) 349-2600
(864)-349-0303 fax
RMoody@roecassidy.com
JSmith@roecassidy.com

Candy-Kern Fuller, S C Bar # 11392
Instate Law Group, LLC
200 E Main Street
Easley, SC 29640

Chuck Allen
Allen Law Firm
1209 North Main Street
Anderson, SC 29621

James W Logan, Jr
Logan, Jolley & Smith, LLP
1805 North Boulevard
P O Box 259
Anderson, SC 29622

Kevin William Strum
Strum & Cont, P A
P O Box 54448
Spartanburg, SC 29304

Attorneys for Respondents

June 20, 2011
Greenville, South Carolina

June 24, 2011

Via Federal Express

V Claire Allen
Deputy Clerk
South Carolina Court of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

RECEIVED
JUN 27 2011
SC Court of Appeals

Re *Freeman v Preston, et al*
Case No 2009-CP-04-4528

Appeal Tracking No 2010181306

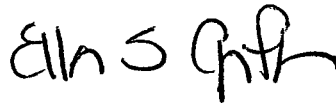
Dear Ms Allen

Pursuant to your request, enclosed please find the original and one copy of the signed conclusion page to Respondents' Initial Brief and Designation of Matter in the above- referenced matter. We apologize to the Court for any inconvenience our oversight may have caused.

If you have any questions or concerns, please do not hesitate to call. With highest regards,

Very truly yours,

ROE CASSIDY COATES & PRICE, P A



Ellen S Griffin
Paralegal to D Randle Moody II

Enclosures (as stated above)

cc Charles R Griffin, Jr
Chuck Allen
Candy Kern-Fullei
James W Logan, Jr
Kate A Rice
Kevin William Sturm



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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FAX (803) 734 1839
www.sccourts.org

June 23, 2011

Candy M Kern-Fuller, Esquire
Upstate Law Group, LLC
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Easley, SC 29640-2073

D Randle Moody, II, Esquire
Joseph O Smith, Esquire
Roe Cassidy Coates & Price, PA
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Greenville, SC 29603

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The Allen Law Firm
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Logan, Jolly & Smith, LLP
Post Office Box 259
Anderson, SC 29622

Kate A Rice, Esquire
Davidson & Lindemann
P O Box 8568
Columbia, SC 29202

Kevin William Sturm, Esquire
Sturm & Cont, PA
P O Box 5448
Spartanburg, SC 29304

Re Freemantle, Richard v Preston, Joey
2010181306

Dear Counsel

We have received the Respondents' Initial Brief and Designation of Matter in the above case. However, you must provide a signed conclusion page for the brief according to Rules 262 and 267(b) of the South Carolina Appellate Court Rules.

Please provide the signed conclusion page within ten days of the date of this letter.

Very truly yours,

V. Claude Allen, Deputy
CLERK

TAG/laf

cc Charles R. Griffin, Jr., Esquire

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

JUN 22 2011

SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
The Honorable J Cordell Maddox, Circuit Judge

Case No 2009-CP-04-4528
Case Tracking Number 2010181306

Richard Freemantle, individually and on behalf of himself and all others similarly
situated, Appellant,

v

Joey Preston, in his official capacities and individually, while the Administrator of
Anderson County, Anderson County, a political subdivision of the State of South
Carolina, Anderson County Council, the legislative and executive body of Anderson
County, Ron Wilson, in his official capacities and individually, Bill McAbee, in his
official capacities and individually, Larry Greer, in his official capacities and
individually, Michael Thompson, in his official capacities and individually, Grace
Floyd, in her official capacities and
individually Respondents

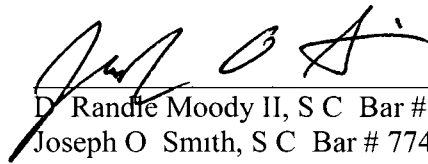
DESIGNATION OF MATTERS TO BE INCLUDED IN THE RECORD ON APPEAL

- 1 Summons & Complaint filed November 16 2009
- 2 Motion to Dismiss a Frivolous Lawsuit and for Sanctions filed December 30, 2009
- 3 Return to Motion to Dismiss a Frivolous Lawsuit and for Sanctions filed January 7 2010
- 4 Anderson County's Motion to Dismiss filed January 15, 2010
- 5 Anderson County Council's Motion to Dismiss filed January 15, 2010
- 6 Anderson County Council's Motion to Dismiss filed January 19, 2010
- 7 Preston s Motion to Dismiss filed January 19, 2010
- 8 Defendants Memorandum in Support of Motions to Dismiss filed March 15, 2010
- 9 Issue Sheet submitted to Trial Court March 17, 2010
- 10 Amended Complaint file March 16, 2010
- 11 Form 4 Order filed March 18, 2010
- 12 Motion to Dismiss a Frivolous Lawsuit and for Sanctions filed march 22, 2010
- 13 Motion to Dismiss filed March 30, 2010
- 14 Motion to Dismiss filed April 16, 2010
- 15 Memorandum of Law filed September 7, 2010
- 16 Form 4 Order filed September 8, 2010

- 17 Memorandum of Law Exhibit & Receipt Form filed September 9 2010
- 18 Plaintiff's Objections to Proposed Order Dismissing Action filed September 28, 2010
- 19 Order filed September 28, 2010
- 20 Motion to Reconsider filed October 14 2010
- 21 Amended Motion to Reconsider filed October 15, 2010
- 22 Amended Order filed November 22, 2010
- 23 Transcript of Record – March 17 2010
- 24 Transcript of Record – September 7, 2010
- 25 Notice of Intent to Appeal

I certify that this designation contains no matter which is irrelevant to this appeal

ROE, CASSIDY, COATES & PRICE, P A



~~D~~ Randle Moody II, S C Bar #14135

Joseph O Smith, S C Bar # 77475

1052 North Church Street

Greenville, South Carolina 29601

(864) 349-2600

(864)-349-0303 fax

RMoody@roecassidy.com

JSmith@roecassidy.com

Attorneys for Respondent(s)

June 20, 2011

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
The Honorable J Cordell Maddox, Circuit Judge

Case No 2009-CP-04-4528
Case Tracking Number 2010181306

RECEIVED
JUN 22 2011
SC Court of Appeals

Richard Freemantle, individually and on behalf of himself and all others similarly
situated, Appellant,

v

Joey Preston, in his official capacities and individually, while the Administrator of
Anderson County, Anderson County, a political subdivision of the State of South
Carolina, Anderson County Council, the legislative and executive body of Anderson
County, Ron Wilson, in his official capacities and individually, Bill McAbee, in his
official capacities and individually, Larry Greer, in his official capacities and
individually, Michael Thompson, in his official capacities and individually, Grace
Floyd, in her official capacities and
individually, Respondents

PROOF OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **RESPONDENTS' INITIAL BRIEF and DESIGNATION OF MATTER** was served upon all counsel of record in the above-referenced action this 20th day of June, 2011, by depositing same in the United States Mail, sufficient postage affixed thereon, and addressed as follows

Charles R. Griffin, Jr
The Griffin Law Firm, LLC
136 North Main Street
Anderson, SC 29621

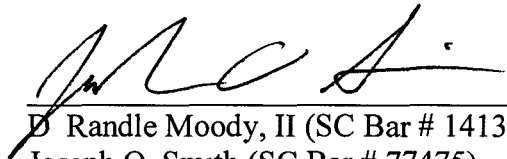
Chuck Allen
Allen Law Firm
1209 North Main Street
Anderson, SC 29621

Candy Kern-Fuller
Upstate Law Group, LLC
200 E Main Street
Easley, SC 29640

James W Logan, Jr
Logan Jolly & Smith, LLP
1805 North Boulevard (29621)
P O Box 259
Anderson, SC 29622

Kate A Rice
Davidson & Lindemann, P A
1611 Devonshire Drive – Second Floor
P O Box 8568
Columbia, SC 29202-8568

Kevin William Sturm
Sturm & Cont, P A
P O Box 5448
Spartanburg, SC 29304



Joseph O. Smith
D Randle Moody, II (SC Bar # 14135)
Joseph O Smith (SC Bar # 77475)
1052 North Church Street (29601)
Post Office Box 10529
Greenville, SC 29603
864-349-2600
864-349-0303 (facsimile)
Counsel for Respondents

Greenville, South Carolina

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
The Honorable J Cordell Maddox, Circuit Judge

Case No 2009-CP-04-4528
Case Tracking Number 2010181306

RECEIVED

JUN 22 2011

SC Court of Appeals

Richard Freemantle, individually and on behalf of himself and all others similarly
situated, Appellant,

v

Joey Preston, in his official capacities and individually, while the Administrator of
Anderson County, Anderson County, a political subdivision of the State of South
Carolina, Anderson County Council, the legislative and executive body of Anderson
County, Ron Wilson, in his official capacities and individually, Bill McAbee, in his
official capacities and individually, Larry Greer, in his official capacities and
individually, Michael Thompson, in his official capacities and individually, Grace
Floyd, in her official capacities and
individually, Respondents

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I Statement of the Issues on Appeal

- 1 Did the trial court properly hold that the Plaintiff lacked standing to pursue the claims asserted against Defendants?
- 2 Did the trial court properly observe that the public importance exception to general standing requirements does not apply to a case where the Plaintiff seeks monetary relief?
- 3 Did the trial court properly find that individual Defendants Wilson, McAbee, Greer, Thompson, and Floyd are entitled to legislative immunity for claims arising out of their actions as Anderson County Council members?
- 4 Did the trial court properly find that Plaintiff's claims are also barred under Rule 12(b)(8) of the South Carolina Rules of Civil Procedure?
- 5 Did the trial court properly hold that Plaintiff's lack of standing on his individual claims precludes him from proceeding with any putative class causes of action?
- 6 Did the trial court properly hold that the Plaintiff failed to comply with the requirements under Rule 15 of the South Carolina Rules of Civil Procedure governing amendment of pleadings?

II Statement of the Case

On November 16, 2009, the Plaintiff (*hereinafter* "Freemantle" or "Plaintiff") filed a Complaint "on behalf of himself and all others similarly situated" against Defendants, Joey Preston, Ron Wilson, Bill McAbee, Larry Greer, Michael Thompson, and Gracie Floyd, in their official and individual capacities, along with Anderson County Council and Anderson County (*hereinafter* Defendants), seeking money damages and a declaratory judgment regarding a Severance Agreement between Anderson County and former Anderson County Administrator, Defendant Joey Preston. The Plaintiff asserted various causes of action, including, but not limited to, covin and collusion, breach of fiduciary duty, illegal gift of county funds, misfeasance, malfeasance, civil conspiracy, violations of South Carolina Freedom of Information Act (*hereinafter* FOIA), S C Code Ann § 30-4-10, *et seq*, violations of public policy, and purporting to set forth 'class action allegations. Defendant McAbee filed a Motion to Dismiss on December 30, 2009. Anderson County and Anderson County Council filed Motions to Dismiss on January 15, 2010. The remaining Defendants, Preston, Floyd, Greer, Thompson, and Wilson filed Motions to Dismiss on January 19, 2010. Defendants' motions were made pursuant to Rule 12(b)(6) and 12(b)(8) S C R Civ P and based upon numerous grounds including that (1) the Plaintiff lacked constitutionally required standing as neither he nor the uncertified class members suffered a particularized injury in fact, (2) Plaintiff's claim was barred by Rule 12(b)(8) as another case currently pending seeks the same or similar relief and involves the parties in interest, and (3) Defendants were entitled to immunity for their alleged actions. (*See* McAbee Mot Dis, Anderson County Mot Dis, Def Mot Dis)

The Court was set to hear arguments on Defendants' motions on March 17, 2010. On March 16, 2010, Defendants filed a memorandum in support of their motions with the Court. That same day, the Plaintiff filed an Amended Complaint with the court, adding a cause of action alleging violations of the federal Racketeer Influenced and Corrupt Organizations Act (*hereinafter* RICO), 18 U.S.C. § 1961 *et seq.* On March 17, 2010, a hearing on Defendants' Motions to Dismiss was held in the Anderson County Court of Common Pleas before the Honorable J. Cordell Maddox. Following arguments of counsel, the Court ruled from the bench, dismissing Plaintiff's Complaint upon the grounds he lacked standing to proceed. (*See Trans. March 17 at 45-47*) Plaintiff's filing of the Amended Complaint the day prior prompted Defendants to file additional motions to dismiss that addressed the RICO cause of action, which the Court consolidated and heard on September 7, 2010. Defendants submitted memorandum in support of the additional motions to dismiss on September 7, 2010. At the September 7th hearing the Court dismissed Plaintiff's RICO claims upon the same grounds as well as upon a finding that Plaintiff failed to comply with the requirements for amending the pleadings as set forth in Rule 15 S.C.R. Civ. P. (*See Trans. Sept. 7 at 6*), (*See also Am. Order at 14-15*) On September 28, 2010 the Court signed an Order dismissing Plaintiff's claims contained in the original Complaint. (Order) On October 15, 2010, Plaintiff filed a Motion to Reconsider pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure challenging the Court's September 28, 2010 Order. (Mot. Recons.) An Amended Order was entered on November 22, 2010, again dismissing Plaintiff's original claims along with those contained in the Amended Complaint. (Am. Order) In the Amended Order the Court held that (1) Plaintiff lacked standing to maintain the action, (2) the case did not warrant application of the public importance exception, (3)

the Plaintiff did not have standing under FOIA as he failed to allege any specific injury directly or proximately caused by Defendants' alleged violation of the statute, (4) Plaintiff's lack of standing precluded him from proceeding with any putative class causes of action, and (5) Rule 12(b)(8) further barred the Plaintiff from pursuing the action (*See Am Order*)

On December 9, 2010, prior to the trial Court's consideration of Plaintiff's October 15th Motion for Reconsideration and without filing an amended motion for reconsideration addressing the Court's Amended Order of November 22nd, Plaintiff filed a Notice of Intent to Appeal the Amended Order (*Notice of Appeal*)

III Statement of the Facts

This action arose as a challenge to the County Council's vote and legislative action in favor of the Severance Agreement between Anderson County and Defendant Joey Preston, Administrator for Anderson County. The Plaintiff alleged that the votes of the Defendant Council Members in favor of the severance agreement violated their fiduciary duties to the County and sought to hold them personally liable. The Plaintiff also named Anderson County Council, Anderson County and Joey Preston and alleged various wrongs on behalf of these Defendants involving the severance agreement. The Plaintiff further alleged that all of the Defendants violated the South Carolina Freedom of Information Act (*hereinafter* FOIA), S C Code Ann § 30-4-10, *et seq* and the federal Racketeer Influenced and Corrupt Organizations Act (*hereinafter* RICO), 18 U S C § 1961 *et seq*. Finally, the Plaintiff alleged that the various actions of each of these Defendants damaged him as "a citizen resident, taxpayer, and registered elector of Anderson County" and sought money damages and a declaratory judgment voiding the severance agreement between Anderson County Council and Preston.

IV Legal Arguments and Authorities

A Standard of Review

A court's dismissal for lack of standing, and therefore lack of jurisdiction, is a legal ruling that an appellate court reviews *de novo*. *White Tail Park Inc v Stroube*, 413 F 3d 451, 459 (4th Cir 2005)(internal citations omitted). The appellate court reviews a trial court's ruling on a motion to dismiss pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure *de novo*. *Doe v Marion*, 373 S C 390, 395, 645 S E 2d 245, 247 (2007)(In reviewing a trial court's grant of a motion to dismiss pursuant to Rule 12(b)(6), the appellate court applies the same standard of review as the court below.) In considering a motion to dismiss a complaint based upon Rule 12(b)(6) "the trial court must base its ruling solely on allegations set forth in the complaint." *Id*. Only if the facts alleged and inferences reasonably deducible therefrom would not entitle plaintiff to any relief on any theory of the case, may a court grant a motion to dismiss pursuant to Rule 12(b)(6). *Id*. "The question is whether in the light most favorable to the plaintiff, and with every doubt resolved in his behalf the complaint states any valid claim for relief." *Id*.

Likewise, an appellate court reviews the trial court's grant of a motion to dismiss pursuant to Rule 12(b)(8) SCRCF *de novo*. *Capital City Ins Co v BP Staff Inc*, 382 S C 92, 674 S E 2d 524 (Ct App 2009). As this Court recently stated, "[i]n other words, we may determine whether there is another action involving the same parties, claims (or subject matter), and remedies as a matter of law." *Id* at 99-100.

B Argument & Authorities

1 The trial court properly held Freemantle lacked standing to maintain the action

Freemantle challenges the Court's¹ holdings as to his lack of standing on brief by arguing that the court erred because (1) this case falls within the public importance exception, (2) the Plaintiff suffered particularized harm as a taxpayer, and (3) the Plaintiff has standing under FOIA to maintain the relief sought for alleged violations of the statute (App Br at 11-15). The trial court did not commit reversible error in dismissing Freemantle's suit. The Plaintiff lacks standing to bring suit against any of the Defendants under the causes of action alleged.

a Freemantle failed to allege or demonstrate he suffered a particular injury uncommon to the general public

A plaintiff must have standing to maintain an action. *Joytime Distrib & Amusement Co Inc v State*, 338 S C 634, 639, 528 S E 2d 647, 649 (1999), *Blandon v Coleman*, 285 S C 472, 475, 330 S E 2d 298, 299 (1985). See also *Brock v Bennett*, 313 S C 513, 443 S E 2d 409 (Ct App 1994) (Standing is a fundamental requirement for instituting an action, and no justiciable controversy is presented unless the plaintiff has standing to maintain the action). Standing may be acquired (1) by statute, (2) through the rubric of 'constitutional standing', or (3) under the 'public importance' exception. *ATC South Inc v Charleston County*, 380 S C 191, 669 S E 2d 337 (2008). In this case Richard Freemantle (*hereinafter* "Plaintiff" or "Freemantle") brought this action in his alleged capacity as a citizen, resident, taxpayer, and registered elector of Anderson County, South Carolina (Compl ¶ 3). Under the facts and circumstances of the case,

¹ As an initial note, Appellant's Initial Brief consistently asserts that "[t]he Respondents have claimed. At this point, Respondents believe and will respond to the initial brief as if Appellant is referring to the trial court's holdings and findings rather than Respondents with these phrases.

none of these capacities afford Freemantle adequate standing to maintain the causes of action against the Defendants, and therefore the trial court rightfully held that he failed to establish constitutional standing (Am Order at 5), *Brock v Bennett*, 313 S C 513, 519, 443 S E 2d 409, 413 (Ct App 1994) (Once is it determined that plaintiff has no standing, the court must dismiss the action)

The principle of standing under the Constitution remains “an essential and unchanging part of the case-or-controversy requirement of Article III” *Lujan v Defenders of Wildlife* 504 U S 555, 560 (1992) In South Carolina “[a] party seeking to establish standing must prove the irreducible constitutional minimum of standing” *Sloan v Greenville County*, 356 S C 531, 549, 590 S E 2d 338, 348 (Ct App 2003) The United States Supreme Court has established a three-part test for constitutional standing

First, the plaintiff must have suffered an “injury in fact”- an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual or imminent, not ‘conjectural’ or ‘hypothetical’” Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be “fairly trace[able] to the challenged action of the defendant, and not the result [of] the independent action of some third party not before the court” Third, it must be “‘likely,’ as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision”

Lujan, 504 U S at 560-61

An individual cannot maintain an action without establishing that they have personally suffered, or will likely suffer an injury that is particular as to them and not one inflicted upon the general public An injury that is common to all does not provide adequate grounds for a plaintiff to maintain suit In fact “[t]his feature of commonality defeats the constitutional requirement of a concrete and particularized injury,” and “a

taxpayer lacks standing when he suffers in some indefinite way in common with people generally” *ATC South Inc v Charleston County*, 380 S C 191, 198, 669 S E 2d 337, 341 (2008), *Florence Morning News Inc v Bldg Comm n of the City & County of Florence*, 265 S C 389, 398, 218 S E 2d 881, 884-85 (1975)(A private citizen cannot test the validity of legislative action unless he or she has sustained or will sustain some prejudice not common to the public from such action)

Freemantle, whether in the capacity of taxpayer, citizen, resident, or elector, fails to allege and cannot evidence that he has suffered a particularized injury in fact Under seven of the eleven causes of action Plaintiff has merely stated in a summarily general fashion that as a result of Defendants’ actions “Plaintiff and members of the class have been damaged, both actual and punitive [sic], for which damages” some combination of Defendants are liable (*See Compl ¶¶ 70, 77, 82, 87, 90, 93, 101*)² Under the remaining causes of action Plaintiff requests “attorneys fees and declaratory relief pursuant to FOIA and/or under the South Carolina Declaratory Judgments Act (*See Compl ¶¶ 110, 114, 122, 127*) The alleged injuries or damages Plaintiff claims to have suffered due to the individual Defendants’ actions are common to the general public, and that “commonality defeats the constitutional requirement of a concrete and particularized injury *ATC*, 380 S C at 198, 669 S E 2d at 341 Freemantle and those “similarly situated as the Plaintiff” did not have to pay more taxes as a result of the Defendants’ actions nor were they otherwise personally encumbered by them If any adverse effects stemmed from Defendants actions, they were borne by the public in general Likewise, any consequences that would flow from a court issuing a declaratory judgment

² This does not include what could be deemed the 12th cause of action Class Action Allegations under which no particular damage or injury is alleged *See Compl ¶¶ 128-32*

invalidating Preston's employment agreement and/or severance (and requiring the return of those funds), would be felt by Anderson County taxpayers, not only or uniquely Freemantle. Therefore, the trial court correctly found that Plaintiff failed to establish the preliminary and essential element required for constitutional standing.

