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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Jean H. Toal, Acting Circuit Court Judge

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Appellate Case No. 2020-000851

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Jonathon Hill and Jonathon Hill for SC House District 8,

Appellants

v.

The South Carolina Republica Party and Vaugh Parfitt

Respondents.

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# INITIAL BRIEF OF APPELLANTS

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# QUESTIONS PRESENTED FOR REVIEW

I. Where a statute defines its use of the word "person" as including any "organization or group of persons acting in concert," and the same statute prohibits any "person" from contributing more than $1,000 to a category of political candidates during an election cycle, did the lower court err in holding that the Chairman of a political party may contribute party funds in unlimited amounts to a political candidate?

A. Given that the plain language of the statute applies to Respondent Republican Party, as a "group of persons acting in concert," did the lower court err in resorting to statutory construction when the plain meaning was capable of ascertainment?

B. The lower court recognized the intent of the legislature was to limit the amount of funds candidates may receive from any given source. Did the lower court err, once it decided to engage in statutory construction, in reaching a result at odds with that intent?

II. Where the same statute prohibits any candidate for the State House from accepting more than $1,000 from any one source during an election cycle, did the lower court err in holding that such candidates may receive unlimited funds from a political party?

III. Did the lower court err in holding that another section of the same statute applies to allow contributions of up to $5,000, while simultaneously holding that section to be unconstitutional, and in concluding that therefore political parties, acting through their chairperson alone, may contribute unlimited amounts to political candidates under South Carolina law?

A. Where the statute separately defines the terms "political party," "party committee" and "legislative caucus committee," did the lower court err in holding that Section 8-13-1316 of the South Carolina code, which concerns contributions made "from a political party through its party committees or legislative caucus committees" applies, given that no party committee nor legislative caucus committee was involved in the making of the contributions?

B. Did the lower court err in holding that because the term "committee" as defined in the statute has been held to be unconstitutionally overly broad, the narrower defined terms "party committee" and "legislative caucus committee" must also be unconstitutional?

# OVERVIEW

This case arises under Title 8, Chapter 13 of the South Carolina Code, the Ethics, Government Accountability, and Campaign Reform Act. This case centrally involves a question of South Carolina law: Does the Act mean what it says?

The Act was enacted in the aftermath of Operation Lost Trust, which exposed widespread corruption in the South Carolina Legislature. To limit that corruption, and to require candidates for public office to rely on broad-based contributions from many sources, rather than large contributions from a few sources, the Ethics Act prohibits any "person" from providing contributions totaling more than $1,000 to a candidate for the State Legislature or for any other office that is not a statewide office. Section 8-13-1314. To prevent persons wanting to unduly influence legislators from doing end-runs around the statute by forming non-person entities (such as partnerships or corporations), the Act specifically defines "person" as "an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert." Section 8-13-1300(25) (emphasis added).

Additionally, and regardless of the definition of "person," the Act prohibits "a candidate or anyone acting on his behalf" from accepting contributions totaling more than $1,000 from a single source for a campaign for a seat in the Legislature. Section 8-13-1314(A)(1)(c).

The Act allows higher limits for contributions "from a political party through its party committees or legislative caucus committees." For contributions through such committees, the Act sets a cap of five thousand dollars for state legislative races. Section

8-13-1316(A)(2). "Party committee" and "Legislative caucus committee" are defined terms in the statute. In requiring that these larger contributions come from party committees or legislative caucus committees, the Legislature prevented any single individual – such as a political party's chairperson, acting alone - from deciding where to funnel these larger contributions, which would put too much power in the hands of that person.

Here, the litigants agree that the contributions exceeded $5,000. Here, the contributions were not made through any party committee or legislative caucus committee. Here, the South Carolina Republican Party is an "organization or group of persons acting in concert."

Here, the questions include,

(1) Does the Ethics Act mean what it says when it forbids "any other organization or group of persons acting in concert" from making "a contribution which exceeds" "one thousand dollars in the case of a candidate" for a State House office?

(2) Does the Ethics Act mean what it says when it limits the $5,000 cap to contributions from a political party "through its party committees or legislative caucus committees"?

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(3) If the answers to (1) and (2) are, "No," the Court would need to approach the question of whether Section 8-13-1316 is constitutional. Relying on a federal district court order that had held the term "committee" as defined in Section 8-13-1300, paragraph 6, to be unconstitutionally overly broad, the lower court held Section 8-13-1316 to be unconstitutional, because the section contains the legislatively-defined terms

"party committees" and "legislative caucus committees." *See* Section 8-13-1300, paragraph 21 (defining "Legislative caucus committee") and paragraph 24 (defining "Party committee"). If the Court reaches the constitutional question, the Court should hold that merely because the broader term, "committee," is overly broad, it does not follow that the narrower terms, "party committee" and "legislative caucus committee," are overly broad, and reverse the holding that the section is unconstitutional.

## STATEMENT OF THE CASE

This case involves alleged violations of the Ethics, Government Accountability, and Campaign Reform Act, Title 8, Chapter 13 of the South Carolina Code, and of Article 13 therein, entitled "Campaign Practices." The appeal is from the lower court's order of June 5, 2020, denying all relief to Plaintiffs-Appellants, and from its order of June 8, 2020, denying reconsideration. (Orders.).