In his initial brief, Freemantle asserts that the trial court erred in finding "the only harms alleged by the Appellant are general in nature and shared equally by the public at large" and "without a showing of direct injury the Appellant cannot establish constitutional standing, and his only avenue to standing is through the public importance exception." (App Br at 13-14). Freemantle fails however to offer any argument and/or evidence that demonstrates he has suffered a particularized injury in fact that is not shared by the general public. Nor does he cite any authority to support his position on this issue and therefore it should be deemed as abandoned. "This court has noted that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review." *Eaddy v Smurfit-Stone Container Corp*, 355 S C 154, 164, 584 S E 2d 390, 396 (Ct App 2003), *See also Glasscock Inc v United States Fid & Guar Co* 348 S C 76, 81, 557 S E 2d 689, 691 (Ct App 2001), *R & G Const Inc v Lowcountry Reg'l Transp Auth* 343 S C 424, 437, 540 S E 2d 113, 120 (Ct App 2000)(Where no authority is cited and argument in brief is conclusory, the issue is deemed abandoned), *First Sav Bank v McLean* 314 S C 361, 363, 444 S E 2d 513, 514 (1994)(Appellant was deemed to have abandoned issue where he failed to provide any argument or supporting authority.)

Putting abandonment of the issue aside, Freemantle argues that "[h]e is not suing as a member of the general public and his "interest as a taxpayer in how public funds

were spent (or wasted) gives him standing” (App Br at 14) This statement and the supporting authority cited by Freemantle in his brief is at odds with his position that the trial court erred in finding he could only establish standing via the public importance exception This Court in *Sloan v Dep t of Transportation* conferred standing upon the Plaintiff as a taxpayer under the public importance exception, not under the traditional constitutional rubric that requires claimants to have suffered a particularized injury uncommon to the general public 379 S C 160, 66 S E 2d 236 (Ct App 2008) A taxpayer may not maintain an action against government officers when he or she has “no special interest and [their] only standing is the exceedingly small interest of a general taxpayer ’ *Sloan v Greenville County*, 356 S C 531, 547, 590 S E 2d 338, 347 (Ct App 2003) Plaintiff’s own argument is one for the application of the public importance exception and in no way evidences he suffered a particular injury uncommon to the general public

Furthermore, at the hearing on Defendants Motions to Dismiss on March 17, 2010, Plaintiff’s counsel expressly recognized and conceded that the Plaintiff could only obtain standing via the public importance doctrine

THE COURT But I m just not sure there s any standing—that any individual taxpayer has a [sic] standing as a result of their taxpayer status under the law

MR GRIFFIN Well, under some of these *Sloan* cases, Your Honor, standing may be conferred upon a party when issues such as public importance as requires [sic] resolution for future guidance

THE COURT So it comes down to the public importance doctrine?

MR GRIFFIN Yes, sir

THE COURT Okay So really all these motions, if you boil them down—and ya’ll tell me if I’m wrong—it comes down to whether or not I

determine that the lawsuit comes under the public importance doctrine Is that right?

MR GRIFFIN That would be my argument, Your Honor

(Trans March 17 at pg 7 ll 5-25, pg 8 ll 1-5) Later in that same hearing Plaintiff's counsel stated ' I think this is an issue of public importance that grants my client standing He's a taxpayer He's suffered injury as a result thereof (Trans March 17 at pg 40 ll 15-18)

Freemantle has failed to allege or argue, much less establish, that he has suffered a particular injury uncommon to the general public Therefore, the trial court correctly found that he lacked constitutional standing to maintain the action (Am Order at 5)

b The trial court properly held that this matter did not justify application of the public importance exception

Freemantle challenges the trial court's finding that this matter does not warrant the application of the public importance exception (App Br at 13) He points to the allegations which allege Defendants violated the notice requirements of FOIA regarding the proper amendment of agendas (App Br at 13) Freemantle summarizes this argument stating that [w]hether or not the Council could amend the agenda during a council meeting to include a large expenditure of County funds is obviously a matter of public importance that requires guidance by the Court' *Id* What Plaintiff has failed to demonstrate, in the pleadings, during oral arguments, and in his initial appellate brief is why the court's future guidance is necessary in this instance

The "Public Importance Exception recognizes that "standing is not inflexible and [it] may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance" *Davis v Richland County Council*, 372 S C

497, 500, 642 S E 2d 740, 741 (2007) In instances which fall within the realm of the exception, standing may be found “without requiring the plaintiff to show that he has an interest greater than other potential plaintiffs” *Id* Justice Kittredge recognized in *ATC South*, “[t]he key to the public importance analysis is whether a resolution is needed for future guidance, [and] it is this concept of ‘future guidance’ that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance” *ATC South*, 380 S C at 199, 669 S E 2d at 341

The exception has been applied to declaratory judgment actions concerning the issuance of hospital bonds, the legality of a governor’s eligibility for military service, and violations of statutory bidding requirements of state agencies *See Baird v Charleston County*, 333 S C 519, 511 S E 2d 69 (1999), *Sloan v Sanford*, 357 S C 431, 593 S E 2d 470 (2004), *Sloan v Dep t of Transp*, 365 S C 299, 618 S E 2d 876 (2005) Judicial determination of those issues necessarily had broader implications outside the confines of the particular case In contrast, no future guidance can be gleaned from this case Plaintiff is attempting to invalidate a Severance Agreement between Preston and County Council Members with which he does not agree His allegations concern isolated events that produced a specific and unique outcome If the Court declared the Agreement void, its holding could not provide any “future guidance” of public importance In light of the facts and circumstances, judicial resolution of the Plaintiff’s allegations fails to rise to a level of public importance as to justify application of the standing exception

Furthermore, the Plaintiff alleges that Defendants violated a FOIA provision mandating that “[a]gendas for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours

prior to such meetings’ S C Code Ann § 30-4-80(a) The statutory language of this section is clear and it is merely a question of fact as to whether the Defendants violated it *See Hodges v Rainey*, 341 S C 79, 85, 533 S E 2d 578, 581 (2000)(‘The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature’ *Charleston County Sch Dist v State Budget and Control Bd* 313 S C 1, 437 S E 2d 6 (1993) Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute *In re Vincent J* 333 S C 233, 509 S E 2d 261 (1998) (citations omitted) Therefore, no future guidance would be had if the court afforded Plaintiff standing to address these allegations The cases under which courts have utilized the public importance exception to abrogate constitutional standing requirements involved unclear, complicated, and consequential determinations of the law and its application, not a simple finding of fact

The trial court rightly recognized that the matter did not warrant application of the exception and stated that “[o]n the contrary, any public impact resulting from the Court’s resolution of the present matter would pale in comparison to the degree, breath, and longevity of the decisions in which the exception was utilized’ (Am Order at 6) The court continued noting that plaintiff’s action seeks to redress alleged injuries/wrongs flowing from an isolated event that he can prevent from happening in the future by voting to replace those he felt wronged the taxpayers of Anderson County *Id* The trial court correctly found and held that the Plaintiff failed to demonstrate the matter is of such public importance as to warrant a grant of standing under the public importance exception

c **Freemantle failed to argue that he had statutory standing under S C Code Ann § 30-4-100**

In his initial brief, Freemantle impliedly argues that the court below should have granted him statutory standing under FOIA (App Br at 12). In a close review, Freemantle's initial brief appears to essentially quote S.C. Code Ann. § 30-4-100 although there is no indication of a quotation or citation (App Br at 12). That section of the statute provides that "[a]ny citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter." S.C. Code Ann. § 30-4-100(a). Plaintiff's entire argument on this point is one simple sentence which states "[c]learly Appellant has alleged that he is a citizen of this state" (App Br at 12). Freemantle, however, has abandoned this issue on appeal. *See Eaddy v Smu fit-Stone Container Corp*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct App 2003) ("This court has noted that short, conclusory statements made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.")

Despite the Plaintiff's abandonment of the FOIA argument, if this Court were to consider the issue, the trial court properly found Freemantle did not assert standing upon these grounds (*See Am Order* at 9). In both hearings below, Freemantle did not clearly or adequately argue that he should be granted standing under FOIA's applicable section, S.C. Code Ann. § 30-4-100. The closest Plaintiff came to doing so was in the March 17th hearing during which Plaintiff argued that

Mr. Freemantle is free to bring his FOIA claim without hindrance. That gives him standing to bring suit based on the 24-hour – the fact that they did not notice – give notice, 24-hour notice, that they were going to amend the agenda to include this over one-million-dollar severance package. Given the fact that that's such a significant event, it should have been notice [*sic*]. And therefore, FOIA was violated and Mr. Freemantle should be allowed to go forward on that issue.

(March 17 Trans at 38-39, *See also* Sept 7 Trans at 5)

Furthermore, as the trial court recognized, Freemantle failed to argue any specific injury to himself directly or proximately caused by Defendants' alleged FOIA violations (Am Order at 9) Moreover, even if the Plaintiff had successfully asserted standing upon FOIA grounds, Rule 12(b)(8) S C R Civ P would preclude him from pursuing the action (Am Order at 9 fn 2), *See also* discussion regarding Rule 12(b)(8) *infra*

Importantly, if Freemantle were afforded standing under FOIA, the applicable one year statute of limitations would greatly narrow the permissible scope of his action S C Code Ann § 30-4-100(a) provides that "[a]ny citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later" The statute of limitations forecloses Freemantle from pursuing all but one of the FOIA claims contained in the Complaint as the Defendant s alleged actions underlying the other FOIA claims all occurred more than a year prior to filing His remedies would likewise be limited to those provided by the statute *Lawson v South Carolina Dep t of Coll* , 340 S C 340, 532 S E 2d 259 (2000), *Dockins v Ingles Markets Inc* , 306 S C 496, 498 S E 2d 18, 19 (1992)("[W]hen a statute creates a substantive right and provides a remedy for infringement of that right, the plaintiff is limited to that statutory remedy ") Therefore, Freemantle would be left to pursue a singular FOIA cause of action under which he may obtain declaratory or injunctive, not monetary, relief Accordingly, the trial court

properly dismissed Freemantle's claims under S.C. R. Civ. P. 12(b)(6) and 12(b)(8) respectively

Further, FOIA claims may only be brought against a 'public body' as defined under the statute S.C. Code Ann. § 30-4-20. There is simply no statutory authority for asserting a FOIA claim against any individual employees of a government entity or an elected official.

2 The trial court properly observed that the public importance exception to general standing requirements had not been utilized in cases where the Plaintiff sought monetary relief

Freemantle argues that the trial court erred in finding that there is no authority for granting public importance standing under circumstances where money damages are sought (App. Br. at 15). However, Plaintiff does not provide citation to any cases in which public importance standing was granted to a party seeking monetary damages (See App. Br. at 15). It appears that no such cases exist. Therefore, the Court's finding that "[t]he public importance exception has been applied only when the Plaintiff sought declaratory relief" is accurate (Am. Order at 6). While Freemantle is correct in that the question of whether a party granted standing under the public importance exception may claim money damages has not been decided by the courts of this State, he fails to address the glaring contradiction that his pleas for economic relief present. The court below recognized the contrarian dilemma this would pose and viewed Freemantle's pleas for monetary relief as further evidence that the action "is a much more private endeavor rather than one undertaken for the greater public good" (Am. Order at 8). A party's plea for money damages directly contravenes the argument that the matter is one of public importance, as only the individual litigant benefits from economic relief. Therefore,

allowing a party to abrogate the constitutional standing requirements via the public importance exception should remain reserved for those cases in which the Plaintiff seeks relief beneficial to the general public rather than pursuing personal economic gain. See *Baird v Charleston County*, 333 S C 519, 511 S E 2d 69 (1999), *Sloan v Sanford*, 357 S C 431, 593 S E 2d 470 (2004), *Sloan v Dep t of Transp*, 365 S C 299, 618 S E 2d 876 (2005)

3 The trial court properly found that Defendants Wilson, McAbee, Greer, Thompson, and Floyd as individuals would be entitled to legislative immunity for claims arising out of their actions as Anderson County Council members

a Defendants' actions in the voting process that approved Preston's severance agreement were acts undertaken in their official roles as council members for which they have legislative immunity

The court below found that if the issue had been reached, it would have granted legislative immunity to Defendants Wilson, McAbee, Greer, and Thompson (Am Order at 16). In making its ruling, the court noted this State's long honored public policy of recognizing an absolute immunity of members of legislative bodies for acts in the performance of their duties. *Id.* citing *Richardson v McGill*, 273 S C 142, 146, 255 S E 2d 341, 342 (1979). Freemantle alleged impropriety in the voting process in which these Defendants participated as members of Anderson County Council. A government employee's participation in this process remains the quintessential discretionary act of legislators. The court below opined that 'there is no duty more essential to the position of a County Council member than voting' and "Defendants actions in this regard constitute discretionary actions for which they are immune from liability' (Am Order at 16).

Defendants Wilson, McAbee, Greer, Thompson, and Floyd were all members of Anderson County Council which voted to approve Preston's severance agreement. The Plaintiff has alleged impropriety in the voting process and challenged the motivations behind the votes. These Defendants' actions in the voting process qualify as legislative actions for which legislative immunity must apply.

In addition, the South Carolina Torts Claims Act, S.C. Code Ann. § 15-78-10 *et seq.*, is the "exclusive remedy available for any tort committed by an employee of a governmental entity" as well as the entity's officers and agents, including elected officials. S.C. Code Ann. § 15-78-30(c). The Tort Claims Act serves as a limited waiver of sovereign immunity and expressly preserves common law immunities, which includes legislative immunity. Nevertheless, the legislature specifically provided that governmental entities, and likewise its elected officials, are not liable for a loss resulting from legislative action or inaction, nor are they liable for administrative action or inaction of a legislative nature. S.C. Code Ann. §§ 15-78-60(1), (2). These individual Defendants are entitled to common law and statutory legislative immunity pursuant to the South Carolina Tort Claims Act, specifically S.C. Code §§ 15-78-60(1) and (2).

The Tort Claims Act not only constitutes the exclusive civil remedy for any tort committed by an employee of a government entity but also explicitly provides that the entity for whom the employee is acting be named as the party defendant, not the employee himself. S.C. Code § 15-78-70. From the outset, Anderson County was a named Defendant in this matter. The Plaintiff's allegations against the individual Defendants involve their votes on a personnel matter and actions in their official capacities. There are no allegations made against these Defendants which involve actions outside their role as council members.

The trial court correctly ruled that legislative immunity barred all of the Plaintiff's claims against these Defendants. Assuming arguendo that the dismissal of all of the Plaintiff's claims against these individuals was not proper, the Tort Claims Act would still mandate a dismissal of the individual Defendants. If the Plaintiff is permitted to seek redress for these claims, the proper Defendant is Anderson County, not its elected officials.

Freemantle has failed to argue these Defendants acted in a manner that precludes legislative immunity. Despite Defendants addressing legislative immunity during the hearings on this matter at length, Freemantle was silent on this issue. *See* (Trans March 17), *See also* (Trans Sept 7 at 5 ll 4-7) (While arguing for standing to maintain his RICO claim and other causes of action, Freemantle mentions discretionary actions however does not argue against legislative immunity). In his initial brief, Freemantle mirrors the argument set forth in his Memorandum in Opposition to Defendant's Motions to Dismiss (*See App Br at 16, Memo Opp Mot Dis at 11-12*). Freemantle argues that because he alleged Defendants' actions in approving Preston's severance agreement were illegal, they should not be entitled to legislative immunity (*App Br at 16*). He provides no alleged factual basis for this claim other than citing the Amended Complaint which sets forth allegations of civil conspiracy. *Id.* The mere allegation of illegal conduct cannot serve to preclude legislative immunity. Freemantle has utterly failed to allege that these Defendants' actions should not be afforded legislative immunity.

Practicality in the name of government efficiency mandates that government officials be able to exercise their personal judgment and take legislative action, i.e. vote, without fear of personal retribution from unsupportive constituents. If each action an elected official took risked personal liability for any losses or injury that may result,

government entities and employees would be paralyzed by fear of liability. The trial court properly found that if Freemantle's lack of standing were not dispositive of the issue, then Wilson, McAbee, Greer, Thompson, and Floyd should all be afforded legislative immunity for their discretionary actions. (Am Order at 16)

b Parliamentary irregularities cannot invalidate contracts and the issue represents a nonjusticiable political question

Judicial scrutiny of the legislature's discretionary actions violates the political question doctrine.³ In this action Freemantle attempts to obtain a declaratory judgment that Preston's Severance Agreement was/is "void because it was signed, prepared and agreed upon in violation of FOIA's requirements of open and honest government" (Compl ¶ 109). Nevertheless, judicial scrutiny of these alleged parliamentary irregularities is an issue that represents a nonjusticiable political question.

The nonjusticiability of a political question is primarily a function of the separation of powers. *Baker v Carr*, 369 U.S. 186, 210-11 (1962). The Political Question Doctrine excludes from judicial review those controversies that revolve around policy decisions, legislative procedures, and the like, which are committed to the halls of the legislatures. *South Carolina Public Interest Foundation v Judicial Merit Selection Comm*, 369 S.C. 139, 142, 632 S.E.2d 277, 278 (2006). Courts will not rule on questions which are predominately political in nature. *Chicago & S. Air Lines v Waterman S.S. Corp. Civil Aeronautics Board*, 333 U.S. 103, 111 (1948).

³ The restrictions on a court's ability to address political questions was addressed by the South Carolina Supreme Court in *Wilson v Preston*, wherein Chief Justice Toal and Justice Pleicones opined that the case was an issue of political question and should not have been before the court. *Wilson v Preston* 378 S.C. 348, 360-61, 662 S.E.2d 580-586 (2008). Chief Justice Toal concurring in separate opinion in which Justice Pleicones concurred ([I]ssues related to the propriety of Respondent's actions present purely political questions the resolution of which rests solely within the Council's domain)

It was previously argued by other taxpayers that Anderson County resolutions were passed contrary to the procurement code and potentially in violation of FOIA. In that case, this Court found that it is improper for the judiciary to referee procedural disputes in order to resolve allegations that council actions violated FOIA. In *Bradshaw v Anderson County*, C A No. 2009-CP-04-00491, citizens challenged the hiring by Council of an auditor and the Nexsen Pruet law firm to conduct an investigation. One challenge they mounted was that the hiring was not done in accordance with the requirements of FOIA because it was not listed on the agenda.⁴ Anderson County submitted a proposed order, which the trial court adopted, rejecting the argument

[T]he Court finds that it would not be appropriate for the Court to sit as in effect a parliamentarian for the County Council reviewing each of its motions and committee appointments. See South Carolina Public Interest Foundation v The Judicial Merit Selection Commission, 369 S C 139, 143, 632 S E 2d 277, 278 (2006) ("the courts will not rule upon question which are exclusively or predominantly political in nature rather than judicial"). Also, it is undisputed that each of the resolutions at issue passed by two thirds of the Council members present and voting. Section 2-38(c)(5) of the Anderson County Code provides that "[n]o advance notice of such introduction of an ordinance or resolution shall be required if so approved by two thirds of the members present and voting."

(Order of March 26, 2009 at 15-16) (emphasis added)

It also bears noting that Appellant's FOIA related causes of action are statutory creations. Therefore, the sole remedies Freemantle may seek are provided by statute. *Lawson v South Carolina Dept of Corr*, 340 S C 340, 532 S E 2d 259 (2000) ("[W]hen a statute creates a substantive right and provides a remedy for infringement of that

⁴ FOIA provides that "[a]genda, if any, for regularly scheduled meetings must be posted on a bulletin board at the office or meeting place of the public body at least twenty-four hours prior to such meetings." S C Code Ann. § 30-4-80(a) and that "[a]ll public bodies shall notify persons or organizations, local news media, or such other news media as may request notification of the agenda of all public meetings." *Id.* § 30-4-80(a).

right, the plaintiff is limited to that statutory remedy), *Dockins v Ingles Markets Inc* , 306 S C 496, 413 S E 2d 18 (1992) The alleged violation of this procedural statute cannot serve to invalidate or void Preston s Severance Agreement because the statute does not allow such a remedy Without a statutory provision providing that a FOIA violation can serve to void a contract, Freemantle may not seek to do so

In sum, any alleged procedural deficiency cannot invalidate a binding contract Likewise, this Court should not address the vague, underdeveloped and naked allegations concerning alleged FOIA violations because such an inquiry, without more, would violate the Political Question Doctrine

Therefore, the trial court properly held as an alternative that if its ruling on the standing issue were not dispositive of the entire matter, the court would have granted legislative immunity to Defendants Wilson, McAbee, Greer, Thompson, and Floyd as their alleged actions of which Freemantle complains, were discretionary acts taken in their official capacities as members of Anderson County Council (Am Order at 16)

4 The trial court properly found that Plaintiff's claims would be further barred under Rule 12(b)(8) of the South Carolina Rules of Civil Procedure

Rule 12(b)(8) of the South Carolina Rules of Civil Procedure provides that an action should be dismissed if "another action is pending between the same parties for the same claim " In the present case, the Plaintiff names, Joey Preston, Anderson County and the other individual Defendants, all as defendants in this case In essence, the Plaintiff's Complaint seeks to undo the Severance Agreement granted by Anderson County to Joey Preston and to hold Preston, along with the individual defendants, liable to him personally for their votes in favor of the Severance Agreement The case of *Anderson County v Joey*

Preston and the South Carolina Retirement System, C A No 2009-CP-04-4482, which is pending in the Anderson County Court of Common Pleas, before the same trial judge, also seeks to revoke the Severance Agreement granted to Preston. The Plaintiff's suit, in this respect, is duplicative. The Anderson County case involves the same substantive issues raised by the Plaintiff, involves the true parties in interest, and is pending in the same court before the same judge. Therefore, the trial court properly found that even if the Plaintiff were granted standing for this suit, all of his claims should be dismissed pursuant Rule 12(b)(8), SCRCP (Am Order at 16-17)

In his initial brief, Freemantle argues that Rule 12(b)(8) is not applicable in this instance as no identity of parties, causes of action, or relief sought exist (App Br at 17). He notes that this Court recently ruled that "12(b)(8) must be interpreted narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8)" (App Br at 17) *citing Capital City Ins Co v BP Staff Inc*, 382 S C 92, 100, 674 S E 2d 524 (Ct App 2009). Freemantle's notion of identity in this context centers on precise mirror images of parties, causes of action, and relief between the two cases. Under the Plaintiff's argument one additional cause of action or plea for attorneys' fees in one case but not the other precludes application of Rule 12(b)(8). Such a treatment of the Rule unnecessarily constrains its applicability and ignores both its purpose and spirit. Rule 12(b)(8) seeks to promote judicial economy by disposing of unnecessarily similar actions. *See Capital City Ins Co v BP Staff Inc*, 382 S C 92 103 674 S E 2d 524, 530 (Ct App 2009) ("The court has broad discretion in its supervision over the progression and disposition of a circuit court case in the interests of justice and judicial economy ')

In this instance the trial judge presiding over both cases recognized that the essential parties, causes of action, and relief sought were identical in each proceeding and arose from the same facts and circumstances (Am Order at 16-17) Therefore, the trial court properly found that, its ruling on the standing issue aside, Rule 12(b)(8) would bar Plaintiff from pursuing the present action (Am Order at 16-17)

5 The trial court properly held that Freemantle’s lack of standing on his individual claims precludes him from proceeding with any putative class causes of action

a A litigant must have standing before proceedings with any putative class causes of action

Rule 23 of the South Carolina Rules of Civil Procedure establishes the prerequisites for a plaintiff seeking to bring a class action Before a class can be certified, a court must find that (1) the class is so numerous that joinder of all parties is impracticable, (2) there are questions of law or fact in common to the class, (3) the claims or defenses of the representative parties are typical to those of the class, (4) the representative parties will fairly and adequately protect the interests of the class, and (5) the amount in controversy exceeds one hundred dollars for each member of the class S C R Civ P 23

Before a class action suit can be certified, an individual or group must have standing to bring the action *Owens v Magill*, 308 S C 556, 419 S E 2d 786 (1992) A party without standing cannot ‘fairly and adequately protect the interests of the class’ as they lack the ability to proceed with the action Therefore, the trial court properly found Freemantle’s lack of standing precludes him from proceeding with any putative class causes of action (Am Order at 10)

Freemantle addresses this issue in one sentence in his initial brief stating that “[t]his ruling was premature since no motion for class certification has been made ’ (Ap Br at

17) Plaintiff does not offer any argument or evidence to support this declaration. Nor does he cite any authority, legal or otherwise, to support the declaration. Therefore, Freemantle has again effectively abandoned this issue on appeal. *Eaddy v Smu fit-Stone Container Corp*, 355 S C 154, 164, 584 S E 2d 390, 396 (Ct App 2003), *See also Glasscock Inc v United States Fid & Guar Co* 348 S C 76, 81, 557 S E 2d 689, 691 (Ct App 2001), *R & G Constri Inc v Lowcountry Reg'l Transp Auth* 343 S C 424, 437, 540 S E 2d 113, 120 (Ct App 2000) (where no authority is cited and argument in brief is conclusory, issue is deemed abandoned), *Fust Sav Bank v McLean* 314 S C 361, 363, 444 S E 2d 513, 514 (1994) (appellant was deemed to have abandoned issue where he failed to provide any argument or supporting authority). Furthermore, the trial court did not rule on certification of a putative class, but rather held that Freemantle's lack of standing precluded him from proceeding with the putative class causes of action. (Am Order at 9-10). The trial court properly dismissed the Plaintiff's class action claims due to his lack of standing. (Am Order at 10).

6 The trial court properly held that Freemantle failed to properly amend his Complaint

a Freemantle failed to adhere to the requirements of Rule 15 S C R Civ P governing amendment of pleadings

Plaintiff filed the original Complaint on November 16, 2009. Defendants filed motions to dismiss on January 13, 15, and 19, 2010. The evening before the trial court was scheduled to hear oral arguments on Defendants' motions to dismiss, Freemantle filed an Amended Complaint adding the RICO claim as an additional cause of action. Plaintiff filed his amended pleadings without obtaining or even seeking either leave of the Court or Defendants' consent.

Rule 15 provides that

A party may amend his pleadings once as a matter of course at any time before or within 30 days after a responsive pleading is served or if the action has not been in place on the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party.

S C R Civ P 15 The Rule is clear that the time for amendment starts to run when a responsive pleading is served. In this action, Defendants did not file responsive pleadings, but rather filed motions to dismiss. Rule 7(a) pertaining to pleadings includes “a complaint, an answer, a reply to a counterclaim, an answer to a cross-claim, a third party complaint [and] a third party answer.” S C R Civ P 7(a). As the statutory interpretation maxim says, the inclusion of the few is to the exclusion of all others. Defendants’ motions to dismiss were not “responsive pleadings” as contemplated under the Rules. At the time Plaintiff attempted to amend his complaint, the trial was on the roster, thus leaving him with the option to either obtain leave of the court or consent of the Defendants’ to amend his pleadings. By failing to even attempt either, Freemantle did not adhere to the requirements of Rule 15. Therefore, the trial court properly found Plaintiff impermissibly amended his pleadings and should not be allowed to pursue his RICO claims. (Am Order at 14-15)

V Conclusion

Taken in a light most favorable to the Plaintiff, the trial court's holdings and rulings in its Amended Order were justified and proper under the facts and circumstances

Freemantle failed to establish the fundamental constitutional requirement for instituting and maintaining an action, standing. Nowhere in the proceedings below did Freemantle adequately allege, argue, or otherwise establish that he suffered a particular injury in fact uncommon to the general public. The Plaintiff's failure in this regard foreclosed him from establishing standing under the traditional constitutional rubric. Nor does Freemantle's suit justify the application of the public importance exception to abrogate the constitutional standing requirement as no future guidance can be gleaned from judicial resolution of the matter. The Plaintiff failed to demonstrate, in his pleadings, during oral arguments, and in his initial appellate brief, why the court's determination of whether a Severance Agreement between the former County Administrator and the County was properly entered into and binding is necessary to provide others future guidance. Without this quintessential feature, the public importance exception to traditional standing requirements has not, and should not be applied. Also, Freemantle's attempt to plead for monetary damages further evidences the fact that his pursuit is personal rather than for the greater public good. The trial court properly recognized the contrarian dilemma allowing a claimant who is afforded standing under the public importance exception to pursue personal monetary relief presents, and refused to allow Freemantle to utilize the doctrine for his personal gain. Furthermore, Freemantle failed to argue he should have been afforded standing under S C Code Ann § 30-4-100 of FOIA. As with other issues noted above, Freemantle failed to clearly

argue this point in his initial brief and therefore has abandoned this issue on appeal. That aside, even if the Plaintiff lodged adequate arguments on his issue, his maintenance of any FOIA causes of action would be severely limited by the applicable statute of limitations and remedies provided under the Act, if the action were not further barred under Rule 12(b)(8) S C R Civ P.

As the trial court properly recognized, that another action is currently pending in the same court, before the same judge, which involves the same substantive issues, and the true parties in interest would further bar Freemantle's action under Rule 12(b)(8) if his lack of standing were not dispositive of the suit.

The trial court also properly held that the individual Defendants, Wilson, McAbee, Greer, Thompson, and Floyd would be entitled to legislative immunity for the claims arising out of their actions as Anderson County Council members. These individuals' participation in a legislative voting process constituted a quintessential action of their duties as legislators. The court below properly foreclosed the Plaintiff from his pursuit to hold these individuals personally liable for alleged injuries or damages that flowed from actions taken in their official capacities. Furthermore, judicial scrutiny of the alleged legislative procedural irregularities presents a nonjusticiable political question.

In sum, Freemantle has alleged many errors on behalf of the trial court below however he has failed to present adequate argument(s) or evidence which would justify reversal of the trial court's dismissal. Likewise, in the proceedings below Freemantle fell markedly short in arguing and establishing that he had standing to pursue the current action. For the reasons set forth above, the Plaintiff should not be allowed to maintain the current action and therefore the trial court's dismissal should be affirmed.

June 20, 2011

The Honorable Tanya A. Gee
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

JUN 22 2011

SC Court of Appeals

Re ***Freeman v Preston, et al***
 Case No 2009-CP-04-4528

Appeal Tracking No 2010181306

Dear Ms. Gee

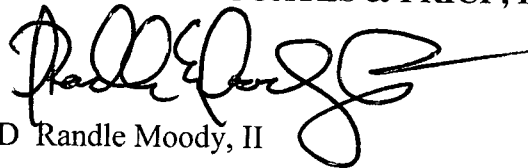
Enclosed please find the original and one copy of **Appellant's Initial Brief and Designation of Matter** in the above-referenced appeal. Also enclosed is a Proof of Service for the same. Please file the enclosed documents in your usual manner and kindly return a clocked copy of the same to me in the stamped, self-addressed envelope provided herein.

If you have any questions or concerns, please do not hesitate to call.

With highest regards,

Very truly yours,

ROE CASSIDY COATES & PRICE, P A



D. Randle Moody, II

DRM esg
Enclosures (as stated above)

cc Charles R. Griffin, Jr
Chuck Allen
Candy Kern-Fuller
James W. Logan, Jr
Kate A. Rice
Kevin William Sturm

The South Carolina Court of Appeals

Richard Freemantle, individually and
on behalf of himself and all others
similarly situated, Appellant,

v

Joe Preston, in his official capacity and
individually, while administrator of
Anderson County, Anderson County, a
political subdivision of the state of
South Carolina, Anderson County
Council, the Legislative and Executive
body of Anderson County, Ron Wilson,
in his official capacity and individually,
Bill McAbee, in his official capacity
and individually, Larry Greer, in his
official capacity and individually,
Michael Thompson in his official
capacity and individually, Gracie
Floyd, in her official capacity and
individually, Respondents

The Honorable J Cordell Maddox, Jr
Anderson County
Trial Court Case No 2009-CP-04-04528

ORDER

Pursuant to a telephone conference with the parties, the Respondents' Initial Brief and
Designation of Matter are due June 20, 2011

IT IS SO ORDERED

JOHN CANNON FEW, CHIEF JUDGE

BY James H. Griffin
Clerk

Columbia, South Carolina

cc Charles R Griffin, Jr, Esquire
Candy M Kern-Fuller, Esquire
D Randle Moody, II, Esquire
Joseph O Smith, Esquire
Donald L Chuck Allen, Esquire
James W Logan, Jr , Esquire
Kate A Rice, Esquire
Kevin William Sturm, Esquire

FILED
4/2/11

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HONORABLE J CORDELL MADDOX

CASE NO 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself
and all others similarly situated APPELLANT

VS

JOEY PRESTON, in his official capacity and individually, while administrator of ANDERSON COUNTY, ANDERSON COUNTY, a political subdivision of the state of SOUTH CAROLINA, ANDERSON COUNTY COUNCIL, the Legislative and Executive body of ANDERSON COUNTY, RON WILSON, in his official capacity and individually, BILL MCABEE, in his official capacity and individually, LARRY GREER, in his official capacity and individually, MICHAEL THOMPSON, in his official capacity and individually, GRACIE FLOYD, in her official capacity and individually RESPONDENTS

DESIGNATION OF MATTER TO BE INCLUDED ON THE RECORD OF APPEAL

- 1 Summons & Complaint filed November 16, 2009
- 2 Motion/Dismiss a Frivolous Lawsuit and Motion for Sanctions filed December 30, 2009
- 3 Return to Motion to Dismiss a Frivolous Lawsuit filed January 7, 2010
- 4 Motion to Dismiss Filed January 15, 2010
- 5 Motion to Dismiss filed January 15, 2010
- 6 Motion to Dismiss filed January 19, 2010
- 7 Motion to Dismiss Filed January 19, 2010
- 8 Amended Complaint filed March 16, 2010
- 9 Order/Form 4 filed March 18, 2010
- 10 Motion/Dismiss a Frivolous Lawsuit and Motion for Sanctions filed March 22, 2010
- 11 Motion to Dismiss filed March 30, 2010
- 12 Motion to Dismiss filed April 16, 2011
- 13 Memo/Memorandum Of Law filed September 7, 2010

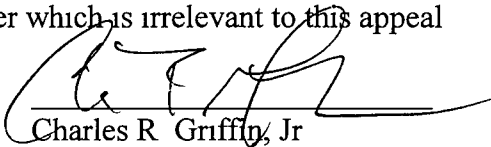
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SC Court of Appeals

- 14 Order/Form 4 filed September 8, 2011
- 15 Memorandum of Law Exhibit & Receipt Form filed September 9, 2010
- 16 Plaintiff's Objections to Proposed Order Dismissing Action filed September 28, 2010
- 17 Order filed September 28, 2010
- 18 Motion to Reconsider filed October 14, 2010
- 19 Amended Motion to reconsider filed October 15, 2010
- 20 Amended Order filed November 10, 2010
- 21 Summons and Complaint filed in Anderson County vs Joey Preston et al civil action number 2009CP0404482
- 22 Transcript

I certify that this designation contains no matter which is irrelevant to this appeal



Charles R. Griffin, Jr
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864-231-8870
Fax 864-231-7797

Dated April 3, 2011

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HON J CORDELL MADDOX

CASE NO 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself and all others
similarly situated APPELLANT

VS

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Anderson County, ANDERSON COUNTY, a political Subdivision of the State of South
Carolina, ANDERSON COUNTY COUNCIL, The Legislative and Executive Body of
Anderson County, RON WILSON, in His Official Capacities and Individually, BILL
MCABEE, in His Official Capacities and Individually, LARRY GREER, in His Official
Capacities and Individually, MICHAEL THOMPSON, in His Official Capacities and
Individually, GRACIE FLOYD, in Her Official Capacities and Individually,
RESPONDENTS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that she served the Designation of Matter to
Be Included on the Record of Appeal and Initial Brief of Appellant on the Respondents
by mailing a copy of the same to the attorney's of record for the Respondents via United
States Postal Service at the addresses listed below

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APR 15 2011
SC Court of Appeals

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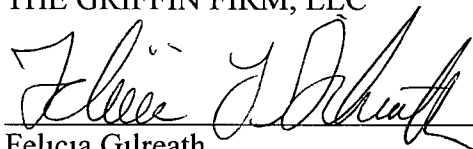
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THE GRIFFIN FIRM, LLC

BY



Felicia Gilreath

Dated April 4, 2011



**Law Offices of
The Griffin Firm, L L C**

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Phone (864) 231-8870 • Fax (864) 231-7797

April 14, 2011

South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

RE Freemantle V Preston, et al
Case No 2009-CP-04-4528

Dear Sir/ Madam

Please find enclosed, for filing purposes, the original Designation of Matter and Initial Brief of Appellant regarding the above captioned case along with the Certificate of service for the same

By copy of this letter, we have notified all counsel of record that we have now filed the ORIGINAL document with the court

If you have any questions, please call

Sincerely,

A handwritten signature in black ink, appearing to read "Felicia Y Gilreath".

Felicia Y Gilreath,
Assistant to Charles R Griffin, Jr

RECEIVED
APR 15 2011
SC Court of Appeals

/fyg
Enclosures

Cc James W Logan, D Randall Moody II, Kevin William Sturm, Candy Kern-Fuller, Chuck Allen, Kate Rice, Joseph O Smith

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HONORABLE J CORDELL MADDOX

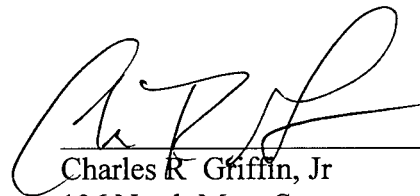
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Executive body of ANDERSON COUNTY, RON WILSON, in his official capacity and
individually, BILL MCABEE, in his official capacity and individually, LARRY GREER,
in his official capacity and individually, MICHAEL THOMPSON, in his official capacity
and individually, GRACIE FLOYD, in her official capacity and individually
RESPONDENTS

INITIAL BRIEF OF APPELLANT



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864-231-7797 (fax)
Attorney for Appellant

April 3, 2011

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Rule 12(b)(8), SCRCF

Rule 12(b)(6), SCRCF

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Charleston County Parents for Pub Schs Inc v Moseley 343 S C 509, 513, 541 S E 2d 533, 535 (2001)

Overcash v S C Elec & Gas Co , 364 S C 569, 572, 614 S E 2d 619, 620 (2005)

Sloan v School District of Greenville County, 342 S C 515, 537 S E 2d 299 (Ct App 2000)

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Piedmont Public Service Dist v Douglas W Cowart, 478 S E 2nd 836 (SC 1996)

Florence Morning News, Inc v Building Comm'n 265 S C 389, 218 S E 2d 881 (1975)

Citizens of Lee County Inc v Lee County, 308 S C 23, 416 S E 2d 641 (1992)

Owens v Magill 308 S C 556, 419 S E 2d 786 (1992)

Richland County Historic Pres Comm'n, 325 S C 79, 480 S E 2nd 72 (SC 1997)

Sloan v Greenville County 590 S E 2nd 338, 356 S C 531 (Ct App 2003)

Jackson v Atlantic Soft Drink Co 286 S C 577, 336 S E 2d 13 (1985)

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Frazier v Badger, 361 S C 94, 101, 603 S E 2d 587, 590 (2004)

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Brown v County of Berkeley, 366 S C 354, 622 S E 2nd 523 (2005)

Capital City Ins Co v BP Staff, Inc , 382 S C 92, 100, 674 S E 2nd 524 (Ct App 2009)

S C Public Serv Comm'n v City of Rock Hill 268 S C 405, 408, 234 S E 2d 228, 229
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STATEMENT OF ISSUES ON APPEAL

- I Did the Trial Court err in holding that Appellant lacked standing to assert these claims against these Respondents?
- II Did the Trial Court err in holding that Appellant could not assert a claim for money damages against these Respondents?
- III Did the Trial Court err in holding that Respondents Wilson, McAbee, Greer, Thompson and Floyd were entitled to absolute immunity?
- IV Did the Trial Court err in holding that Appellant could not proceed with the putative class action?
- V Did the Trial Court err in holding that Appellant's claims were barred by Rule 12(b)(8) of the South Carolina Rules of Civil Procedure?