### A. Events Leading to The Order of June 5, 2020

This case began in Richland County Court on June 3, 2020, with the filing and service of a summons and Appellants' verified petition and motion for preliminary injunction, complaint for declaratory and injunctive relief, and motion to expedite discovery. (Summons & Petition). Appellants are Representative Jonathon Hill, a candidate for re-election as the District 8 Representative to the South Carolina House of Representatives, and his official campaign committee, Jonathon Hill For SC House District 8. They alleged violations of South Carolina election law on the part of Respondents South Carolina Republican Party and Vaughn Parfitt. (Petition, R. pp. __).

The allegations concerned many thousands of mailers that were sent to likely voters in the Republican primary to be held on June 9, 2020. (Exhibits 1-3, Pet. ¶¶ 9, 20).

These mailers advocated the election of Respondent Parfitt as the Republican Party nominee for the District 8 seat and the defeat of Appellant Hill's candidacy for re-nomination to that seat. (Exhibits 1-3).

Specifically, Appellants claimed that the cost of these mailers exceeded $1,000, and therefore Respondent Party was violating South Carolina Code Section 8-13-1314, which limits contributions to candidates for State House races to $1,000. (Petition, ¶¶ 25-31, 37-44, 50, 53). Relying on South Carolina Code Section 8-13-1300 *et seq.,* Appellants noted that the statute defines its use of the word "person" as including any "organization or group of persons acting in concert," and the same statute prohibits any "person" from contributing more than $1,000 to a category of political candidates during an election cycle. Appellants reasoned that the Party was therefore prohibited from exceeding the $1,000 limit. (*Id.*)

Appellants further alleged that Mr. Parfitt was in violation of the provision in Section 8-13-1314 that prohibits any candidate from accepting contributions from a single source totaling more than $1,000. (*Id*., ¶¶ 25-31, 37, 41-44, 50, 53).

Appellants further noted that there did not appear to be any "party committee" or "legislative caucus committee" involved with these contributions. (Petition, ¶ 32). Appellants noted that Section 8-13-1316 allows contributions of up to $5,000, "[n]otwithstanding Section 8-13-1314(A)(1)," from "a political party through its party committees or legislative caucus committees." (*Id*.) Appellants alleged that, therefore, (1) the exception for contributions through "party committees" and "legislative caucus committees" did not apply; and (2) if the exception did apply, the contributions totaled more than $5,000, and Respondents were therefore still in violation of the law. (*Id*.)

Appellants requested an early hearing. (*Id*., ¶¶ 54-55). Appellants further requested that Respondents be required to bring to the hearing all invoices and all documents indicating payments made this election cycle relating to State House District 8 (*Id*.). Chief Administrative Judge Alison Renee Lee issued an order on June 3, 2020, setting a hearing for June 5, 2020, before the Honorable Jean Toal, Chief Justice of the Supreme Court (Retired) (Lee order, p. 1), and instructing Respondents to bring to the hearing the documents Appellants had requested (*id*., p. 3).

Respondent Parfitt emailed his Response to Judge Toal the evening of June 4, 2020, and emailed a copy to counsel for Appellants on June 5, 2020. (Cover email; Defendant Vaughn Parfitt's Response In Opposition To Plaintiffs' Motion For Temporary Injunction).

The hearing took place on June 5. (Order, p. 1). Present were Respondent Vaughn Parfitt; Drew McKissick, the Chairman of Respondent South Carolina Republican Party; Respondent Jonathon Hill; and counsel (*Id*.)

Respondents brought only one document to the hearing in response to the Administrative Judge's order, an invoice to Respondent Party for postage for mailers in support of Parfitt's campaign in the amount of $2,650.00. [1] (Def. Ex. 1). The parties stipulated at the hearing that the value of the contributions accepted by candidate Parfitt and given by South Carolina Republican Party exceed $5,000.00. (Order, p. 2).

[1] Appellants were aware of six sets of mailers when they arrived at the Courthouse. (Pls.' Tr. Exs. 1-6). They brought a sample of each to the hearing. (*Id*.). Respondents then produced a document showing eight sets of such mailers. (Defs.' Ex. 1).

The testimony as to what person or committee within Respondent Party authorized the contributions at issue was from Respondent Party's Chairman, Drew McKissick.

Q Who can authorize these expenditures for the party?

A That would be myself.

Q Yourself, not the committee?

A What's that?

Q Not the executive committee?

A No.

Q Okay. Who did authorize these expenses?

A That would be me.

Tr. Hr'g, page 38, lines 15-23 (direct examination of Party Chairman Drew McKissick).

The lower court read its order into the record at the hearing and filed its order the same day. (Tr. p. 112, line 1-p. 116, p. 6; Order). The order held (1) that Section 8-13-1314, with its $1,000 limit on contributions such as those at issue here, did not apply (*id*., page 2); and (2) that Section 8-13-1316, which allowed a $5,000 limit for certain contributions, would apply, but was unconstitutional under the holding of the federal district court in *SC Citizens for Life v. Krawcheck*, 759 F. Supp. 2d 708 (D.S.C. 2010). (Order, pages 2-3). It therefore concluded there are "no valid provisions which restrict the giving or receiving" of contributions from a political party to a political campaign. (*Id*., p. 3).

## B. The Holdings

### 1. The Holding Regarding -1314

As to Section 8-13-1314, the court held,

> Definitional sections of the Ethics Act, specifically Sections 8-13-1300(25),(26) contain the definition of "persons" and the definition of "political party." It is clear that the legislature intended to regulate persons and political parties separately. Thus, the restrictions of §8-13-1314 on personal contributions do not apply to the South Carolina Republican Party.

Order, p. 2 (emphasis added).

### 2. The Holding Regarding -1316

As to Section 8-13-1316, the court held,

> The constitutionality of the SC Ethics Act's regulation of "committee" as defined in Section 8-13-1300(6) was challenged in *SC Citizens for Life v. Krawcheck,* 759 F.Supp.2d 708 (D.S.C. 2010). In this case and subsequent cases, the federal district court concluded that the definition of "committee" is overbroad and facially unconstitutional. U.S. District Judge Terry Wooten addressed the issue of whether or not the definition of "committee" could be given a narrowing construction by the Court which would make it constitutional. Judge Wooten held:
>
> > [L]imiting the application of S.C. Code Ann § 8-13-1300(6) only to groups that have the major purpose of influencing the outcome of an election would be tantamount to rewriting the state statute. This is particularly true in this instance, where the "committee" definition invalidated herein is a component of a comprehensive legislative scheme that involves detailed regulations governing all entities that are encompassed by the statutory definition. The revision of the statutory scheme is a task best-suited to the state legislature, and the Court concludes that application of a limiting construction is not appropriate in this case.
>
> If the definition of "committee" is struck from the SC Ethics Act, then the regulations and restrictions of Section 8-13-1316 on the accepting or giving of candidate contributions of more than $5,000.00 are invalidated. I therefore deny the petition for a

> preliminary injunction on the grounds that the SC Ethics Act contains no valid provisions which restrict the giving or receiving of the political contribution at issue in this matter.

(*Id*. pp. 2-3).

The court further stated,

> And I say to you, Mr. Fudenberg, and to your client, Representative Hill: Had the legislature done a job of dealing with this matter after the ruling in 2010 and stuck with the intention that they have, you would be completely right about saying that these contributions exceed what is permitted.

(Tr. Hr'g, page 116, lines 9-14).

## C. Post-Hearing Events

Appellants electronically filed a motion to reconsider, alter, or amend the judgment on Saturday, June 6, 2009, with courtesy copies via email to the Judge and opposing counsel. (Cover email and Motion). Respondents filed a response in opposition to Appellants' motion to reconsider on June 8, 2020. (Cover email and Response). The lower court denied Appellants' motion to reconsider by an order dated June 8, 2020. (Ord. Mot. Recon.). That order recognized that Judge Manning had ruled to largely opposite result regarding the impact of *Krawcheck* in *Richard A. Harpootlian v. South Carolina Senate Republican Caucus,* Case No. 2018-CP-40-05370 (Oct. 19, 2018). (Order Mot. Recon., pp. 1-2). The lower court "respectfully disagree[d]" with Judge Manning, and stated "This is an issue of novel impression for the South Carolina Supreme Court. It is there that this matter should be resolved." (*Id*., p. 2).

This appeal was noticed on June 8, 2020.

# STATEMENT OF FACTS

## A. Background: The Nature of the Contributions.[2]

Although not needed to decide this case, this discussion of the nature of the contributions is provided as background. The contributions at issue here took the form of many thousands of mailers paid for by Respondent Party and authorized by Respondent Parfitt or those acting in his behalf. These mailers, which were sent to likely District 8 voters in the upcoming Republican primary, urged the election of Vaughn Parfitt as the Republican nominee and the defeat of Jonathon Hill. Each mailer states in capital letters that it is "PAID FOR BY SCGOP AND AUTHORIZED BY VAUGHN D. PARFITT FOR SC HOUSE." (Pls.' Tr. Exs. 1-6).

There were 24,150 such mailers. (Respondents' Exhibit 1).[3]

Six examples of these mailers were presented at the hearing. They state such things as, "However you decide to cast your ballot, remember to vote for Vaughn Parfitt in the June 9th Republican primary" (Ex. 2); "Vote Vaughn Parfitt on June 9th" (Ex. 3); "That's why I'm asking you to elect Vaughn Parfitt in the Republican primary for state

[2] A "contribution" within the meaning of the Ethics Act includes an "in-kind contribution or expenditure … or anything of value made to a candidate or committee to influence an election[.]" S.C. Code Ann. § 8-13-1300(7). Likewise, an "expenditure" under the Act is any "purchase, payment, loan, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit, transfer of funds, gift of money, or anything of value for any purpose." *Id.* § 8-13-1300(12). Further, an "in-kind contribution or expenditure" is defined as "goods or services which are provided to or by a person at no charge or for less than their fair market value." *Id.* § 8-13-1300(20).