STATEMENT OF THE CASE

This case challenges the legality of the Respondents' actions, conduct and/or omissions regarding the institution of, participation in and implementation of a Severance Package (hereinafter "Severance Agreement" or "Settlement Agreement"), that unlawfully awarded Respondent Joey Preston (hereinafter Preston) approximately \$1,139,833 00 in direct cash transfers plus title to the County's luxury 2006 Yukon Denali SUV Comp ¶ 2 Further, the Appellant instituted this action on behalf of himself and all class members for Damages and Declaratory Relief to remedy the Respondents' violations of § 30-4-10 et seq S C Code of Laws Ann (Freedom of Information Act) (hereinafter referred to as FOIA), § 15-53-10 et seq S C Code of Laws Ann (Uniform Declaratory Judgments Act), Covin and Collusion, Breach of Fiduciary Duty, Aiding and Abetting Breach of Fiduciary Duty, Prohibition Against Illegal Gifts of County Funds, Misfeasance, Malfeasance, Civil Conspiracy, violations of Public Policy and Racketeer Influenced and Corrupt Organizations Act (RICO) 18 U S C §1962 et seq

Preston asserted that he and Anderson County were bound by an employment agreement contract signed in 1998 which allegedly annually renewed for three years unless one of the parties gives notice of non-renewal The terms of the contract provide an extremely generous cost-prohibitive termination provision to Preston should the County decide to terminate his employment Comp ¶ 18

Respondent Ron Wilson (hereinafter Ron Wilson) at the Council meeting on November 18, 2008, presented a five-page Severance Agreement and made a motion to approve the Severance Agreement The Severance Agreement awarded Preston approximately \$1,139,833 00 in direct cash transfers plus title to the County's luxury

2006 Yukon Denali SUV The Severance Agreement further in paragraph 8 purportedly protects Preston from any lawsuit by the County against Preston even if the County later discovers that he has embezzled funds, defrauded taxpayers, or engaged in other civil or criminal violations of the rights of Anderson County taxpayers which include those rights of Appellant and members of the class Comp ¶ 31

Immediately after Ron Wilson presented the Severance Agreement to the Council and at the same Council meeting November 18, 2008, Respondent Larry Greer (hereinafter Greer) presented the Council with a three-page list of accounts from which he proposed transferring funds to provide for the funds necessary to implement Ron Wilson's proposed Severance Agreement For an unknown reason, the total transfer on Greer's list of accounts and amounts was \$1,140,122 00 exceeding the amount on the Severance Agreement by \$289 00 Comp ¶ 32

Ron Wilson's intention to present the Severance Agreement to the Council was not on the agenda despite a prior intention to address the issue and ample time to get the matter on the agenda and provide the public with the notice required under FOIA, all in violation of and prohibited by FOIA Comp ¶ 34

The reasons for the Severance Agreement were not presented and have not been explained, and the taxpayers have no way of determining why they were and are paying a government employee a Severance Agreement of more than \$1 Million on a void and/or voidable contract Comp ¶ 35

During 2008, Preston approved Respondent Michael Thompson's (hereinafter Thompson) attending training for his anticipated employment with Anderson County all at Anderson County's expense, which expenses included, hotels, meals and mileage, both

before and after Council's consideration of Preston's claims and severance agreement
Comp ¶ 44

In June of 2008, Thompson falsely told the Anderson Independent newspaper that he had no intention of becoming a county employee. Preston did not correct this false statement. Comp ¶ 45

Thompson was under consideration for county employment at the time the Council considered Preston's claims for over One Million Dollars, at the time the Council, and at the time Thompson voted for the Severance Agreement, for the payments to and for Preston, and for related motions. Comp ¶ 46

Thompson voted for this Severance Agreement and payments to Preston of over One Million Dollars without ever reading the Severance Agreement. Comp ¶ 47

After the Council Vote on November 18, 2008, Thompson received training at Anderson County Expense, with Preston's approval. Comp ¶ 52

Ron Wilson was chair of the Personnel Committee, to which the Council referred Preston's claims against Anderson County. Under Ron Wilson's leadership, the Personnel Committee oversaw the negotiations of Preston's Severance Agreement. Wilson made the that the Council approve Preston's Severance Agreement, Ron Wilson voted in favor of the Severance Agreement, and Ron Wilson voted in favor of other motions related to the Severance Agreement. Comp ¶ 54

On or about September 4, 2007, on behalf of Anderson County, Preston signed a contract with the consulting company of the daughter of Ron Wilson for consulting services related to Agricultural programs. That contract provided that it was a month to

month contract and that the rate of payment was a fixed hourly rate of \$65 00 per hour
Comp ¶ 55

On or about November 1, 2008, while Preston's claims were pending before
Council, and under consideration and negotiation by Ron Wilson's Personnel Committee,
and before Ron Wilson Proposed the Severance Agreement with proposed payments in
excess of One Million Dollars to and for the benefit of Preston, Preston entered into a
new contract with the consulting company of Ron Wilson's daughter that significantly
improved the benefits to the consulting company of Wilson's daughter Comp ¶ 56

Specifically, the new contract increased the hourly rate to \$75 00, provided yearly
increases in the hourly rate so that it increased to \$95 00 per hour, provided payments for
the additional employees of the consultant, and provided that it was a contract for a
definite term of three years, rather than a month to month contract. Additionally, the
November 1, 2008 contract provided for liquidated damages in case Anderson County
terminated the contract prior to the expiration of three years. If Anderson County had
decided to terminate the contract, it could have resulted in liquidated damages of over
\$300,000 00 to the consulting company of Wilson's daughter Comp ¶ 57

Additionally, at the November 18, 2008 meeting after the approval of Preston's
Severance Agreement, Respondent Gracie Floyd (hereinafter Floyd) purportedly moved
to fire Preston as County Administrator and hire Cunningham as County Administrator.
Floyd seemingly produced out of thin air a three year contract for Cunningham to
execute Comp ¶ 59

Also, on or about June 19, 2008 Anderson County purchased approximately 76 25
acres off Old Portman Road, on September 18, 2008 Anderson County purchased

approximately 7 00 acres off Scarborough Road, and on or about September 18, 2008 Anderson County purchased approximately 9 16 acres off Dobbins Bridge Road, the total purchase price for these three properties (hereinafter “properties”) was approximately \$1,344,275 00 Preston (as Administrator), expressly or by implication, approved the purchase of the properties for the aforementioned purchase price Comp ¶ 60

Allison Properties was the sales agent in the transaction regarding the purchase of the properties On information and belief, Allison Properties received approximately \$27,390 00 in commissions from the purchase of the properties At the time Anderson County purchased the properties, Respondent Bill McAbee (hereinafter McAbee) and Ms Amy Plummer (an associate of McAbee) were affiliated with Allison Properties Further, Amy Plummer was a member of the economic advisory board Comp ¶ 61

The purchase of the properties was consummated in order to generate commissions for the benefit of McAbee and Amy Plummer Interestingly, the purchase of the properties and payment of commissions was near the time Preston presented his September 25, 2008 letter to Council raising the allegations of purported anticipatory breach of contract Comp ¶ 62

The McAbee filed a Motion to Dismiss on December 30, 2009 The Respondents Anderson County and Anderson County Council filed Motions to Dismiss on January 15, 2009 Floyd, Greer, Bill, Thompson, Preston and Ron Wilson filed Motions to Dismiss on January 19, 2010 On March 16, 2010, Appellant filed an Amended Complaint

On March 17, 2010 a hearing was held before the Hon J Cordell Maddox who issued a form 4 Order dismissing Appellant’s initial complaint on March 18, 2010 On March 22, 2010 McAbee filed a Motion to Dismiss Appellant’s Amended Complaint On

March 30, 2010 Respondent Anderson County filed a Motion to Dismiss Appellant's Amended Complaint Floyd, Greer, McAbee, Thompson, Preston and Ron Wilson filed Motions to Dismiss Appellant's Amended Complaint on April 16, 2010

On September 7, 2010 Appellant filed a Memorandum in Opposition to Respondents' Motions to Dismiss On September 7, 2010 Floyd, Greer, McAbee, Thompson, Preston and Ron Wilson filed a Memorandum in Support of Respondents' Motions to Dismiss

On September 7, 2010 a hearing was held before the Honorable J Cordell Maddox and on September 8, 2010 issued a Form 4 Order dismissing Appellant's Amended Complaint

On September 28, 2010 the Honorable J Cordell Maddox issued a Formal Order relating to the March 17, 2010 hearing Thereafter on October 14, 2010 Appellant filed a Motion to Reconsider the Order issued September 28, 2010 On October 15, 2010 Appellant filed an Amended Motion to Reconsider the Order issued September 28, 2010

On November 22, 2010, the Honorable J Cordell Maddox issued an Amended Order dismissing Appellant's action

On December 9, 2010 Appellant filed a Notice of Intent to Appeal the Honorable J Cordell Maddox's Amended Order dated November 22, 2010

ARGUMENTS

1 DID THE TRIAL COURT ERR IN HOLDING THAT APPELLANT LACKED STANDING TO ASSERT THESE CLAIMS AGAINST THESE RESPONDENTS?

The Respondents claim that Appellant failed to assert standing upon the South Carolina Freedom of Information Act (FOIA) FOIA provides in relevant part (a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists (b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof Clearly Appellant has alleged that he is a citizen of this state ¶ 3of complaint states "Plaintiff Richard Freemantle is a citizen, resident, taxpayer, and registered elector of Anderson County, South Carolina "

"A motion to dismiss a claim pursuant to Rule 12(b)(6), SCRCPP, must be based solely on the allegations set forth on the face of the complaint " *Overcash v S C Elec & Gas Co* , 364 S C 569, 572, 614 S E 2d 619, 620 (2005) "The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case " *Id* It is patently clear that Appellant has stated a claim at least under FOIA for Declaratory Relief and Attorney Fees, thus this action should not have been dismissed

The Respondents claim that the Appellant lacks standing to assert these claims against the Respondents, that the Appellant has not alleged a compensable injury, lacks standing to proceed and the Appellant fails to demonstrate that this matter is of such public importance as to warrant a grant of standing under the public importance exception. To have standing, one must be a real party in interest. *Baird v Charleston County*, 333 S C 519, 530, 511 S E 2d 69, 75 (1999). Standing may be conferred upon a party "when an issue is of such public importance as to require its resolution for future guidance." *Baird* 333 S C at 531, 511 S E 2d at 75, see also *Charleston County Parents for Pub Schs Inc v Moseley* 343 S C 509, 513, 541 S E 2d 533, 535 (2001). Appellant alleged at ¶ 115 of the Complaint that "Agendas of the regularly scheduled meetings must be published at least 24 hours in advance of the meeting." Appellant alleged at ¶ 116 of the Complaint that "The Council published an agenda of the November 18, 2008, meeting that did not include the discussion of the Severance Agreement and the hiring of the new administrator." At ¶ 124 of the Complaint Appellant is requesting Declaratory Relief under FOIA that "The Defendants failed to properly place the Severance Agreement issue on the Agenda for the November 18, 2008 Council Meeting." Whether or not the Council could amend the agenda during a council meeting to include such a large expenditure of County funds is obviously a matter of public importance that requires future guidance by the Court. The public interest involved is in the prevention of the unlawful expenditure of money raised by taxation. *Sloan v School District of Greenville County* 342 S C 515, 537 S E 2d 299 (Ct App 2000).

The Respondents have claimed that the only harms alleged by the Appellant are general in nature and shared equally by the public at large. Therefore, without a showing

of direct injury the Appellant cannot establish constitutional standing, and his only avenue to standing is through this public importance exception. Further Appellant has standing as a taxpayer of Anderson County. He is not suing as a member of the general public. Appellant's interest as a taxpayer in how public funds were spent (or wasted) gives him standing. *Sloan v Dept of Transportation*, 666 S E 2nd 236 (SC 2008). In Appellant's complaint he seeks certain declaratory relief which includes a declaration that "the Master Employment Agreement" Joey Preston asserted as his current contract with the Council was and is not binding on Anderson County" since the contract extended well beyond the term of the governing members of the county council who entered into the contract. Such was a similar issue in *Piedmont Public Service Dist v Douglas W Cowart*, 478 S E 2nd 836 (SC 1996).

The Respondents have claimed that there is no authority for granting taxpayer standing to a Appellant bringing suit concerning the government's handling of a personnel matter. A private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in danger of sustaining, prejudice there from. *Florence Morning News, Inc v Building Comm'n* 265 S C 389, 218 S E 2d 881 (1975). Such imminent prejudice must be of a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public. *Citizens of Lee County Inc v Lee County* 308 S C 23, 416 S E 2d 641 (1992).

However, an exception to this rule exists for ultra vires acts by government officials. For example, we have said that a court will not attempt to control the discretionary powers conferred upon a county board and will not interfere, by means of a taxpayer suit, to restrain the authorities of a county board from the exercise of their discretionary power.

with regard to the control or disposition of property of the county board in the **absence of illegality, fraud, or clear abuse of authority** *Owens v Magill* 308 S C 556, 419 S E 2d 786 (1992) (emphasis added) See Chief Justice Toal's dissent in *Newman v Richland County Historic Pres Comm'n*, 325 S C 79, 480 S E 2nd 72 (SC 1997) The Appellant has expressly or by implication made numerous allegations of illegality, fraud, or clear abuse of authority which in fact did occur

2 DID THE TRIAL COURT ERR IN HOLDING THAT APPELLANT COULD NOT ASSERT A CLAIM FOR MONEY DAMAGES AGAINST THESE RESPONDENTS?

The Respondents claim that there is no authority for granting public importance standing under circumstances where monetary damages are sought In *Sloan v Greenville County* 590 S E 2nd 338, 356 S C 531 (Ct App 2003), the Court of Appeals found that Sloan had not prayed for damages and the court awarded none The Court of Appeals did not say that Sloan could not have been awarded damages had he prayed for damages and proved that he was entitled to damages The Court of Appeals left this question open Important questions of novel impression should not be decided on demurrer *Jackson v Atlantic Soft Drink Co* 286 S C 577, 336 S E 2d 13 (1985)

3 DID THE TRIAL COURT ERR IN HOLDING THAT RESPONDENTS WILSON, MCABEE, GREER, THOMPSON AND FLOYD WERE ENTITLED TO ABSOLUTE IMMUNITY?

The Respondents have claimed that the Court would have granted legislative immunity to Respondents Wilson, McAbee, Greer, Thompson and Floyd Individual members of a local county council are not entitled to absolute immunity See *Richardson v McGill* 273

S C 142, 146, 255 S E 2d 341, 343 (1979) (noting that privilege depends not on rigid requirements but is determined by consideration of public policy) Furthermore, the trial court's denial of the individual council members' motion to dismiss does not preclude the individual council members from raising the issues presented in their motion at a later point in the case *See Frazier v Badger*, 361 S C 94, 101, 603 S E 2d 587, 590 (2004) (stating that immunity under the Tort Claims Act is an affirmative defense that must be proved at trial), *Sanders v Prince* 304 S C 236, 240, 403 S E 2d 640, 643 (1991) (stating that when a government employee's conduct constitutes actual malice, he is not entitled to immunity from suit) *Brown v County of Berkeley*, 366 S C 354, 622 S E 2nd 523 (2005) Appellant has alleged that the acts of these Respondents were illegal ¶ 99 of the Amended Complaint states “Defendants Ron Wilson, McAbee, Greer, Floyd, Thompson and Preston participated in both civil and criminal conspiracies to defraud the residents of Anderson County, Plaintiff and members of the class by colluding to settle Preston’s sham claim of purported anticipatory breach of contract prior to the new Council taking office less than forty-five days later, and further aiding and abetting one another to pursue a fraudulent legal claim ”

4 DID THE TRIAL COURT ERR IN HOLDING THAT APPELLANT’S CLAIMS WERE BARRED BY RULE 12(B)(8) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE?

The Respondents claim that Appellant would be precluded from pursuing this action under Rule 12(b)(8) of the South Carolina Rules of Civil Procedure since the case of *Anderson County vs Joey Preston and the South Carolina Retirement System*, C A No 2009-CP-04-4482 is pending which also seeks to revoke the severance agreement

awarded to Preston. In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. Rule 12(b)(8), SCRPC. The South Carolina Court of Appeals recently ruled that Rule 12(b)(8) must be interpreted narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8). *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 100, 674 S.E.2d 524 (Ct. App. 2009). Here the Appellant has asserted claims under FOIA as well as other causes of action which include collusion, illegal gifts of county funds, misfeasance, malfeasance, and civil conspiracy while the other suit pursued rescission and restitution, breach of fiduciary duty, numerous allegations of fraud, negligent misrepresentation, and breach of contract. Further, the South Carolina Supreme Court has traditionally interpreted that statute narrowly, stating that it only applied when there was identity of parties, causes of action and relief. *S.C. Public Serv. Comm'n v. City of Rock Hill*, 268 S.C. 405, 408, 234 S.E.2d 228, 229 (1977). Rule 12(b)(8) is not applicable here since there is not an identity of the parties (this action has other Respondents and a different Appellant), not an identity of causes of action and the relief sought is not identical since Appellant here is seeking damages, declaratory relief and attorney fees.

5 DID THE TRIAL COURT ERR IN HOLDING THAT APPELLANT COULD NOT PROCEED WITH THE PUTATIVE CLASS ACTION?

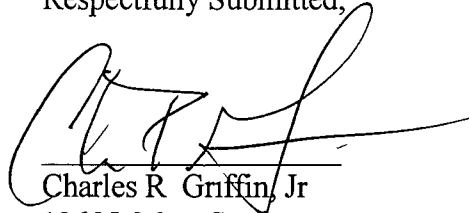
This ruling was premature since no motion for class certification had been made.

CONCLUSION

For the reasons stated above, the Appellant asks that the Order of the Court appealed

from be reversed

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'C. R. Griffin, Jr.', written over a horizontal line.

Charles R. Griffin, Jr
136 N Main Street
Anderson SC 29621
Attorney for Respondent
864-231-8870

April 3, 2011



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
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April 12, 2011

Charles R Griffin, Jr, Esquire
136 N Main St
Anderson, SC 29621

Re Freemantle, Richard v Preston, Joey
Case #2010181306

Dear Mr Griffin

We have received the Initial Brief of the Appellant in the above case on appeal. Rule 262 of the South Carolina Appellant Court Rules requires that at least one copy of any document filed with this court contain an original signature. Upon review, the Designation of Matter, Proof of Service, and Conclusion page for the Initial Brief of the Appellant do not contain an original signature. Please provide these items with original signatures within ten (10) days of the date of this letter.

Very truly yours,

V Claire Allen, Deputy
CLERK

TAG/jt

cc Candy M Kern-Fuller, Esquire
D Randle Moody, II, Esquire
Joseph O Smith, Esquire
Donald L Chuck Allen, Esquire
James W Logan, Jr, Esquire
Kate A Rice, Esquire
Kevin William Sturm, Esquire

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HONORABLE J CORDELL MADDOX

CASE NO 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself
and all others similarly situated APPELLANT

VS

JOEY PRESTON, in his official capacity and individually, while administrator of ANDERSON COUNTY, ANDERSON COUNTY, a political subdivision of the state of SOUTH CAROLINA, ANDERSON COUNTY COUNCIL, the Legislative and Executive body of ANDERSON COUNTY, RON WILSON, in his official capacity and individually, BILL MCABEE, in his official capacity and individually, LARRY GREER, in his official capacity and individually, MICHAEL THOMPSON, in his official capacity and individually, GRACIE FLOYD, in her official capacity and individually RESPONDENTS

DESIGNATION OF MATTER TO BE INCLUDED ON THE RECORD OF APPEAL

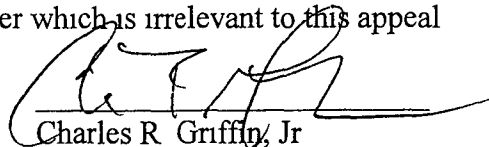
- 1 Summons & Complaint filed November 16, 2009
- 2 Motion/Dismiss a Frivolous Lawsuit and Motion for Sanctions filed December 30, 2009
- 3 Return to Motion to Dismiss a Frivolous Lawsuit filed January 7, 2010
- 4 Motion to Dismiss Filed January 15, 2010
- 5 Motion to Dismiss filed January 15, 2010
- 6 Motion to Dismiss filed January 19, 2010
- 7 Motion to Dismiss Filed January 19, 2010
- 8 Amended Complaint filed March 16, 2010
- 9 Order/Form 4 filed March 18, 2010
- 10 Motion/Dismiss a Frivolous Lawsuit and Motion for Sanctions filed March 22, 2010
- 11 Motion to Dismiss filed March 30, 2010
- 12 Motion to Dismiss filed April 16, 2011
- 13 Memo/Memorandum Of Law filed September 7, 2010

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- 14 Order/Form 4 filed September 8, 2011
- 15 Memorandum of Law Exhibit & Receipt Form filed September 9, 2010
- 16 Plaintiff's Objections to Proposed Order Dismissing Action filed September 28, 2010
- 17 Order filed September 28, 2010
- 18 Motion to Reconsider filed October 14, 2010
- 19 Amended Motion to reconsider filed October 15, 2010
- 20 Amended Order filed November 10, 2010
- 21 Summons and Complaint filed in Anderson County vs Joey Preston et al civil action number 2009CP0404482
- 22 Transcript

I certify that this designation contains no matter which is irrelevant to this appeal



Charles R. Griffin, Jr
Attorney for Appellant
136 N Main Street
Anderson, SC 29621
864-231-8870
Fax 864-231-7797

Dated April 3, 2011

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HON J CORDELL MADDOX

CASE NO 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself and all others
similarly situated APPELLANT

VS

JOEY PRESTON, in His Official Capacities and Individually, While Administrator of
Anderson County, ANDERSON COUNTY, a political Subdivision of the State of South
Carolina, ANDERSON COUNTY COUNCIL, The Legislative and Executive Body of
Anderson County, RON WILSON, in His Official Capacities and Individually, BILL
MCABEE, in His Official Capacities and Individually, LARRY GREER, in His Official
Capacities and Individually, MICHAEL THOMPSON, in His Official Capacities and
Individually, GRACIE FLOYD, in Her Official Capacities and Individually,
RESPONDENTS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that she served the Designation of Matter to
Be Included on the Record of Appeal and Initial Brief of Appellant on the Respondents
by mailing a copy of the same to the attorney's of record for the Respondents via United
States Postal Service at the addresses listed below

Chuck Allen
Allen Law Firm
1209 North Main Street
Anderson, SC 29621

Candy Kern-Fuller
Attorney at Law
Upstate Law Group, LLC
200 E Main Street

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SC Court of Appeals

Easley, SC 29640

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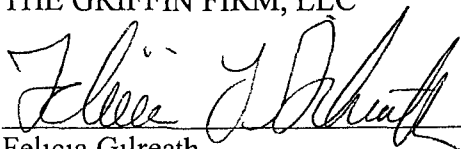
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THE GRIFFIN FIRM, LLC

BY



Felicia Gilreath

Dated April 4, 2011



**Law Offices of
The Griffin Firm, L L C**

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January 13, 2011

South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

RE Appellant, Richard Freemantle V Respondent, Joey Preston et al
Case No 2009-CP-04-4528

Dear Sir/ Madam

Please find enclosed, for filing purposes, the original Designation of Matter and Initial Brief of Appellant regarding the above captioned case along with the Certificate of service for the same

By copy of this letter I have provided to the attorneys of record a copy of the same

If you have any questions, please call

Sincerely,

A handwritten signature in black ink, appearing to read "Felicia Y Gilreath".

Felicia Y Gilreath,
Assistant to Charles R Griffin, Jr

/fyg
Enclosures

Cc James W Logan, D Randall Moody II, Kevin William Sturm Candv Kern-Fuller, Chuck Allen, Kate Rice, Joseph O Smith

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HONORABLE J CORDELL MADDOX

CASE NO 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself
and all others similarly situated APPELLANT

VS

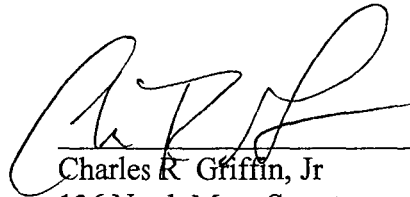
JOEY PRESTON, in his official capacity and individually, while administrator of
ANDERSON COUNTY, ANDERSON COUNTY, a political subdivision of the state of
SOUTH CAROLINA, ANDERSON COUNTY COUNCIL, the Legislative and
Executive body of ANDERSON COUNTY, RON WILSON, in his official capacity and
individually, BILL MCABEE, in his official capacity and individually, LARRY GREER,
in his official capacity and individually, MICHAEL THOMPSON, in his official capacity
and individually, GRACIE FLOYD, in her official capacity and individually
RESPONDENTS

INITIAL BRIEF OF APPELLANT

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APR 05 2011

SC Court of Appeals



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April 3, 2011

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§ 15-53-10 et seq S C Code of Laws Ann , Uniform Declaratory Judgments Act

Racketeer Influenced and Corrupt Organizations Act (RICO) 18 U S C §1962 et seq

Rule 12(b)(8), SCRCF

Rule 12(b)(6), SCRCF

CASES

Baird v Charleston County, 333 S C 519, 511 S E 2d 69, 75 (1999)

Charleston County Parents for Pub Schs Inc v Moseley 343 S C 509, 513, 541 S E 2d 533, 535 (2001)

Overcash v S C Elec & Gas Co , 364 S C 569, 572, 614 S E 2d 619, 620 (2005)

Sloan v School District of Greenville County, 342 S C 515, 537 S E 2d 299 (Ct App 2000)

Sloan v Dept of Transportation, 666 S E 2nd 236 (SC 2008)

Piedmont Public Service Dist v Douglas W Cowart, 478 S E 2nd 836 (SC 1996)

Florence Morning News Inc v Building Comm'n 265 S C 389, 218 S E 2d 881 (1975)

Citizens of Lee County, Inc v Lee County, 308 S C 23, 416 S E 2d 641 (1992)

Owens v Magill, 308 S C 556, 419 S E 2d 786 (1992)

Richland County Historic Pres Comm'n, 325 S C 79, 480 S E 2nd 72 (SC 1997)

Sloan v Greenville County 590 S E 2nd 338, 356 S C 531 (Ct App 2003)

Jackson v Atlantic Soft Drink Co 286 S C 577, 336 S E 2d 13 (1985)

Richardson v McGill, 273 S C 142, 146, 255 S E 2d 341, 343 (1979)

Frazier v Badger 361 S C 94, 101, 603 S E 2d 587, 590 (2004)

Sanders v Prince, 304 S C 236, 240, 403 S E 2d 640, 643 (1991)

Brown v County of Berkeley, 366 S C 354, 622 S E 2nd 523 (2005)

Capital City Ins Co v BP Staff, Inc, 382 S C 92, 100, 674 S E 2nd 524 (Ct App 2009)

S C Public Serv Comm'n v City of Rock Hill, 268 S C 405, 408, 234 S E 2d 228, 229
(1977)

STATEMENT OF ISSUES ON APPEAL

- I Did the Trial Court err in holding that Appellant lacked standing to assert these claims against these Respondents?
- II Did the Trial Court err in holding that Appellant could not assert a claim for money damages against these Respondents?
- III Did the Trial Court err in holding that Respondents Wilson, McAbee, Greer, Thompson and Floyd were entitled to absolute immunity?
- IV Did the Trial Court err in holding that Appellant could not proceed with the putative class action?
- V Did the Trial Court err in holding that Appellant's claims were barred by Rule 12(b)(8) of the South Carolina Rules of Civil Procedure?

STATEMENT OF THE CASE

This case challenges the legality of the Respondents' actions, conduct and/or omissions regarding the institution of, participation in and implementation of a Severance Package (hereinafter "Severance Agreement" or "Settlement Agreement"), that unlawfully awarded Respondent Joey Preston (hereinafter Preston) approximately \$1,139,833.00 in direct cash transfers plus title to the County's luxury 2006 Yukon Denali SUV. Comp. ¶ 2. Further, the Appellant instituted this action on behalf of himself and all class members for Damages and Declaratory Relief to remedy the Respondents' violations of § 30-4-10 et seq. S.C. Code of Laws Ann. (Freedom of Information Act) (hereinafter referred to as FOIA), § 15-53-10 et seq. S.C. Code of Laws Ann. (Uniform Declaratory Judgments Act), Covin and Collusion, Breach of Fiduciary Duty, Aiding and Abetting Breach of Fiduciary Duty, Prohibition Against Illegal Gifts of County Funds, Misfeasance, Malfeasance, Civil Conspiracy, violations of Public Policy and Racketeer Influenced and Corrupt Organizations Act (RICO) 18 U.S.C. § 1962 et seq.

Preston asserted that he and Anderson County were bound by an employment agreement contract signed in 1998 which allegedly annually renewed for three years unless one of the parties gives notice of non-renewal. The terms of the contract provide an extremely generous cost-prohibitive termination provision to Preston should the County decide to terminate his employment. Comp. ¶ 18.

Respondent Ron Wilson (hereinafter Ron Wilson) at the Council meeting on November 18, 2008, presented a five-page Severance Agreement and made a motion to approve the Severance Agreement. The Severance Agreement awarded Preston approximately \$1,139,833.00 in direct cash transfers plus title to the County's luxury

2006 Yukon Denali SUV The Severance Agreement further in paragraph 8 purportedly protects Preston from any lawsuit by the County against Preston even if the County later discovers that he has embezzled funds, defrauded taxpayers, or engaged in other civil or criminal violations of the rights of Anderson County taxpayers which include those rights of Appellant and members of the class Comp ¶ 31

Immediately after Ron Wilson presented the Severance Agreement to the Council and at the same Council meeting November 18, 2008, Respondent Larry Greer (hereinafter Greer) presented the Council with a three-page list of accounts from which he proposed transferring funds to provide for the funds necessary to implement Ron Wilson's proposed Severance Agreement For an unknown reason, the total transfer on Greer's list of accounts and amounts was \$1,140,122 00 exceeding the amount on the Severance Agreement by \$289 00 Comp ¶ 32

Ron Wilson's intention to present the Severance Agreement to the Council was not on the agenda despite a prior intention to address the issue and ample time to get the matter on the agenda and provide the public with the notice required under FOIA, all in violation of and prohibited by FOIA Comp ¶ 34

The reasons for the Severance Agreement were not presented and have not been explained, and the taxpayers have no way of determining why they were and are paying a government employee a Severance Agreement of more than \$1 Million on a void and/or voidable contract Comp ¶ 35

During 2008, Preston approved Respondent Michael Thompson's (hereinafter Thompson) attending training for his anticipated employment with Anderson County all at Anderson County's expense, which expenses included, hotels, meals and mileage, both

before and after Council's consideration of Preston's claims and severance agreement
Comp ¶ 44

In June of 2008, Thompson falsely told the Anderson Independent newspaper that he had no intention of becoming a county employee. Preston did not correct this false statement. Comp ¶ 45

Thompson was under consideration for county employment at the time the Council considered Preston's claims for over One Million Dollars, at the time the Council, and at the time Thompson voted for the Severance Agreement, for the payments to and for Preston, and for related motions. Comp ¶ 46

Thompson voted for this Severance Agreement and payments to Preston of over One Million Dollars without ever reading the Severance Agreement. Comp ¶ 47

After the Council Vote on November 18, 2008, Thompson received training at Anderson County Expense, with Preston's approval. Comp ¶ 52

Ron Wilson was chair of the Personnel Committee, to which the Council referred Preston's claims against Anderson County. Under Ron Wilson's leadership, the Personnel Committee oversaw the negotiations of Preston's Severance Agreement. Wilson made the that the Council approve Preston's Severance Agreement, Ron Wilson voted in favor of the Severance Agreement, and Ron Wilson voted in favor of other motions related to the Severance Agreement. Comp ¶ 54

On or about September 4, 2007, on behalf of Anderson County, Preston signed a contract with the consulting company of the daughter of Ron Wilson for consulting services related to Agricultural programs. That contract provided that it was a month to

month contract and that the rate of payment was a fixed hourly rate of \$65 00 per hour
Comp ¶ 55

On or about November 1, 2008, while Preston's claims were pending before
Council, and under consideration and negotiation by Ron Wilson's Personnel Committee,
and before Ron Wilson Proposed the Severance Agreement with proposed payments in
excess of One Million Dollars to and for the benefit of Preston, Preston entered into a
new contract with the consulting company of Ron Wilson's daughter that significantly
improved the benefits to the consulting company of Wilson's daughter Comp ¶ 56

Specifically, the new contract increased the hourly rate to \$75 00, provided yearly
increases in the hourly rate so that it increased to \$95 00 per hour, provided payments for
the additional employees of the consultant, and provided that it was a contract for a
definite term of three years, rather than a month to month contract Additionally, the
November 1, 2008 contract provided for liquidated damages in case Anderson County
terminated the contract prior to the expiration of three years If Anderson County had
decided to terminate the contract, it could have resulted in liquidated damages of over
\$300,000 00 to the consulting company of Wilson's daughter Comp ¶ 57

Additionally, at the November 18, 2008 meeting after the approval of Preston's
Severance Agreement, Respondent Gracie Floyd (hereinafter Floyd) purportedly moved
to fire Preston as County Administrator and hire Cunningham as County Administrator
Floyd seemingly produced out of thin air a three year contract for Cunningham to
execute Comp ¶ 59

Also, on or about June 19, 2008 Anderson County purchased approximately 76 25
acres off Old Portman Road, on September 18, 2008 Anderson County purchased

approximately 7 00 acres off Scarborough Road, and on or about September 18, 2008 Anderson County purchased approximately 9 16 acres off Dobbins Bridge Road, the total purchase price for these three properties (hereinafter “properties”) was approximately \$1,344,275 00 Preston (as Administrator), expressly or by implication, approved the purchase of the properties for the aforementioned purchase price Comp ¶ 60

Allison Properties was the sales agent in the transaction regarding the purchase of the properties On information and belief, Allison Properties received approximately \$27,390 00 in commissions from the purchase of the properties At the time Anderson County purchased the properties, Respondent Bill McAbee (hereinafter McAbee) and Ms Amy Plummer (an associate of McAbee) were affiliated with Allison Properties Further, Amy Plummer was a member of the economic advisory board Comp ¶ 61

The purchase of the properties was consummated in order to generate commissions for the benefit of McAbee and Amy Plummer Interestingly, the purchase of the properties and payment of commissions was near the time Preston presented his September 25, 2008 letter to Council raising the allegations of purported anticipatory breach of contract Comp ¶ 62

The McAbee filed a Motion to Dismiss on December 30, 2009 The Respondents Anderson County and Anderson County Council filed Motions to Dismiss on January 15, 2009 Floyd, Greer, Bill, Thompson, Preston and Ron Wilson filed Motions to Dismiss on January 19, 2010 On March 16, 2010, Appellant filed an Amended Complaint

On March 17, 2010 a hearing was held before the Hon J Cordell Maddox who issued a form 4 Order dismissing Appellant’s initial complaint on March 18, 2010 On March 22, 2010 McAbee filed a Motion to Dismiss Appellant’s Amended Complaint On

March 30, 2010 Respondent Anderson County filed a Motion to Dismiss Appellant's Amended Complaint Floyd, Greer, McAbee, Thompson, Preston and Ron Wilson filed Motions to Dismiss Appellant's Amended Complaint on April 16, 2010

On September 7, 2010 Appellant filed a Memorandum in Opposition to Respondents' Motions to Dismiss On September 7, 2010 Floyd, Greer, McAbee, Thompson, Preston and Ron Wilson filed a Memorandum in Support of Respondents' Motions to Dismiss

On September 7, 2010 a hearing was held before the Honorable J Cordell Maddox and on September 8, 2010 issued a Form 4 Order dismissing Appellant's Amended Complaint

On September 28, 2010 the Honorable J Cordell Maddox issued a Formal Order relating to the March 17, 2010 hearing Thereafter on October 14, 2010 Appellant filed a Motion to Reconsider the Order issued September 28, 2010 On October 15, 2010 Appellant filed an Amended Motion to Reconsider the Order issued September 28, 2010

On November 22, 2010, the Honorable J Cordell Maddox issued an Amended Order dismissing Appellant's action

On December 9, 2010 Appellant filed a Notice of Intent to Appeal the Honorable J Cordell Maddox's Amended Order dated November 22, 2010

ARGUEMENTS

1 DID THE TRIAL COURT ERR IN HOLDING THAT APPELLANT LACKED STANDING TO ASSERT THESE CLAIMS AGAINST THESE RESPONDENTS?

The Respondents claim that Appellant failed to assert standing upon the South Carolina Freedom of Information Act (FOIA) FOIA provides in relevant part (a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists (b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof Clearly Appellant has alleged that he is a citizen of this state ¶ 3 of complaint states "Plaintiff Richard Freemantle is a citizen, resident, taxpayer, and registered elector of Anderson County, South Carolina "

"A motion to dismiss a claim pursuant to Rule 12(b)(6), SCRCP, must be based solely on the allegations set forth on the face of the complaint " *Overcash v S C Elec & Gas Co* , 364 S C 569, 572, 614 S E 2d 619, 620 (2005) "The motion will not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to relief on any theory of the case " *Id* It is patently clear that Appellant has stated a claim at least under FOIA for Declaratory Relief and Attorney Fees, thus this action should not have been dismissed

The Respondents claim that the Appellant lacks standing to assert these claims against the Respondents, that the Appellant has not alleged a compensable injury, lacks standing to proceed and the Appellant fails to demonstrate that this matter is of such public importance as to warrant a grant of standing under the public importance exception. To have standing, one must be a real party in interest. *Baird v Charleston County*, 333 S C 519, 530, 511 S E 2d 69, 75 (1999). Standing may be conferred upon a party "when an issue is of such public importance as to require its resolution for future guidance." *Baird*, 333 S C at 531, 511 S E 2d at 75, see also *Charleston County Parents for Pub Schs, Inc v Moseley*, 343 S C 509, 513, 541 S E 2d 533, 535 (2001). Appellant alleged at ¶ 115 of the Complaint that "Agendas of the regularly scheduled meetings must be published at least 24 hours in advance of the meeting." Appellant alleged at ¶ 116 of the Complaint that "The Council published an agenda of the November 18, 2008, meeting that did not include the discussion of the Severance Agreement and the hiring of the new administrator." At ¶ 124 of the Complaint Appellant is requesting Declaratory Relief under FOIA that "The Defendants failed to properly place the Severance Agreement issue on the Agenda for the November 18, 2008 Council Meeting." Whether or not the Council could amend the agenda during a council meeting to include such a large expenditure of County funds is obviously a matter of public importance that requires future guidance by the Court. The public interest involved is in the prevention of the unlawful expenditure of money raised by taxation. *Sloan v School District of Greenville County*, 342 S C 515, 537 S E 2d 299 (Ct App 2000).

The Respondents have claimed that the only harms alleged by the Appellant are general in nature and shared equally by the public at large. Therefore, without a showing

of direct injury the Appellant cannot establish constitutional standing, and his only avenue to standing is through this public importance exception. Further Appellant has standing as a taxpayer of Anderson County. He is not suing as a member of the general public. Appellant's interest as a taxpayer in how public funds were spent (or wasted) gives him standing. *Sloan v Dept of Transportation*, 666 S E 2nd 236 (SC 2008). In Appellant's complaint he seeks certain declaratory relief which includes a declaration that "the Master Employment Agreement" Joey Preston asserted as his current contract with the Council was and is not binding on Anderson County" since the contract extended well beyond the term of the governing members of the county council who entered into the contract. Such was a similar issue in *Piedmont Public Service Dist v Douglas W Cowart*, 478 S E 2nd 836 (SC 1996).

The Respondents have claimed that there is no authority for granting taxpayer standing to a Appellant bringing suit concerning the government's handling of a personnel matter. A private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in danger of sustaining, prejudice therefrom. *Florence Morning News, Inc v Building Comm'n* 265 S C 389, 218 S E 2d 881 (1975). Such imminent prejudice must be of a personal nature to the party laying claim to standing and not merely of general interest common to all members of the public. *Citizens of Lee County, Inc v Lee County*, 308 S C 23, 416 S E 2d 641 (1992).

However, an exception to this rule exists for ultra vires acts by government officials. For example, we have said that a court will not attempt to control the discretionary powers conferred upon a county board and will not interfere, by means of a taxpayer suit, to restrain the authorities of a county board from the exercise of their discretionary power.

with regard to the control or disposition of property of the county board in the absence of illegality, fraud, or clear abuse of authority *Owens v Magill*, 308 S C 556, 419 S E 2d 786 (1992) (emphasis added) See Chief Justice Toal's dissent in *Newman v Richland County Historic Pres Comm'n*, 325 S C 79, 480 S E 2nd 72 (SC 1997) The Appellant has expressly or by implication made numerous allegations of illegality, fraud, or clear abuse of authority which in fact did occur

2 DID THE TRIAL COURT ERR IN HOLDING THAT APPELLANT COULD NOT ASSERT A CLAIM FOR MONEY DAMAGES AGAINST THESE RESPONDENTS?