[3] Respondents' Trial Exhibit 1 shows a total of 24,150 separate pieces of mail across eight sets of mailers. (R. p. ).

representative on June 9th" (Ex. 4); "Call Jonathon Hill at ***-***-****. Ask him why he chose to support liberal Allison [*sic*] Lee" (Ex. 5); "Vote Vaughn Parfitt" (Ex. 6).[4]

## B. Respondent Republican Party's Contributions to Respondent Vaughan's Campaign Exceed Five Thousand Dollars.

The parties so stipulated. Order, page 2 ("It is stipulated by all parties that the value of the contributions accepted by candidate Parfitt and given by South Carolina Republican Party exceed $5,000.00").[5]

To state the obvious, because the contributions exceed five thousand dollars, they also exceed one thousand dollars. *Cf. Posadas de P.R. Assocs. v. Tourism Co.,* 478 U.S. 328, 345-46, 106 S. Ct. 2968, 2979 (1986) ("In our view, the greater . . . necessarily includes the lesser[.]"[6]).

## C. How the Contributions Were Made

The contributions at issue here were made by Respondent Party at the direction of one man, Drew McKissick, the Chairman of Respondent Party.

Q Who can authorize these expenditures for the party?

---

[4] Drew McKissick, Chairman of Respondent Party, testified on direct examination,

Q [W]ere these mailers intended to advance Mr. Parfitt's candidacy?

A Absolutely.

Q At the expense of Mr. Hill's?

A Absolutely.

Tr. 31:5-9.

[5] The postage alone was more than $2,600. Def's Ex. 1.

[6] More fully, the Court wrote, "In our view, the greater power to completely ban casino gambling necessarily includes the lesser power to ban advertising of casino gambling, and *Carey* and *Bigelow* are hence inapposite." *Posadas de P.R. Assocs. v. Tourism Co*., 478 U.S. 328, 345-46, 106 S. Ct. 2968, 2979 (1986).

A That would be myself.

Q Yourself, not the committee?

A What's that?

Q Not the executive committee?

A No.

Q Okay. Who did authorize these expenses?

A That would be me.[7]

Tr. Hr'g, page 38, lines 15-23 (emphasis added).

# ARGUMENT

## Structure of the Argument

Because a court faced with a matter of federal constitutional analysis of a statute must undertake statutory analysis first, in hope of mooting the constitutional issue, *e.g., Boumediene v. Bush*, 553 U.S. 723, 787, 128 S. Ct. 2229, 2271 (2008), this Brief will address the statutory analysis first.[8]

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[7] He similarly testified (Tr. p. 66, line 24 – p. 67, line 4),

Q Do you have any idea how those mailers [Appellants' Trial Exhibits 1-6] would have gotten the SCGOP name on them?

A Absolutely.

Q Please explain that to the Court.

A Because I told them to put it on there, because we were paying for it.

[8] To foreshadow, three related rules (or three aspects of the same rule) apply to this appeal:

First, a principle of process: Courts address a statutory issue before addressing a related federal constitutional issue;

Second, a related principle of substance: Courts strive to read a statute in a manner that will avoid their needing to address the federal constitutional issue; and

## Standard of Review

The issues here are pure issues of law. Therefore, a *de novo* standard of review is appropriate. *Bennett &Bennett Constr., Inc. v. Auto Owners Ins. Co*., 405 S.C. 1, 4, 747 S.E.2d 426, 427 (2013) (stating that questions of law are reviewed *de novo*.)

## A. Law

### 1. Background: The Purpose of the Act

The Legislature enacted the Ethics, Government Accountability, and Campaign Reform Act of 1991 (Title 8, Chapter 13 of the South Carolina Code) in the aftermath of a federal corruption probe, "Operation Lost Trust," [9] which exposed widespread corruption within the South Carolina Legislature. The Legislature recognized that public trust is necessary for government to function effectively. It sought to foster public trust and confidence in government, to reduce corruption, and to promote the integrity of government through openness. Important to achieving those goals was to limit the amounts that may be contributed to candidate from a single source, and similarly, to limit the amounts that candidates may accept from a source.

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> Third, an analogous principle of substance: If a court does reach a federal constitutional issue, the court strives to read the statutory provision as constitutional.

As to the first two precepts, *see, e.g., Boumediene v. Bush*, 553 U.S. 723, 787 (2008) (cited in text above); as to the third, *see, e.g.*, *Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 270 (1827).

[9] See State v. Thrift, 312 S.C. 282, 306 n.17, 440 S.E.2d 341, 354 n.17 (1994) ("The General Assembly recognized the serious effect of the investigation and noted that because the public's trust was essential for government to function effectively, the use of any threats, favoritism, undue influence, or other impropriety would undermine the public's confidence. Act No. 248, 1991 S.C. Acts 1579.").

Background on Operation Lost Trust is provided in, e.g., "Operation Lost Trust" (SCEncyclopdia), available at http://www.scencyclopedia.org/sce/entries/operation-lost-trust/.

This appeal asks whether any limit still exists on contributions parties may provide candidates for State or local offices.