The Respondents claim that there is no authority for granting public importance standing under circumstances where monetary damages are sought In *Sloan v Greenville County* 590 S E 2nd 338, 356 S C 531 (Ct App 2003), the Court of Appeals found that Sloan had not prayed for damages and the court awarded none The Court of Appeals did not say that Sloan could not have been awarded damages had he prayed for damages and proved that he was entitled to damages The Court of Appeals left this question open Important questions of novel impression should not be decided on demurrer *Jackson v Atlantic Soft Drink Co* , 286 S C 577, 336 S E 2d 13 (1985)

3 DID THE TRIAL COURT ERR IN HOLDING THAT RESPONDENTS WILSON, MCABEE, GREER, THOMPSON AND FLOYD WERE ENTITLED TO ABSOLUTE IMMUNITY?

The Respondents have claimed that the Court would have granted legislative immunity to Respondents Wilson, McAbee, Greer, Thompson and Floyd Individual members of a local county council are not entitled to absolute immunity See *Richardson v McGill* 273

S C 142, 146, 255 S E 2d 341, 343 (1979) (noting that privilege depends not on rigid requirements but is determined by consideration of public policy) Furthermore, the trial court's denial of the individual council members' motion to dismiss does not preclude the individual council members from raising the issues presented in their motion at a later point in the case *See Frazier v Badger*, 361 S C 94, 101, 603 S E 2d 587, 590 (2004) (stating that immunity under the Tort Claims Act is an affirmative defense that must be proved at trial), *Sanders v Prince*, 304 S C 236, 240, 403 S E 2d 640, 643 (1991) (stating that when a government employee's conduct constitutes actual malice, he is not entitled to immunity from suit) *Brown v County of Berkeley*, 366 S C 354, 622 S E 2nd 523 (2005) Appellant has alleged that the acts of these Respondents were illegal ¶ 99 of the Amended Complaint states “Defendants Ron Wilson, McAbee, Greer, Floyd, Thompson and Preston participated in both civil and criminal conspiracies to defraud the residents of Anderson County, Plaintiff and members of the class by colluding to settle Preston’s sham claim of purported anticipatory breach of contract prior to the new Council taking office less than forty-five days later, and further aiding and abetting one another to pursue a fraudulent legal claim ”

4 DID THE TRIAL COURT ERR IN HOLDING THAT APPELLANT’S CLAIMS WERE BARRED BY RULE 12(B)(8) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE?

The Respondents claim that Appellant would be precluded from pursuing this action under Rule 12(b)(8) of the South Carolina Rules of Civil Procedure since the case of Anderson County vs Joey Preston and the South Carolina Retirement System, C A No 2009-CP-04-4482 is pending which also seeks to revoke the severance agreement

awarded to Preston. In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. Rule 12(b)(8), SCRCP. The South Carolina Court of Appeals recently ruled that Rule 12(b)(8) must be interpreted narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8). *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 100, 674 S.E.2d 524 (Ct. App. 2009). Here the Appellant has asserted claims under FOIA as well as other causes of action which include collusion, illegal gifts of county funds, misfeasance, malfeasance, and civil conspiracy while the other suit pursued rescission and restitution, breach of fiduciary duty, numerous allegations of fraud, negligent misrepresentation, and breach of contract. Further, the South Carolina Supreme Court has traditionally interpreted that statute narrowly, stating that it only applied when there was identity of parties, causes of action and relief. *S.C. Public Serv. Comm'n v. City of Rock Hill*, 268 S.C. 405, 408, 234 S.E.2d 228, 229 (1977). Rule 12(b)(8) is not applicable here since there is not an identity of the parties (this action has other Respondents and a different Appellant), not an identity of causes of action and the relief sought is not identical since Appellant here is seeking damages, declaratory relief and attorney fees.

5 DID THE TRIAL COURT ERR IN HOLDING THAT APPELLANT COULD NOT PROCEED WITH THE PUTATIVE CLASS ACTION?

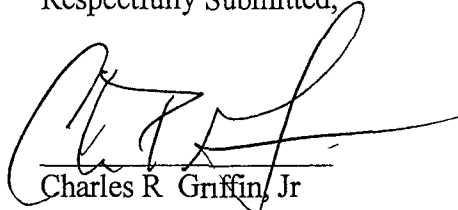
This ruling was premature since no motion for class certification had been made.

CONCLUSION

For the reasons stated above, the Appellant asks that the Order of the Court appealed

from be reversed

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Charles R. Griffin, Jr.', written over a horizontal line.

Charles R. Griffin, Jr
136 N Main Street
Anderson SC 29621
Attorney for Respondent
864-231-8870

April 3, 2011



The South Carolina Court of Appeals

JOHN CANNON FEW
CHIEF JUDGE

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Re Freemantle, Richard v Preston, Joey
2010181306

Dear Counsel

This letter serves as an Order granting Appellant's request for an extension of time in which to file the Appellant's Initial Brief and Designation of Matter. I have extended the due date until May 4, 2011. I realize that this extension may not give you all the time you need to complete the Appellant's Initial Brief and Designation of Matter. I have set a conference call for 9:15 a.m. on Tuesday, April 19, 2011 to discuss an overall approach to setting due dates for all filings in this appeal. **The Appellant is responsible for initiating the conference call by getting all parties on the phone at the allotted time.** The call should last less than ten minutes. The participants in the call will include counsel for all parties and me. In preparation for the call, please consider the other time commitments you have in the near future so we can discuss a suitable timeframe for all parties to complete their briefs. If the time scheduled for the conference call creates a conflict, please contact the Clerk's Office at 734-1890 with all counsel on the phone. We will reschedule the call to suit you.

I look forward to talking to you on Tuesday, April 19, 2011.

Sincerely yours,

John Cannon Few
John Cannon Few
by Tamara G
Clerk

JCF/laf

FILED
4/15/11

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM ANDERSON COUNTY
HON J CORDELL MADDOX
CASE NO 2010181306

RICHARD FREEMANTLE, individually and on behalf of himself
and all others similarly situated APPELLANT

VS

JOEY PRESTON, in his official capacity and individually, while administrator of ANDERSON COUNTY, ANDERSON COUNTY, a political subdivision of the state of SOUTH CAROLINA, ANDERSON COUNTY COUNCIL, the Legislative and Executive body of ANDERSON COUNTY, RON WILSON, in his official capacity and individually, BILL MCABEE, in his official capacity and individually, LARRY GREER, in his official capacity and individually, MICHAEL THOMPSON, in his official capacity and individually, GRACIE FLOYD, in her official capacity and individually RESPONDENTS

MOTION TO FILE INITIAL BRIEF AND DESIGNATION OF MATTER OUT OF TIME

The undersigned, attorney for the Appellant, hereby moves the Court for an Order allowing the Respondent to file his Initial Brief out of time. The grounds for this motion are that Respondent's attorney has had an exceptionally busy schedule and has been undergoing follow up tests and treatment for cancer surgeries, chemotherapy and radiation treatments. Respondent's counsel hereby certifies that this motion is made in compliance with rule 249 of the South Carolina Appellate court Rules.

RECEIVED

MAR 29 2011

SC Court of Appeals

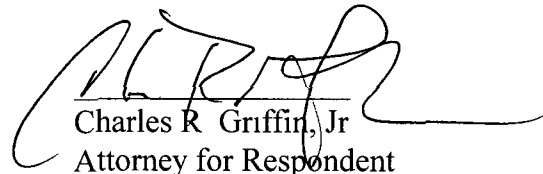
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4/19/11
9:15 am
1

3/10/11

5-4-11

I So Move

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Charles R. Griffin, Jr
Attorney for Respondent
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864-231-8870
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March 28, 2011

Other Counsel of Record

Candy M Kern Fuller
D Randle Moody, II
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Kevin William Sturm

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY

HON J CORDELL MADDOX

CASE NO 2010181306

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MAR 29 2011

SC Court of Appeals

Certificate of Service

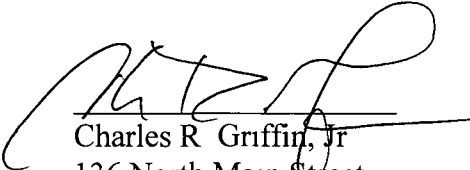
RICHARD FREEMANTLE, individually and on behalf of himself
and all others similarly situated APPELLANT

VS

JOEY PRESTON, in his official capacity and individually, while administrator of ANDERSON COUNTY, ANDERSON COUNTY, a political subdivision of the state of SOUTH CAROLINA, ANDERSON COUNTY COUNCIL, the Legislative and Executive body of ANDERSON COUNTY, RON WILSON, in his official capacity and individually, BILL MCABEE, in his official capacity and individually, LARRY GREER, in his official capacity and individually, MICHAEL THOMPSON, in his official capacity and individually, GRACIE FLOYD, in her official capacity and individually RESPONDENTS

The undersigned, Attorney for Appellant, does hereby certify that he served the MOTION TO FILE INITIAL BRIEF AND DESIGNATION OF MATTER OUT OF TIME on the Other Counsel of Record by depositing a copy of same in the United States Mails with sufficient postage affixed on the 28th Day of March 28, 2011

Dated March 28, 2011


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MAR 29 2011

SC Court of Appeals

March 28, 2011

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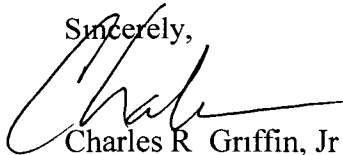
RE RICHARD FREEMANTLE, APPELLANT vs JOEY PRESTON, et al

Dear Ms Barber

Enclosed, please find the original and six (6) copies of Appellant's MOTION TO FILE INITIAL BRIEF AND DESIGNATION OF MATTER OUT OF TIME along with certificate of Service. If you have any questions, please do not hesitate to contact me.

With kind regards, I am,

Sincerely,


Charles R. Griffin, Jr



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

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March 25, 2011

Charles R Griffin, Jr, Esquire
136 N Main St
Anderson, SC 29621

Re Freemantle, Richard v Preston, Joey
2010181306

Dear Mr Griffin

Our records indicate that the Appellant's Initial Brief and Designation of Matter in the above matter should have been served and filed by March 10, 2011. You must file the brief and a Motion to Serve and File the Appellant's Initial Brief and Designation of Matter Out of Time within ten (10) days of this letter or your appeal will be dismissed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc Candy M Kern-Fuller, Esquire
D Randle Moody, II, Esquire
Joseph O Smith, Esquire
Donald L Chuck Allen, Esquire
James W Logan, Jr, Esquire
Kate A Rice, Esquire
Kevin William Sturm, Esquire



**Law Offices of
The Griffin Firm, L.L.C.**

136 North Main Street • Anderson, SC 29621
Phone (864) 231-8870 • Fax (864) 231-7797

February 8, 2011

South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

RF Freemantle V Preston et al
Case No 2009-CP-04-4528

Dear Sir/ Madam

I am writing to advise the court and all attorneys of record that we have received the transcripts from the September 7, 2010 hearing and the transcripts from the March 17, 2010 hearing with regard to the above captioned case

If you have any questions, please call :

Sincerely,

Felicia Y Gilreath,
Assistant to Charles R Griffin, Jr

rfvg

Enclosures

Cc James W Logan D Randall Moody II, Kevin William Sturm Candy Kern-Fuller, Chuck Allen Kate Rice

RECEIVED
FEB 09 2011
SC Court of Appeals



**Law Offices of
The Griffin Firm, L.L.C.**

136 North Main Street • Anderson, SC 29621
Phone (864) 231-8870 • Fax (864) 231-7797

January 13, 2011

South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

RE Freemantle V Preston et al
Case No 2009-CP-04-4528

Dear Sir/ Madam

Please find enclosed, for filing purposes, the original Amended Notice of Intent to Appeal and the Certificate of service along with a copy of the letter we sent to the other attorneys of record regarding our Amended Notice of Appeal

If you have any questions please call

Sincerely,

A handwritten signature in black ink, appearing to read "Felicia Y Gilreath". The signature is fluid and cursive.

Felicia Y Gilreath,
Assistant to Charles R Griffin, Jr

/fyg
Enclosures

Cc James W Logan, D Randall Moody II, Kevin William Sturm, Candy Kern-Fuller, Chuck Allen, Kate Rice

RECEIVED

JAN 18 2011

SC Court of Appeals



**Law Offices of
The Griffin Firm, L.L.C.**

136 North Main Street • Anderson, SC 29621
Phone (864) 231-8870 • Fax (864) 231-7797

January 13, 2011

James W Logan
1805 North Boulevard
Anderson, SC 29621

D Randall Moody II
Roe Cassidy Coates & Price, PA
P O Box 10529
Greenville, SC 29603

Kevin William Sturm
Sturm & Cont, PA
P O Box 5448
Spartanburg, SC 29304

Candy Kern-Fuller
Attorney at Law
200 E Main Street
Easley, SC 29640

Chuck Allen
Allen Law Firm
1209 North Main Street
Anderson, SC 29621

Kate Rice
Attorney at Law
Davidson & Lindemann, PA
P O Box 8568
Columbia, SC 29202-8568

RE Freemantle V Preston, et al
Case No 2009-CP-04-4528

Dear Attorneys

Please find enclosed, for service, a copy of the Amended Notice of Intent to Appeal and Certificate of Service that we will be filing for the above captioned case

Sincerely,

A handwritten signature in black ink, appearing to read "Felicia Y Gilreath". The signature is written in a cursive style with a large, stylized initial "F".

Felicia Y Gilreath,
Assistant to Charles R Griffin, Jr

/fyg
Enclosures

AMENDED NOTICE OF APPEAL
THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JAN 18 2011
SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HON J CORDELL MADDOX , Jr

CASE NO 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself and all others
similarly situated APPELLANT

VS


JOEY PRESTON, in His Official Capacities and Individually, While Administrator of
Anderson County, ANDERSON COUNTY, a political Subdivision of the State of South
Carolina, ANDERSON COUNTY COUNCIL, The Legislative and Executive Body of
Anderson County, RON WILSON, in His Official Capacities and Individually, BILL
MCABEE, in His Official Capacities and Individually, LARRY GREER, in His Official
Capacities and Individually, MICHAEL THOMPSON, in His Official Capacities and
Individually, GRACIE FLOYD, in Her Official Capacities and Individually,
RESPONDENTS

AMENDED NOTICE OF INTENT TO APPEAL

Richard Freemantle, Appellant, hereby appeals the Order dated November 9,
2010 dismissing Appellant's Complaint, said Order was received by Plaintiff's attorney
on November 12, 2010

THE GRIFFIN FIRM, LLC

BY


Charles R. Griffin, Jr
Attorney for Appellant
136 N Main Street
Anderson, SC 29621
864-231-8870
Fax 864-231-7797
Attorney for Appellant

Dated January 13, 2011

Other Counsel of Record

James W Logan
Attorney at Law
Logan, Jolly & Smith LLP
1805 North Boulevard
Anderson, SC 29621

D Randall Moody II
Roe Cassidy Coates & Price, PA
P O Box 10529
Greenville, SC 29603

Kevin William Sturm
Sturm & Cont, PA
P O Box 5448
Spartanburg, SC 29304

Chuck Allen
Allen Law Firm
1209 North Main Street
Anderson, SC 29621

Candy Kern-Fuller
Attorney at Law
Upstate Law Group, LLC
200 E Main Street
Easley, SC 29640

Kate Rice
Attorney at Law
Davidson & Lindemann, PA
Post Office Box 8568
Columbia, SC 29202-8568

CERTIFICATE OF SERVICE
THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED
JAN 18 2011
SC Court of Appeals

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HON J CORDELL MADDOX

CASE NO 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself and all others
similarly situated APPELLANT

VS

JOEY PRESTON, in His Official Capacities and Individually, While Administrator of
Anderson County, ANDERSON COUNTY, a political Subdivision of the State of South
Carolina, ANDERSON COUNTY COUNCIL, The Legislative and Executive Body of
Anderson County, RON WILSON, in His Official Capacities and Individually, BILL
MCABEE, in His Official Capacities and Individually, LARRY GREER, in His Official
Capacities and Individually, MICHAEL THOMPSON, in His Official Capacities and
Individually, GRACIE FLOYD, in Her Official Capacities and Individually,
RESPONDENTS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that she served the Notice of Appeal on the
Respondents by mailing a copy of the same to the attorney's of record for the
Respondents via United States Postal Service at the addresses listed below

Chuck Allen
Allen Law Firm
1209 North Main Street
Anderson, SC 29621

Candy Kern-Fuller
Attorney at Law
Upstate Law Group, LLC
200 E Main Street
Easley, SC 29640

James W Logan
Attorney at Law
Logan, Jolly & Smith LLP
1805 North Boulevard
Anderson, SC 29621

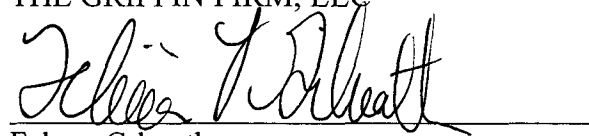
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Spartanburg, SC 29304

Kate Rice
Attorney at Law
Davidson & Lindemann, PA
P O Box 8568
Columbia, SC 29202-8568

THE GRIFFIN FIRM, LLC

BY

A handwritten signature in cursive script, appearing to read "Felicia Gilreath", is written over a horizontal line.

Felicia Gilreath

Dated January 13, 2011



The South Carolina Court of Appeals

TANYA A GEE
CLERK

V CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 18 9
www.sccourts.org

January 5, 2011

Charles R Griffin, Jr, Esquire
136 N Main St
Anderson, SC 29621

Re Freemantle, Richard v Preston, Joey
2010181306

Dear Mr Griffin

We have received your Notice of Appeal in the case noted above. This case will be docketed in the Court of Appeals and all communications concerning this case, including motions and petitions, initial and final briefs, and the Record on Appeal, should be directed to and filed in this Court. For all filings, please note the requirements of Rule 267(a) of the South Carolina Appellate Court Rules, and be further advised that Court of Appeals policy requires the firm name of any counsel shown must be included in his or her address.

Upon review, the Notice of Appeal must include a statement of when the appealing party received notice of the order from which the appeal is taken. Please provide an amended Notice of Appeal including the date the order was received within ten (10) days of this letter.

We suggest that large parcels such as copies of final briefs and the Record On Appeal be sent directly to the Court via the street address 1015 Sumter Street, Columbia, S C 29201. Thank you for your attention to this. Failure to file in the proper court may result in the dismissal of your appeal.

PLEASE BE ADVISED that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, the transcript must be ordered within ten (10) days of the proof of service of the Notice of Appeal and you must provide this Court, opposing counsel, and the Office of Court Administration with all correspondence regarding the transcript. It is also Appellant's responsibility to make satisfactory arrangements (including agreement regarding payment for the transcript) with the Court Reporter for furnishing the transcript. You are reminded of the notification requirements of Rule 207(a)(5), SCACR, also, please advise the Court in writing upon receipt of the transcript.

NOTE If you believe this case has been improperly filed in the Court of Appeals, by reason of the limitations set forth in S C Code Ann Section 14-8-200(b)(1998), as amended June 1, 1999, notify the Clerk's office of the Court of Appeals immediately. The cited Code Section prohibits the Court of Appeals from hearing appeals in seven classes of cases

- 1) any final judgment from the circuit court which includes a sentence of death,
- 2) any final judgment from the circuit court setting public utility rates pursuant to Title 58,
- 3) any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is the constitutionality of the law or ordinance,
- 4) any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the state, its agencies, political subdivisions, public service districts, counties, and municipalities or any other indebtedness now or hereafter authorized by Article X of the Constitution of this state,
- 5) any final judgment from the circuit court pertaining to elections and election procedure,
- 6) any order limiting an investigation by a State Grand Jury under S C Code Ann Section 14-7-1630,
- 7) any order of the family court relating to an abortion by a minor under S C Code Ann Section 44-41-33

Very truly yours,

V. Claire Allen, Deputy

Tanya A Gee
CLERK

TAG/laf

cc Candy M Kern-Fuller, Esquire
D Randle Moody, II, Esquire
Joseph O Smith, Esquire
Donald L Chuck Allen, Esquire
James W Logan, Jr, Esquire
Kate A Rice, Esquire
Kevin William Sturm, Esquire



The South Carolina Court of Appeals

TANYA A. GEE
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11679
COLUMBIA SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA SOUTH CAROLINA 29201
TELEPHONE (803) 734 1890
FAX (803) 734 1839
www.sccourts.org

January 5, 2011

Charles R. Griffin, Jr, Esquire
136 N Main St
Anderson, SC 29621

Re Freemantle, Richard v Preston, Joey
2010181306

Dear Mr Griffin

This office has received your Notice of Appeal in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

V. Claire Allen, Deputy
CLERK

TAG/laf

cc Candy M. Kern-Fuller, Esquire
D. Randle Moody, II, Esquire
Joseph O. Smith, Esquire
Donald L. Chuck Allen, Esquire
James W. Logan, Jr., Esquire
Kate A. Rice, Esquire
Kevin William Sturm, Esquire

The Supreme Court of South Carolina

RE Interim Guidance Regarding Personal Data Identifiers and
Other Sensitive Information in Appellate Court Filings

ORDER

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S C 1 630 S E 2d 464 (2006), Davis v Jennings, 304 S C 502, 405 S E 2d 601 (1991). Therefore, with some few exceptions 1 documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts, and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts:

Parties shall not include, or will partially redact where inclusion is necessary, the following personal data identifiers from documents filed with an appellate court 2:

1 Social Security Numbers. If a social security number must be included, only the last four digits of that number should be used.