### 2. Additional Background: Definitions

A "contribution" within the meaning of the Ethics Act includes an "in-kind contribution or expenditure … or anything of value made to a candidate or committee to influence an election[.]" S.C. Code Ann. § 8-13-1300(7). Likewise, an "expenditure" under the Act is any "purchase, payment, loan, forgiveness of a loan, an advance, in-kind contribution or expenditure, a deposit, transfer of funds, gift of money, or anything of value for any purpose." § 8-13-1300(12). Further, an "in-kind contribution or expenditure" is defined as "goods or services which are provided to or by a person at no charge or for less than their fair market value." § 8-13-1300(20).

"Candidate' means: (a) a person who seeks appointment, nomination for election, or election to a statewide or local office, or authorizes or knowingly permits the collection or disbursement of money for the promotion of his candidacy or election; . . . ." *Id*., ¶ 4.

"'Election' means: (a) a general, special, primary, or runoff election; . . . ." *Id.*, ¶ 9.

"'Election cycle' means the period of a term of office beginning on the day after the general election for the office, up to and including the following general election for the same office, including a primary, special primary, or special election . . . ." *Id*., ¶ 10.

"'Legislative caucus committee' means (a) a committee of either house of the General Assembly controlled by the caucus of a political party or a caucus based upon racial or ethnic affinity, or gender; . . ." *Id*., ¶ 21.

"'Party committee' means a committee established by a political party." *Id*., ¶ 24.

"'Person' means an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert." *Id*., ¶ 25.

"'Political party' means an association, a committee, or an organization which nominates a candidate whose name appears on the election ballot as the candidate of that association, committee, or organization." *Id*., ¶ 26.

### 3. The Sections at Issue / The Letter of the Law

#### a. The Basic Limit on Contributions

For preventing corruption in campaign practices, the Act relies chiefly on Section 8-13-1314 ("-1314"). The section provides, in especially pertinent part,

> (A) Within an election cycle, a candidate or anyone acting on his behalf shall not solicit or accept, and a person shall not give or offer to give to a candidate or person acting on the candidate's behalf:
>
> (1) a contribution which exceeds
>
> . . . .
>
> (c) one thousand dollars in the case of a candidate for [any office other than a "statewide" office].[10]

[10] Section 8-13-1314 provides in full,

> (A) Within an election cycle, a candidate or anyone acting on his behalf shall not solicit or accept, and a person shall not give or offer to give to a candidate or person acting on the candidate's behalf:
>
> (1) a contribution which exceeds:
>
> (a) three thousand five hundred dollars in the case of a candidate for statewide office; or
>
> (b) three thousand five hundred dollars in the aggregate for statewide candidates elected jointly pursuant to Section 8, Article IV of the South Carolina Constitution, 1895; or

Its one thousand dollar contribution limit thus applies to candidates for the State House. (§ 8-23-1314(A)(1)(c)).

The Legislature was concerned that people might try to get around the limit by saying, for example, "Our partnership is not a 'person.' Thus, our partnership may contribute four thousand dollars, ten thousand dollars, whatever amount we like, to any candidate for a state, county, or local office in South Carolina." Or, "Let's form a club, just the three of us: me, a millionaire; you, my employee; and Joe, my friend. I will give $100,000 to the club, and then 'we' will contribute it to Jane Roe, who is running for the State House. A club is not a person, and the statute only limits contributions from a person. Always good to have a Representative in my pocket."

To prevent such end-runs around the legislative intent, the Legislature defined what it meant to include when it wrote "person": "'Person' means an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert." Section 8-

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> (c) one thousand dollars in the case of a candidate for any other office;
>
> (2) a cash contribution from an individual unless the cash contribution does not exceed twenty-five dollars and is accompanied by a record of the amount of the contribution and the name and address of the contributor;
>
> (3) a contribution from, whether directly or indirectly, a registered lobbyist if that lobbyist engages in lobbying the public office or public body for which the candidate is seeking election;
>
> (4) contributions for two elective offices simultaneously, except as provided in Section 8-13-1318.
>
> (B) The restrictions on contributions in subsections (A)(1) and (A)(2) do not apply to a candidate making a contribution to his own campaign.

13-1300(25). In short, the Legislature held up a big "Stop" sign to anyone trying to circumvent the prohibitions of Section 8-13-1314. Regardless of whether you are incorporated, unincorporated, a formal organization, an informal organization: any attempt to get around the rule by joining with others or creating legal structures is barred.

The Legislature did create one exception, as discussed immediately below.

### b. The Legislated Exception

Recognizing that political parties may have a legitimate interest in contributing more than $1,000 towards campaigns for non-statewide offices, and recognizing that no one person should be allowed to wield the power that comes with larger donations, but that only through group consensus should larger donations be allowed, the Legislature enabled "political parties," acting through their "party committees" or "legislative caucus committees," to provide up to $5,000 in total contributions to House candidates and other candidates for non-statewide offices. Each of the terms in quotation marks in the previous sentence is a term defined by the statute:

"'Political party' means an association, a committee, or an organization which nominates a candidate whose name appears on the election ballot as the candidate of that association, committee, or organization." Section 8-13-1300(26).

Importantly, "'Party committee' means a committee established by a political party." *Id.*, paragraph 24 (emphasis added). The statute explicitly contemplates something akin to a set/subset, parent/child, parent company/subsidiary corporation,

greater-including/lesser-included[11] relationship between the "political party" and the "party committee . . . established by [that] political party."