2 Names of Minor Children. If a minor is the victim of a sexual assault or is involved in an abuse or neglect case, the minor's name will be completely redacted and a term such as "victim" or "child" should be used. In all other cases, only the minor's first name and first initial of the last name (i.e., John S.) should be used.

3 Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be used.

4 Home Addresses. If a home address must be included, only the city and state should be used.

Parties wishing to file documents containing the personal data identifiers listed above may file unredacted documents under seal, together with redacted versions for the public file. The sealed unredacted documents shall be filed in a separate Appendix and the bottom of each page of the Appendix shall be marked "Sealed." No order of the appellate court will be required to file this sealed Appendix. The number of copies of the Appendix to be served and filed shall be the same as that required for the brief, record on appeal, motion or other filing that includes the redacted documents.

If the caption of the case contains any of the personal data identified above, the parties should file a motion to amend the caption to redact the identifier. This should be done contemporaneously with the filing of the notice of appeal or the commencement of the case with the appellate court. Without a motion to the appellate court, the caption of a juvenile delinquency matter from the family court shall be redacted to only use the juvenile's first name and first letter of the juvenile's last name (i.e., In the Interest of John S. a Juvenile).

A party seeking to seal material beyond those personal identifiers listed above must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings, supra, must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed, the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED

s/Jean H. Toal C J

s/James E. Moore J

s/John H. Waller, Jr. J

s/E. C. Burnett, III J

s/Costa M. Pleicones J

Columbia, South Carolina

August 13, 2007

¹ See, e.g., Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR; Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR; Rule 402(n), SCACR, and Rule 403(l), SCACR.

² This restriction shall not apply when this information is required or requested by the appellate court. For example, the application for admission to practice law under Rule 402, SCACR, requires many of these personal identifiers to be disclosed.



Law Offices of
The Griffin Firm, L L C.

136 North Main Street • Anderson, SC 29621
Phone (864) 231-8870 • Fax (864) 231-7797

December 17, 2010

Renee H Tollison
Post Office Box 4321
Anderson, SC 29622

RECEIVED
DEC 22 2010
SC Court of Appeals

RE Freemantle V Preston, et al
Case No 2009-CP-04-4528

Dear Mrs Tollison

I am writing to request the transcripts from the Hearings that took place on March 17, 2010 and September 7, 2010 regarding the above captioned case. If a fee is required prior to our receiving the transcripts, please advise us who to make our check payable to and where to send it.

By copy of this letter, I have advised the opposing counsels on this case of my request for the transcripts from these past two hearings.

Sincerely,

Felicia Y Gilreath,
Assistant to Charles R Griffin, Jr

/fyg

CC James Logan, Esq
Randall Moody, Esq
Candy Kern-Fuller, Esq
Kevin Sturm, Esq
Chuck Allen, Esq

NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HON J CORDELL MADDOX , Jr

CASE NO 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself and all others
similarly situated APPELLANT

VS

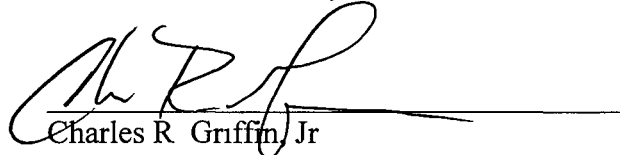
JOEY PRESTON, in His Official Capacities and Individually, While Administrator of Anderson County, ANDERSON COUNTY, a political Subdivision of the State of South Carolina, ANDERSON COUNTY COUNCIL, The Legislative and Executive Body of Anderson County, RON WILSON, in His Official Capacities and Individually, BILL MCABEE, in His Official Capacities and Individually, LARRY GREER, in His Official Capacities and Individually, MICHAEL THOMPSON, in His Official Capacities and Individually, GRACIE FLOYD, in Her Official Capacities and Individually,
RESPONDENTS

NOTICE OF INTENT TO APPEAL

Richard Freemantle, Appellant, hereby appeals the Order dated November 9, 2010 dismissing Appellant's Complaint

THE GRIFFIN FIRM, LLC

BY



Charles R. Griffin, Jr
Attorney for Appellant
136 N Main Street
Anderson, SC 29621
864-231-8870
Fax 864-231-7797
Attorney for Appellant

RECEIVED

DEC 22 2010

SC Court of Appeals

Dated December 9, 2010

Other Counsel of Record

James W Logan
1805 North Boulevard
Anderson, SC 29621

D Randall Moody II
Roe Cassidy Coates & Price, PA
P O Box 10529
Greenville, SC 29603

Kevin William Sturm
Sturm & Cont, PA
P O Box 5448
Spartanburg, SC 29304

Chuck Allen
Allen Law Firm
1209 North Main Street
Anderson, SC 29621

Candy Kern-Fuller
Attorney at Law
200 E Main Street
Easley, SC 29640

CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS
HON J CORDELL MADDOX

CASE NO 2009-CP-04-4528

RICHARD FREEMANTLE, individually and on behalf of himself and all others
similarly situated APPELLANT

VS

JOEY PRESTON, in His Official Capacities and Individually, While Administrator of
Anderson County, ANDERSON COUNTY, a political Subdivision of the State of South
Carolina, ANDERSON COUNTY COUNCIL, The Legislative and Executive Body of
Anderson County, RON WILSON, in His Official Capacities and Individually, BILL
MCABEE, in His Official Capacities and Individually, LARRY GREER, in His Official
Capacities and Individually, MICHAEL THOMPSON, in His Official Capacities and
Individually, GRACIE FLOYD, in Her Official Capacities and Individually,
RESPONDENTS

CERTIFICATE OF SERVICE

The undersigned does hereby certify that she served the Notice of Appeal on the
Respondents by mailing a copy of the same to the attorney's of record for the
Respondents via United States Postal Service at the addresses listed below

Chuck Allen
Allen Law Firm
1209 North Main Street
Anderson, SC 29621

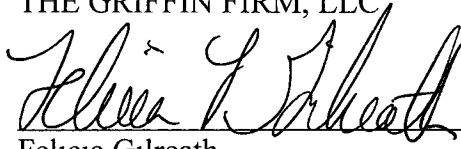
Candy Kern-Fuller
Attorney at Law
200 E Main Street
Easley, SC 29640

RECEIVED
DEC 22 2010
SC Court of Appeals

James W Logan
1805 North Boulevard
Anderson, SC 29621

D Randall Moody II
Roe Cassidy Coates & Price, PA
P O Box 10529
Greenville, SC 29603

Kevin William Sturm
Sturm & Cont, PA
P O Box 5448
Spartanburg, SC 29304

THE GRIFFIN FIRM, LLC
BY 
Felicia Gilreath

Dated December 9, 2010



**Law Offices of
The Griffin Firm, L L C.**

136 North Main Street • Anderson, SC 29621
Phone (864) 231-8870 • Fax (864) 231-7797

December 9, 2010

James W Logan
1805 North Boulevard
Anderson, SC 29621

D Randall Moody II
Roe Cassidy Coates & Price, PA
P O Box 10529
Greenville, SC 29603

Kevin William Sturm
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Candy Kern-Fuller
Attorney at Law
200 E Main Street
Easley, SC 29640

Chuck Allen
Allen Law Firm
1209 North Main Street
Anderson, SC 29621

RECEIVED

DEC 22 2010

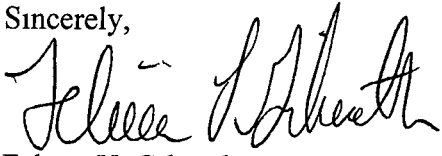
SC Court of Appeals

RE Freemantle V Preston, et al
Case No 2009-CP-04-4528

Dear Attorneys

Please find enclosed, for service, a copy of the Notice of Intent to Appeal and Certificate of Service that we will be filing for the above captioned case

Sincerely,

A handwritten signature in cursive script, appearing to read "Felicia Y Gilreath". The signature is written in black ink and is positioned above the printed name.

Felicia Y Gilreath,
Assistant to Charles R. Griffin, Jr

/fyg

Enclosures



**Law Offices of
The Griffin Firm, L.L.C**

136 North Main Street • Anderson, SC 29621
Phone (864) 231-8870 • Fax (864) 231-7797

December 17, 2010

South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211

RE Freemantle V Preston, et al
Case No 2009-CP-04-4528

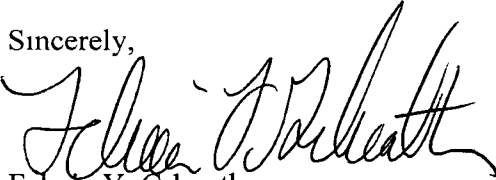
RECEIVED
DEC 22 2010
SC Court of Appeals

Dear Sir/ Madam

Please find enclosed, for filing purposes, one check in the amount of (\$100 00) One Hundred Dollars, the Notice of Intent To Appeal along with the Order and Certificate of Service for the above captioned case Also find a copy of the letter we sent requesting the transcript regarding this matter We respectfully request that you please file these documents with the court for the above captioned case

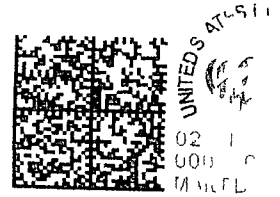
If you have any questions, please call

Sincerely,


Felicia Y Gilreath,
Assistant to Charles R Griffin, Jr

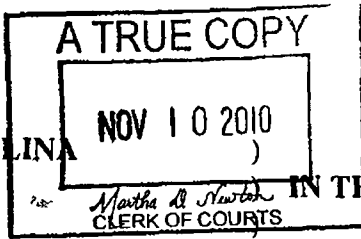
/fyg
Enclosures

Cc James W Logan, D Randall Moody II, Kevin William Sturm, Candy Kern-Fuller, Chuck Allen



**Law Offices of
The Griffin Firm, L L C**
136 North Main Street
Anderson SC 29621

***South Carolina Court of Appeals
P O Box 11629
Columbia, SC 29211***



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

Richard Freemantle individually and on behalf
of himself and all others similarly situated

Plaintiff

v

Joey Preston in his official capacity and
individually while administrator of Anderson
County Anderson County a political
subdivision of the state of South Carolina,
Anderson County Council the Legislative and
Executive body of Anderson County, Ron
Wilson in his official capacity and
individually Bill McAbee in his official
capacity and individually Larry Greer in his
official capacity and individually Michael
Thompson in his official capacity and
individually Gracie Floyd, in her official
capacity and individually

Defendants

Civil Action Number 09-CP 04-4528

AMENDED ORDER

This matter comes before the Court upon numerous Motions to Dismiss filed by the Defendants in response to Plaintiff's Complaint and Amended Complaint. In response to Plaintiff's original Complaint filed on November 16, 2010 Defendants filed motions to dismiss which the Court consolidated and heard arguments on March 17, 2010. Plaintiff also filed an amended complaint on March 16, 2010 prompting Defendants to file additional motions to dismiss which the Court consolidated and heard arguments on September 7, 2010. On September 28, 2010 the Court signed an Order dismissing Plaintiff's claims contained in the original Complaint based upon Plaintiff's lack of standing, among other things. This is an

Amended Order again dismissing Plaintiff's original claims and those contained in the Amended Complaint for the reasons set forth below. The Plaintiff was represented by Charles R. Griffin Jr. Esquire. The Defendants were represented as follows: D. Randle Moody II Esquire and Joseph O. Smith Esquire, of Roe, Cassidy Coates & Price, P.A. for Defendants Preston Wilson McAbee, Greer Thompson and Floyd; Kate A. Rice, Esquire of Davidson & Lindemann P.A. for Defendants Wilson McAbee Greer Thompson and Floyd; Donald L. Chuck Allen, Esquire of The Allen Law Firm for Defendant McAbee; Candy M. Kern-Fuller, Esquire of Upstate Law Group LLC for Defendants Preston Greer and Floyd; Kevin Sturm, Esquire, of Sturm & Cont, P.A. for Defendant Anderson County Council and James W. Logan Jr., Esquire, of Logan Jolly & Smith, LLC for Defendant Anderson County.

The Court has carefully considered all the evidence in the record, the memoranda filed by the parties and the parties' arguments. Construing the facts in a light most favorable to the Plaintiff for the reasons set forth below Defendants' Motions to Dismiss are granted.

I FACTS AND PROCEDURAL BACKGROUND

The Plaintiff filed suit on November 16, 2009 against the above-named Defendants in their official and individual capacities: Joey Preston, the former County Administrator, individually and in his official capacity; Anderson County Council and Anderson County. During all times relevant to this action the Defendants Wilson, McAbee, Greer Thompson and Floyd were members of the Anderson County Council. This action arose from their votes in favor of a severance agreement between the County and Joey Preston. The Plaintiff alleges that the votes of the Defendant Council Members in favor of the severance agreement violated their fiduciary duties to the County and seeks to hold them personally liable for said votes. The Plaintiff also names Anderson County Council, Anderson County and Joey Preston and alleges various wrongs involving the severance agreement.

The Plaintiff further alleges that all of the Defendants violated the South Carolina Freedom of Information Act (*hereinafter* FOIA) S C Code Ann § 30-4-10 *et seq* and in Plaintiff's Amended Complaint he alleges that Defendants violated the federal Racketeer Influenced and Corrupt Organizations Act (*hereinafter* RICO) 18 U S C. § 1961 *et seq*. Finally the Plaintiff alleges that the various actions of each of these Defendants has damaged him as 'a citizen resident, taxpayer and registered elector of Anderson County' and seeks money damages and declaratory judgment voiding the severance agreement between Anderson County Council and Preston, among other things.

The Defendants raise a number of issues in their Motions to Dismiss, including lack of standing and legislative immunity.

II APPLICABLE LAW AND ANALYSIS

A STANDING

A plaintiff must have standing to maintain an action. *Joytime Distrib & Amusement Co Inc v State* 338 S C 634 639 528 S E 2d 647, 649 (1999). *See also Brock v Bennett* 313 S C 513, 443 S E 2d 409 (S C App 1994) (Standing is a fundamental requirement for instituting an action, and no justiciable controversy is presented unless the plaintiff has standing to maintain the action.) "Generally a party must be a real party in interest to the litigation to have standing. A real party in interest is a party with a real, material, or substantial interest in the outcome of the litigation." *Sloan v Friends of the Hunley Inc*, 369 S C 20 28, 630 S E 2d 474 479 (2006)(internal citations omitted). Standing may be acquired (1) by statute (2) through the rubric of "constitutional standing", or (3) under the 'public importance' exception. *ATC South Inc v Charleston County* 380 S C 191 669 S E 2d 337 (2008).

(1) Constitutional Standing Requirements

The principle of standing under the Constitution remains “an essential and unchanging part of the case-or controversy requirement of Article III *Lujan v Defenders of Wildlife* 504 U S 555, 560 (1992) In South Carolina “[a] party seeking to establish standing must prove the irreducible constitutional minimum of standing *Sloan v Greenville County*, 356 S C 531, 549 590 S E 2d 338 348 (Ct App 2003) The United States Supreme Court has established a three-part test for evaluating whether the Plaintiff has established constitutional standing

First, the plaintiff must have suffered an injury in fact - an invasion of a legally protected interest which is (a) concrete and particularized, and (b) “actual or imminent not conjectural’ or ‘hypothetical ’ Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be “fairly trace[able] to the challenged action of the defendant, and not the result [of] the independent action of some third party not before the court ’ Third, it must be ‘likely ’ as opposed to merely “speculative ” that the injury will be “redressed by a favorable decision ’

Lujan 504 U S at 560-61

An individual cannot maintain an action without establishing that they have personally suffered, or will likely suffer an injury that is particular as to them and not one inflicted upon the general public An injury that is common to all does not provide adequate grounds for a plaintiff to maintain suit In fact [t]his feature of commonality defeats the constitutional requirement of a concrete and particularized injury” and “a taxpayer lacks standing when he suffers in some indefinite way in common with people generally *ATC South Inc* 380 S C at 198, 669 S E 2d at 341 (2008) *See Sloan v Greenville County*, 356 S C 531, 547 590 S E 2d 338 347 (S C App 2003)(A taxpayer may not maintain an action against government officers when he or she has ‘no special interest and [their] only standing is the exceedingly small interest of a general taxpayer), *Florence Morning News Inc v Bldg Comm n of the City & County of Florence* 265 S C 389 398, 218 S E 2d 881 884-85 (1975)(A private citizen cannot test the validity of

legislative action unless he or she has sustained or will sustain some prejudice not common to the public from such action)

The Plaintiff brought this action in his general capacity as ‘a citizen resident, taxpayer and registered elector of Anderson County, South Carolina” (Compl ¶ 3) The only harms alleged by the Plaintiff are general in nature and shared equally by the public at large¹ Therefore without showing of an injury particular to the Plaintiff that is not borne by the other taxpayers, citizens, residents and registered electors of Anderson County he cannot establish constitutional standing

(2) The Public Importance Exception

The courts have carved out a public importance exception to the general standing rules that can confer standing upon a party that otherwise fails to meet the constitutionally required minimum threshold *Sloan v Dep’t of Transp*, 365 S C 299, 618 S E 2d 876 (2005) The scope of the exception has and continues to be narrow, confined to those cases which involve issues of such public importance that their resolution is required for future guidance *See Sloan v Dep’t of Transp*, 365 S C 299 618 S E 2d 876 (2005)(Concerning violations of statutory bidding requirements of state agencies) *Sloan v Sanford*, 357 S C 431 593 S E 2d 470 (2004)(Addressing legality of governor’s eligibility for military service), *Baird v Charleston County* 333 S C 519, 511 S E 2d 69 (1999)(Involving issuance of hospital bonds) Narrowing the scope further is the fact that this exception has been applied in declaratory judgment actions not

¹ Under seven of the eleven causes of action Plaintiff has merely stated in a summarily general fashion that as a result of Defendants’ actions Plaintiff and members of the class have been damaged both actual and punitive [sic] for which damages some combination of Defendants are liable (See Compl ¶¶ 70 77 82 87 90 93 101) This does not include what could be deemed the 12th cause of action Class Action Allegations under which no particular damage or injury is alleged (See Compl ¶¶ 128 32) Finally in the Amended Complaint Plaintiff summarily states that the Defendants’ conduct allegedly in violation of RICO has facilitated the taking of funds property and/or cognizable property interests from Anderson County taxpayers the Plaintiff and the class (See Amend Compl ¶ 131) This is again a broad conclusive statement which fails to identify any specific injury to the Plaintiff proximately caused by Defendants’ alleged misdeeds

in actions for money damages. *Id.*, See also *Sloan v Sanford* 357 S C 431, 593 S E 2d 470(2004), *Sloan v Greenville County*, 356 S C 531 590 S E 2d 338 (Ct App 2003), *Beaufort County v Trask* 349 S C 522 563 S E 2d 660 (Ct App 2002) As our State Supreme Court has recognized “[t]he key to the public importance analysis is whether a resolution is needed for future guidance, [and] it is this concept of future guidance that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance. *ATC South* 380 S C at 199 669 S E 2d at 341

a Resolution is not necessary for future guidance

The Plaintiff's allegations do not raise issues of such public importance that judicial resolution would be needed for future guidance, calling for the application of the exception. On the contrary any public impact resulting from the Court's resolution of the present matter would pale in comparison to the degree, breath, and longevity of the decisions in which the exception was utilized. Specifically the South Carolina Supreme Court's decisions concerning how a state agency bids on construction jobs whether the governor may serve in the military, and hospitals issuance of bonds are all matters whose resolution have broad and continued effects on the public. State agencies will continue to bid on construction jobs, hospitals will issue bonds, and the State will continue to elect Governors who may want to serve in the military during their tenure. Plaintiff's action seeks to redress alleged injuries/wrongs flowing from an isolated event that he can prevent from happening in the future by voting to replace those he felt wronged the taxpayers of Anderson County. The Court also finds it telling that he seeks monetary damages in addition to declaratory relief, an action contrary to Plaintiff's position. The public importance exception has been applied only when the Plaintiff sought declaratory relief as such relief in those cases conferred a benefit on the public at large. Plaintiff's recovery of monetary damages

would benefit him and him alone. The public importance exception should not be utilized in a manner contrary to its name and spirit. Courts have, and should rarely apply this narrow exception to the constitutional mandates flowing from Article III.

b. Judiciary is not “super-personnel” department

The Plaintiff’s suit involves the methods by which a personnel matter was investigated and ultimately decided upon by the Anderson County Council. The Plaintiff challenges the legality of the individual Defendants’ (Wilson, McAbee Greer, Thompson, and Floyd) votes in favor of a severance package to Joey Preston, the former County Administrator. There is no authority for granting standing under the public importance exception to a plaintiff bringing suit concerning the government’s handling of a personnel matter. See *South Carolina Educ. Ass’n v. Campbell*, 883 F.3d 1251 (4th Cir. 1989). In fact, our courts discourage such judicial oversight. For example, in dealing with Title VII claims, the Fourth Circuit courts, including the South Carolina District Courts, routinely note that courts are not super-personnel departments. See *Thompson v. S. Carolina Dept. of Corr.*, 3:06-1020-JFA JRM, 2007 WL 1726530 (D.S.C. June 14, 2007). It is not the province of the judicial system to weigh the prudence of employment decisions. *Anderson v. Westinghouse Savannah River Co.*, 406 F.3d 248 (4th Cir. 2005), See also *Rowe v. Marley Co.*, 233 F.3d 825-831 (4th Cir. 2000).