The final term, "legislative caucus committee, is defined as follows,

> 'Legislative caucus committee' means:
>
> (a) a committee of either house of the General Assembly controlled by the caucus of a political party or a caucus based upon racial or ethnic affinity, or gender; however, each house may establish only one committee for each political, racial, ethnic, or gender-based affinity;
>
> (b) a party or group of either house of the General Assembly based upon racial or ethnic affinity, or gender;
>
> (c) 'legislative caucus committee' does not include a 'legislative special interest caucus' as defined in Section 2-17-10(21).

*Id*., paragraph 21. For purposes of the text, "a political party through its party committees or legislative caucus committees," "its" legislative caucus committee would be "a committee of either house of the General Assembly controlled by the caucus of a political party."

Thus, where Section 8-13-1316 states (emphasis added),[12]

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[11] *Cf. Posadas de P.R. Assocs. v. Tourism Co.,* 478 U.S. 328, 345-46, 106 S. Ct. 2968, 2979 (1986) ("In our view, the greater . . . necessarily includes the lesser[.]")

[12] The full text of Section 8-13-1316 provides,

> **(A)** Notwithstanding Section 8-13-1314(A)(1), within an election cycle, a candidate may not accept or receive contributions from a political party through its party committees or legislative caucus committees, and a political party through its party committees or legislative caucus committees may not give to a candidate contributions which total in the aggregate more than:
>
> **(1)** fifty thousand dollars in the case of a candidate for statewide office; or
>
> **(2)** five thousand dollars in the case of a candidate for any other office.
>
> **(B)** The recipient of a contribution given in violation of subsection (A) may not keep the contribution, but within seven days must remit the contribution to the Children's Trust Fund.

> **(A)** Notwithstanding Section 8-13-1314(A)(1), within an election cycle, a candidate may not accept or receive contributions from a political party through its party committees or legislative caucus committees, and a political party through its party committees or legislative caucus committees may not give to a candidate contributions which total in the aggregate more than:
>
> **(1)** fifty thousand dollars in the case of a candidate for statewide office; or
>
> **(2)** five thousand dollars in the case of a candidate for any other office,

it states, in defined terms, exactly where the exception to Section 8-13-1314 begins and where it ends.

## I. EVERYDAY STATUTORY ANALYSIS RESOLVES THIS CASE

The plain meaning of the statute necessitates a finding that Respondents repeatedly violated valid law, because where the words of a statute are clear, the text is to be applied as written, and here, the words are clear; because if the words were ambiguous, routine statutory-construction rules mandate the same conclusion; and because the statutory construction urged here allows the case to be resolved without a constitutional inquiry.

### A. The Plain Meaning of the Statute Requires A Decision in Appellants' Favor, Because Where the Plain Text of a Statute Affords A Clear Meaning, There Is No Place for Statutory Construction; and Here, the Plain Meaning Is Clear and Forbids Respondents' Actions.

#### 1. Where A Statute Affords A Clear Meaning, There Is No Place for Statutory Construction.

Under South Carolina law, it is well established that statutory construction is not to be employed where the language of a statute is unambiguous.

> The cardinal rule of statutory construction is that the court ascertain and effectuate the intent of the legislature. *Greene v. S.C. Election Comm'n*, 314 S.C. 449, 452, 445 S.E.2d 451, 453 (1994).

> However, we must first attempt to construe a statute according to its plain language, and if the language of a statute is plain, unambiguous, and conveys a clear meaning, "the rules of statutory interpretation are not needed and the court has no right to impose another meaning."

*Odom v. Town of McBee Election Comm'n*, 427 S.C. 305, 310, 831 S.E.2d 429, 432 (2019) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)) (emphasis added).

"Where the language of a statute is clear and unambiguous, it requires no construction and must be literally applied. In other words, it means what it says." *State v. Carrigan*, 284 S.C. 610, 616, 328 S.E.2d 119, 122 (Ct. App. 1985) (citing *Jones v. South Carolina State Highway Department*, 247 S.C. 132, 146 S.E. (2d) 166 (1966)) (emphasis added).

This is a very strong rule in South Carolina. It applies even where the result is illogical.

> Although it may seem illogical that respondent will be treated as a juvenile in family court for the CSC and burglary charges, while being treated as an adult in general sessions court for the murder charges, it is beyond this Court's power to effect a change in the statutes enacted by the Legislature.

*State v. Corey D.,* 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000) (requiring that seemingly "illogical" result) (emphasis added). "It is the duty of this court to interpret the law. We have no legislative authority and cannot vary a statutory scheme and this is true no matter how logical the basis of the variance." *Benat v. State Farm Mut. Ins. Co.,* 286 S.C. 132, 134, 333 S.E.2d 57, 58 (Ct. App. 1985) (citing *State v. Carrigan*, 328 S.E. (2d) 119 (S.C. App. 1985)) (emphasis added).

### 2. The Text of the Statute Is Clear.

#### a. The Basic Prohibition Encompasses the Acts at Issue Here.

Section 8-13-1300 of the South Carolina Ethics, Government Accountability, and Campaign Reform Act, Title 8, Chapter 13 of the South Carolina Code provides, in paragraph 25 (emphasis added), "'Person' means an individual, a proprietorship, firm, partnership, joint venture, joint stock company, syndicate, business trust, an estate, a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert."

Under the plain language, the South Carolina Republican Party fits the definition of an association, or another organization or group of persons acting in concert.

Section -1314 provides that within an election cycle, "a person shall not give or offer to give to a candidate or person acting on the candidate's behalf . . . a contribution which exceeds . . . one thousand dollars in the case of a candidate for" the State House.

This is quite clear. The text of Sections 8-13-1300(25) and -1314 apply to contributions from Respondent Party, and make Respondents' actions illegal, unless there is an applicable exception. And there is no applicable exception, as explained immediately below.

#### b. There Is No Applicable Exception.

South Carolina law allows an exception for contributions from a political party's "party committees" or "legislative caucus committees." For State House races, the limit is $5,000. The Legislature also allows candidates to accept or receive contributions from a political party through its party committees or legislative caucus committees in these larger amounts. The Legislature was adamant that these larger amounts were not to be

contributed at the discretion of one person. It was not to be left to the sole discretion of whomever happened to be the Director or Chairman of a party.

Section 8-13-1316 of the code provides, in paragraph (A) (emphasis added),

> Notwithstanding Section 8-13-1314(A)(1), within an election cycle, a candidate may not accept or receive contributions from a political party <u>through its party committees or legislative caucus committees</u>, and a political party <u>through its party committees or legislative caucus committees</u> may not give to a candidate contributions which total in the aggregate more than . . .[13]

In short, the plain language does not allow a political party, except when acting through a "party committee" or "legislative caucus committee," to exceed the $1,000 limit in State House races. Except when it is acting through a party committee or a legislative caucus committee, a political party must obey the same limit as the rest of us.

A "party committee" is defined as "a committee established by a political party." Section 8-13-1300(24). Obviously, simply by the fact that the Legislature defined "party committee" differently than it defined "political party," the two are not the same under the statute. There is a difference between a "political party" and a "party committee." To hold that "political parties" are identical to "party committees" contradicts the plain language of the statute.

This is not akin to a statute that defines "mule" and also similarly defines "the offspring of a horse and a donkey." That might leave readers scratching their heads as to why the legislature defined the same thing twice. Here, on the other hand, there is an obvious difference between the two defined entities. As noted above, the legislature

[13] Section 8-13-1316(A) continues, "[more than:] (1) fifty thousand dollars in the case of a candidate for statewide office; or (2) five thousand dollars in the case of a candidate for any other office." However, the focus in this part of Appellants' Brief is not on the amounts, it is on whom may give the larger contributions (and from whom a candidate may receive the larger contributions).

intended a parent/offspring, set/subset, or similar relationship between the two, not a self-self relationship. One would no more say that a "party committee" is the same as the "party" than one would say that a mother is the same entity as her child.

Nor is a party's legislative caucus committee, defined as "a committee of either house of the General Assembly controlled by the caucus of a political party" identical to a "political party," defined as "an association, a committee, or an organization which nominates a candidate whose name appears on the election ballot as the candidate of that association, committee, or organization." *Compare* Section 8-13-1300(21) (defining "Legislative Caucus Committee") *with id*., paragraph 26 (defining "political party"). The two are separate entities. There is a difference in the statute between those two entities, a difference the courts are obligated to respect.

Here, there is absolutely no evidence that a "party committee" or "legislative caucus committee" had any role whatsoever in these contributions. Rather, the evidence is conclusive to the contrary. Chairman McKissick testified that the contributions were authorized and made by himself alone. (Tr. Hr'g, page 38, lines 15-23 ("me" and "myself" authorized these contributions); *id*., page 66, line 24 – p. 67, line 4 ("I" told the printers to put the SCGOP name on the mailers)).

The lower court should have stopped at this point. As no "party committee" or "legislative caucus committee" was involved, Section -1316, with its higher limits, simply does not apply.

The lower court should have declined to engage in statutory construction, and declined to engage in constitutional analysis. It should have held that parties when <u>not</u>

acting through its party committees or legislative caucus committees do not come within the exception to the basic prohibition in Section 8-13-1314.

It should have then found Respondents in violation of Section 8-13-1314 because they admit to repeatedly providing and receiving contributions of more than $1,000.

Party chairpersons acting alone are not an exception to Section -1314, and the SCGOP is not an exception to Section -1316.

## B. In The Alternative, If Statutory Construction Is Called for in the Present Case, Proper Application of Statutory Construction Principles Mandates the Conclusion that Respondents Violated the Ethics Act. The Lower Court Erred in Holding to the Contrary.

### 1. Standard of Decision: Construe the Statute to Avoid Constitutional Problems.

As noted above, the standard of review is *de novo*. Another standard of decision applies here as well. Courts strive to interpret statutes to avoid reaching constitutional issues. Because Appellants' reading of the statute avoids the constitutional issue that the lower court's reading leads to, the law prefers Appellants' reading. The law would do so even were the lower court's reading otherwise more reasonable, which it is not.