In the present action, the Plaintiff is essentially asking the Court to convey him standing in order to allow judicial oversight of the County’s personnel decision. No “future guidance” can be gleaned from a court order finding that Defendants’ actions were somehow improper. Therefore, judicial resolution of the Plaintiff’s allegations fails to rise to a level of public importance that would justify application of the standing exception. The proper forum for resolution of the Plaintiff’s grievances lies in the voting booth, not the court house.

I find that the Plaintiff lacks standing to assert the claims set forth in his original Complaint against the Defendants. The only injuries alleged by the Plaintiff are in his capacity as a citizen, resident, taxpayer and registered elector of Anderson County. I find that under the facts as they are alleged and taken in the light most favorable to the Plaintiff, the Plaintiff fails to demonstrate that this matter is of such public importance as to warrant application of the public importance exception to grant him standing. Moreover, the Plaintiff's attempt to recover monetary damages derides against application of the exception and evidences the fact that the action is a much more private endeavor rather than one undertaken for the greater public good. I find no authority for granting public importance standing under circumstances where monetary damages are sought.

c. Improper to proceed against Defendants in their individual capacity

Even if this Court were to confer taxpayer standing to the Plaintiff, it would still not allow Freemantle to proceed with a claim against Defendant Preston or the other individual Defendants in their individual capacity. The Plaintiff's Complaint challenges the County's action in entering into a contractual relationship with the former County administrator. The Plaintiff asks that the contract be declared void due to the manner in which Preston and the other individual Defendants allegedly entered into the agreements. However, none of the individual defendants had the power to enter into a contract on behalf of the County as individual council members. Rather, the Council Members had to act collectively as the Anderson County Council, not as individuals. Notably, the taxpayer standing cases from South Carolina do not involve individual legislators. The Plaintiffs in those cases challenged the actions of the entities or government officials in their official capacities. See *Sloan v Friends of the Hunley Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006), *Sloan v Dep't of Transp.*, 365 S.C. 299, 618 S.E.2d 876 (2005), *Sloan v Sanford*, 357 S.C. 431, 593 S.E.2d 470 (2004), *Sloan v Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (S.C. App. 2003), *Beaufort*

County v Trask, 349 S C 522, 563 S E 2d 660 (S C App 2002), *Bard v Charleston County*, 333 S C 519, 511 S E 2d 69 (1999) *Crews v Beattie*, 197 S C 32, 14 S E 2d 351 (1941) Here, the Plaintiff seeks redress from Preston and the other Defendants in their individual capacities. There is simply no authority for this. The proper defendant for any taxpayer challenge would be the County, not the individual defendants.

(3) Statutory Standing – Freedom of Information Act Cause of Action

As to the Plaintiff's claims falling under the Freedom of Information Act, I find that the Plaintiff also lacks standing as to these claims.² The only injury alleged is that of a general taxpayer, resident, citizen, and elector of Anderson County. The Plaintiff fails to allege any specific injury directly or proximately caused by Defendants' alleged FOIA violations. As stated above, I find that the Plaintiff's claims do not fall within the public importance exception to the standing rules. The Plaintiff has not alleged a compensable injury and lacks standing to proceed. These claims are also dismissed.

(4) Asserted Class Action

The Plaintiff seeks to assert a class action presumably on behalf of "all others similarly situated" as himself. (Compl ¶ 1). Rule 23 of the South Carolina Rules of Civil Procedure establishes the prerequisites for a plaintiff seeking to bring a class action. Before a class can be certified, a court must find that (1) the class is so numerous that joinder of all parties is

² South Carolina Freedom of Information Act (FOIA) allows any citizen to bring a cause of action for violations of the statute. S C Code Ann § 30-4-100. Plaintiff failed to assert standing upon this statutory ground; however, even if he had done so, he would be precluded from pursuing this action under Rule 12(b)(8) of the South Carolina Rules of Civil Procedure as discussed *infra*. Despite this definitive preclusion, if Plaintiff were allowed to proceed by being afforded standing upon this statutory basis, the permissible scope of his action would be greatly limited. Specifically, the applicable one-year statute of limitations would prevent him from asserting all but one of the alleged FOIA violations contained in his Complaint, as the actions underlying the other FOIA claims happened more than a year prior to the commencement of the action. S C Code Ann § 30-4-100(a). Furthermore, his remedies would be limited to those provided by the statute. *Lawson v South Carolina Dept of Corr*, 340 S C 340, 532 S E 2d 259 (2000); *Dockins v Ingles Markets, Inc.*, 306 S C 496, 498, 413 S E 2d 18, 19 (1992) ("When a statute creates a substantive right, and provides a remedy for infringement of that right, the plaintiff is limited to that statutory remedy."). Therefore, Plaintiff could seek declaratory and/or injunctive relief, not monetary damages. S C Code Ann § 30-4-100.

impracticable (2) there are questions of law or fact in common to the class, (3) the claims or defenses of the representative parties are typical to those of the class, (4) the representative parties will fairly and adequately protect the interests of the class and (5) the amount in controversy exceeds one hundred dollars for each member of the class. S.C.R. Civ.P. 23, *King v American Gen Finance Inc*, 386 S.C. 82, 687 S.E.2d 321 (2009), *Tilley v Pacesetter Corp*, 355 S.C. 361, 585 S.E.2d 292 (S.C. App. 2003) *McGann v Mungo*, 287 S.C. 561, 340 S.E.2d 154 (S.C. App. 1986)

The Plaintiff has failed to set forth any evidence establishing the necessary prerequisites for class certification under Rule 23. In fact, the Plaintiff did not even attempt to define what group of individuals for whom he seeks to speak beyond the general description of "all those similarly situated" as himself (Compl. ¶ 1). Without more information to identify the putative class, any class action claims cannot be permitted to proceed. Most importantly, before a class action suit can be certified, an individual or group must have standing to bring the action. *Owens v Magill*, 308 S.C. 556, 419 S.E.2d 786 (1992). Plaintiff's lack of standing on his individual claims precludes him from proceeding with any putative class causes of action.

B PLAINTIFF'S AMENDED COMPLAINT

(1) RICO Cause of Action³

a Public importance exception

As to the Plaintiff's claims contained in the Amended Complaint concerning alleged violations of RICO, I find that if the Court were to rule upon the claims, the Plaintiff lacks standing to maintain these claims as well. The Plaintiff's claims and alleged injuries under the RICO cause

³ Any claim contained in Plaintiff's Amended Complaint is not properly before the Court due to Plaintiff's failure to comply with Rule 15 of the South Carolina Rules of Civil Procedure which governs amendment of pleadings. *See infra*. Assuming arguendo that the Court would have granted Plaintiff leave to amend the Complaint, the RICO cause of action would not be upheld and/or viable under the facts and circumstances of this case.

of action offer nothing which would confer standing and allow him to proceed as to this or any other cause of action. The addition of the RICO claim does not change the nature of the action in a manner which would somehow make the resolution of the case of such public importance as to confer standing under the exception. In essence the RICO cause of action primarily parrots the allegations contained in the original complaint and the Court's conclusion as to the application of the public importance exception remains unchanged.

In fact, the public importance exception to the constitutional standing requirements has not been recognized or utilized to confer standing in this context. A RICO claim is a federal cause of action which may be brought by "[a]ny person injured in his business or property by reason of a violation of section 1962 in any appropriate United States district court." 18 U.S.C. § 1962(c). The proper venue for Plaintiff's RICO claim lies in the district court which is bound by Art. III's "case and controversy" requirement. Therefore, the public importance exception has not been applied to confer plaintiffs standing to maintain RICO actions because to do so would violate the United States Constitution. Specifically, the exception has not been utilized to confer a party standing for a purely federal cause of action such as a RICO claim who otherwise lacks the constitutionally required elements as detailed in *Lujan*. See *supra* at 4. Therefore, maintenance of Plaintiff's RICO cause of action requires that he establish standing either by statute or through the traditional constitutional rubric detailed above. *ATC South Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337 (2008).

b Constitutional standing

As already noted, the Plaintiff has failed to allege a particularized "injury in fact" that is not suffered by the general public. Just as in the original Complaint, the Plaintiff's RICO claim merely alleges that he has suffered an injury which is common to the general public and impacts

him merely as a taxpayer citizen and registered voter of Anderson County (See Amend Compl ¶¶ 130-131)⁴ Specifically Plaintiff alleges that he and the uncertified class suffered injury as a result of Defendants' alleged intimidation of Anderson County residents for the purpose of stifling public dissent the utilization of county funds for interstate travel and Defendants' other alleged actions Plaintiff claims to have violated the federal RICO statute (Amend Compl ¶¶ 129-30) The Plaintiff has claimed a general injury resulting from Defendants' alleged violations of RICO which is suffered by the general public and the commonality of the alleged injury defeats the constitutional requirement of a concrete and particularized injury" *ATC South Inc, v Charleston County* 380 S C 191 198, 669 S E 2d 337, 341 (2008) Also, while Plaintiff's failure to establish the first element of constitutional standing, particularized injury in fact, is dispositive, he likewise fails to show that the alleged injuries would be redressed by a favorable decision of this Court See *Lujan*, 504 U S at 560-61 Lacking any allegation or proof that he has suffered such an injury and without the aid of the public importance exception the only remaining avenue for Plaintiff to garner standing is via statute

c Statutory Standing

RICO allows [a]ny person injured in his business or property by reason of a violation of section 1962 [to] sue therefor in any appropriate United States district court" 18 U S C A § 1962(c) Under the statute a "person is 'any individual or entity capable of holding legal or beneficial interest in property ' 18 U S C A § 1961(3) In order to maintain a RICO action 'plaintiffs must allege that Defendants' violations were a proximate cause of their injuries *Sadighi v Daghighfek* 36 F Supp 2d 279, 286 (D S C 1999) See *Holmes v Securities Investor Protection Corp* 503 US 258 268 112 S Ct 1311 (1992) Here, as in *Sadighi* Plaintiff has alleged

⁴ The Court also believes it is worth noting that Plaintiff fails to plead for any specific damages under the RICO cause of action and the injuries alleged appear to be set forth by implication See Amend Compl ¶¶ 128-134

Defendants have engaged in conduct in violation of 18 U S C §§ 1962(b), (c), and (d) and [t]o have standing to assert private causes of action for these RICO violations, Plaintiffs must allege (1) violation of § 1962, and (2) injuries to their business or property that were proximately caused by these RICO violations ' *Id*, See also *Sedima, S P R L v Imrex Co , Inc* , 473 U S 479, 496-97, 105 S Ct 3275 3285, 87 L Ed 2d 346 (1985)(“In addition, the plaintiff only has standing if, and can only recover to the extent that, he has been injured in his business or property by the conduct constituting the violation of RICO)

The Plaintiff's Amended Complaint fails to allege that property in which he or the uncertified class holds a legal or beneficial interest and/or his or the uncertified class' business(es) have been damaged by the Defendants' actions which allegedly violated § 1962 The Amended Complaint states that Plaintiff and the class have suffered injury as set forth above as required under 18 U S C § 1964(c) based upon the defendants prohibited activities in violation of 18 U S C § 1962' (Amend Compl ¶¶ 130) What Plaintiff fails to do is establish the necessary causal nexus between the Defendants' activities alleged to have violated § 1962 and any damage or harm to his or the uncertified class business or property See *Sadighi* at 286 (“[P]roximate cause requires a nexus between the proscribed acts and the injuries ’) Therefore, he cannot obtain standing to proceed via statute Plaintiff has exhausted all available avenues by which he may obtain standing to proceed with his RICO claim, and accordingly his RICO cause of action if it was properly before the Court, should be dismissed

d Improper Venue

Even if the Plaintiff could pursue his RICO cause of action, he seeks to do so in an inappropriate venue 18 U S C A § 1964(a) confers jurisdiction to the District Courts of the United

States to hear claims for alleged RICO violations. This is not to say that state courts may never hear a civil RICO claim when considered in conjunction with viable state causes of action; however, without any surviving state causes of action, this Court may not obtain supplemental jurisdiction to hear Plaintiff's federal claim.

(2) Rule 15 South Carolina Rules of Civil Procedure

Plaintiff filed the original complaint on November 16, 2009. Defendants filed motions to dismiss on January 13, 15, and 19, 2010.⁵ The Court scheduled oral arguments on the motion for March 17, 2010. The evening prior to oral arguments, on March 16, 2010, Plaintiff filed an Amended Complaint adding the RICO claim as an additional cause of action. Neither the parties nor the Court addressed the RICO claim at the March 17th hearing. Addressing the RICO claim at that time would have prejudiced Defendants as they did not have adequate notice and opportunity to address and refute the new claims, a disadvantage Rule 15 is designed to protect against. See *Collins Entertainment, Inc. v. White*, 363 S.C. 546, 611 S.E.2d 626 (S.C. App. 2005); *Parker*, 362 S.C. 276, 607 S.E.2d 711 (S.C. App. 2005); *Staubes v. City of Folly Beach*, 339 S.C. 406, 529 S.E.2d 543 (S.C. 2000) (The prejudice envisioned by Rule 15 is a lack of notice that the new issue is to be tried and a lack of opportunity to refute it). Following the March 17th hearing, Defendants filed additional motions to dismiss, and the Court heard arguments on those motions on September 7, 2010.

Rule 15 provides that

A party may amend his pleadings once as a matter of course at any time before or within 30 days after a responsive pleading is served or, if the action has not been placed on the trial roster, he may so amend it at any time within 30 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party.

⁵ Anderson County filed a motion to dismiss on January 13, 2010. Anderson County Council filed a motion to dismiss on January 15, 2010, and the remaining Defendants filed a motion to dismiss on January 19, 2010.

S C R Civ Pro 15 The Plaintiff contends that his amendment was within the time allowed under Rule 15 because Defendants' motions to dismiss were "responsive pleadings" and therefore their filing extended the timeframe in which he could amend his complaint Under Plaintiff's theory, the deadline for amending a complaint re-sets each time a motion to dismiss, or presumably any other motion related to the complaint, is filed Acceptance of Plaintiff's position would hinder the judicial process and is contrary to the spirit purpose, and language of the Rules of Civil Procedure However, even assuming Plaintiff is correct Defendants filed and served their motions to dismiss on January 19, 2010 which under Plaintiff's theory, would make the latest permissible date to amend February 19, 2010 Plaintiff's attempted amendment was too late even under his incorrect interpretation of the Rule⁶

Rule 15 is clear that the time for amendment starts to run when a responsive pleading is served In the present case no responsive pleadings were filed, but rather Defendants responded to the complaint by filing motions to dismiss These filings were not "responsive pleadings" as Rule 7(a) pertaining to pleadings makes clear by including "a complaint an answer a reply to a counterclaim an answer to a cross-claim a third party complaint [and] a third-party answer S C R Civ P 7(a)

At the time Plaintiff attempted to amend his complaint the trial was on the roster and therefore his only options for adherence to Rule 15 was to either obtain leave of the court or Defendants consent to amend Plaintiff failed to do either and therefore his amendment was impermissible under Rule 15

⁶ Defendants' motions filed after the March 17th hearing were in response to the new cause of action in Plaintiff's amended complaint and cannot be utilized as Plaintiff appears to argue to retroactively toll the timeframe in which the complaint may be amended

C LEGISLATIVE IMMUNITY

While the ruling of standing is dispositive of the issues raised in the various Motions to Dismiss, I also find that had I reached the issue, I would have granted legislative immunity to Defendants Wilson, McAbee Greer, Thompson and Floyd. South Carolina has long honored the public policy of recognizing an absolute immunity of members of legislative bodies for acts in the performance of their duties. *Richardson v McGill*, 273 S C 142, 146, 255 S E 2d 341, 342 (1979). There is no duty more essential to the position of a County Council member than voting. It is a long standing principle throughout this nation that judicial inquiries into legislative motivation should be avoided. *Fletcher v Peck*, 10 U S 87 (1810). Each of these individual Defendants were a member of the Anderson County Council which voted in favor of the severance agreement at issue in this case. The Plaintiff alleges impropriety in the voting process and questions the motivations of these individuals in casting said votes. Defendants' actions in this regard constitute discretionary actions for which they are immune from liability. Judicial scrutiny of such discretionary actions would violate the political question doctrine and threaten the necessary immunity afforded legislators so that they may act without fear of personal liability. *Bear Enterprises v County of Greenville*, 319 S C 137, 459 S E 2d 883 (S C App 1995). Therefore, I find that these issues are not a proper inquiry for this Court, Defendants are entitled to legislative immunity for their actions as County Council members and, therefore, the Plaintiff's claims should be dismissed.

D ADDITIONAL BAR UNDER S C R CIV P 12(B)(8)

Finally, while the ruling regarding Plaintiff's lack of standing remains dispositive of all the issues raised by Defendants various Motions to Dismiss, I find that Plaintiff would be further barred from pursuing the present action by Rule 12(b)(8) of the South Carolina Rules of Civil

Procedure Rule 12(b)(8) provides that an action should be dismissed if ‘ another action is pending between the same parties for the same claim ’” In the present case, the Plaintiff names, Joey Preston Anderson County and the individual Defendants all as defendants in this case The Plaintiff’s Complaint seeks to undo the severance agreement granted by Anderson County to Joey Preston and to hold Preston, along with the individual defendants, liable to him personally for their votes in favor of the agreement The case of *Anderson County v Joey Preston and the South Carolina Retirement System* C A No 2009-CP 04-4482, which is pending in the Anderson County Court of Common Pleas, also seeks to revoke the severance agreement granted to Preston The Plaintiff’s suit, in this respect, is duplicative Furthermore, the Anderson County case deals with the same substantive issues raised by the Plaintiff and involves the true parties in interest Therefore, even if the Plaintiff were granted standing for this suit, all of his claims should be dismissed pursuant Rule 12(b)(8) S C R Civ P

III CONCLUSION

Taken in the light most favorable to the Plaintiff the Complaint fails to set forth facts and allegations that would confer Plaintiff standing to pursue his claims in the present action Plaintiff’s only conceivable means of obtaining standing under the present circumstances would be through the application of the public importance exception However, this Court finds that the present controversy and the fact that Plaintiff seeks monetary damages derides against application of the exception Lacking this fundamental constitutional requirement Plaintiff’s claims must be dismissed

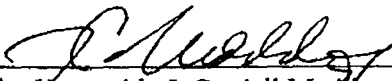
Further, Plaintiff’s claim should be dismissed pursuant to Rule 12(b)(8) of the South Carolina Rules of Civil Procedure as there is currently an action pending before this Court that concerns the same issues, involves proper parties to the action, and seeks nearly identical relief



As to the remainder of the issues and defenses raised in the Defendants' Motions to Dismiss I make no ruling on them at this time

I find that the Plaintiff lacks standing to proceed in this matter. The Defendants' Motions to Dismiss as amended, are hereby GRANTED

IT IS SO ORDERED



The Honorable J. Cordell Maddox Jr.
Tenth Judicial Circuit

Number 9
October __, 2010
Anderson, South Carolina

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