"'[W]e are obligated to construe the statute to avoid [constitutional] problems' if it is 'fairly possible' to do so." *Boumediene v. Bush*, 553 U.S. 723, 787, 128 S. Ct. 2229, 2271 (2008) (quoting *INS v. St. Cyr*, 533 U.S. 289, 299-300, 121 S. Ct. 2271, 150 L. Ed. 2d 347 (2001)) (alteration in original) (internal quotation marks omitted).

> "The canon of constitutional avoidance comes into play only when, after the application of ordinary textual analysis, the statute is found to be susceptible of more than one construction; and the canon functions as *a means of choosing between them*"[.]

*Id.* (quoting *Clark* v. *Martinez*, 543 U.S. 371, 385, 125 S. Ct. 716, 160 L. Ed. 2d 734 (2005)) (emphasis in original).

Appellants do not need to show that their reading of the statute is more likely correct than is the lower court's. If both readings are reasonable, a court choosing between the two readings is obliged to choose Appellants,' because doing so enables the court to avoid the federal constitutional issue.

The rule that statutes are to be read to avoid constitutional issues is a matter of federal constitutional law, and so takes precedence over state rules of statutory construction.

Because the lower court chose a reading that leads to federal constitutional issues over a possible reading that does not, the lower court erred.

### 2. The Cardinal Principle of Statutory Construction, which Is to Give Effect to the Intent of the Legislature, Mandates a Decision in Appellants' Favor. The Lower Court Erred in Holding to the Contrary.

Under state law, after the overriding principle that statutory construction is not to be employed where the statutory language is clear, the cardinal rule in construing a statute is to give effect to the legislative intent. *Odom v. Town of McBee Election Comm'n*, 427 S.C. 305, 310, 831 S.E.2d 429, 432 (2019) (stating, "The cardinal rule of statutory construction is that the court ascertain and effectuate the intent of the legislature.") Because the lower court construed the statute in a way that contradicts the legislative intent, the lower court erred.

Appellants' position accords with the legislative intent, as the court below explicitly recognized.

> And I say to you, Mr. Fudenberg, and to your client, Representative Hill: Had the legislature done a job of dealing with this matter after the ruling in 2010 and stuck with the intention that they have, you would be completely right about saying that these contributions exceed what is permitted.

(Tr. Hr'g, page 116, lines 9-14) (emphasis added).

The lower court was correct about the legislative intent. In the aftermath of Operation Lost Trust, the Legislature intended to impose limits on contributions, including contributions from political parties.

Nevertheless, the lower court employed a statutory construction technique to reach a conclusion at odds with the intent of the legislature. The Legislature did not intend that there be, as the order below has it (Order, p. 3), no limit on contributions from a political party to a candidate.

By employing a statutory construction technique to reach a result at odds with the statutory language and the legislative intent, the lower court erred.

### 3. The Principle of *Exclusio Alterius* Yields a Decision in Appellants' Favor.

Turning to specific rules of statutory construction within the umbrella of trying to effectuate the legislative intent, the lower court erred. First, the principle of *espressio uni est exclusio alterius*, the specification of one thing is the exclusion of another, yields a decision in Appellants' favor. Here, the Ethics Act enumerated in Section -1316 certain exceptions to the prohibitions set forth in Section -1314. Thus, those things specifically excepted by -1316, and only those things specifically excepted by Section -1316, are removed from the requirements of Section -1414. Here, Section -1316 excepted contributions from a party <u>through its party committees or legislative caucus committees.</u> Nothing else comes within the exception that Section -1316 provides.

The principle of *espressio uni est exclusio alterius* is well established in South Carolina law. *See, e.g., Berkeley Cty. Sch. Dist. v. S.C. Dep't of Reven*ue, 383 S.C. 334, 348, 679 S.E.2d 913, 920 (2009); *Evins v. Richland Cty. Historic Pres. Comm'n*, 341

S.C. 15, 19, 532 S.E.2d 876, 878 (2000); *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 644, 528 S.E.2d 647, 652 (1999); *Hughes v. W. Carolina Reg'l Sewer Auth.*, 386 S.C. 641, 647, 689 S.E.2d 638, 641 (Ct. App. 2010). (Excerpts from these cases are provided in the attached note.[14])

Notably, this Court and the Court of Appeals have each held that the principle applies in the specific case of a statute listing certain exceptions, such as the statute here. The result is that the statute applies to all cases not specifically excepted.

> "The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" *Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d

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[14] "Thus, by expressly excluding only general bond indebtedness from the exemption, the General Assembly by implication included the lease/installment-purchase payments within the definition . . . ." *Berkeley Cty. Sch. Dist. v. S.C. Dep't of Reven*ue, 383 S.C. 334, 348, 679 S.E.2d 913, 920 (2009) (following *Riverwoods, LLC v. Cty. of Charleston*, 349 S.C. 378, 384, 563 S.E.2d 651, 655 (2002).

> The specific power to convey property was not enumerated. "The maxim 'Expressio unius est exclusio alterius' is defined as: "When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred." *Little v. Town of Conway*, 171 S.C. 27, 171 S.E. 447, 448 (1933). *See also Atlanta Skin & Cancer Clinic v. Hallmark Gen. Partners, Inc.,* 320 S.C. 113, 463 S.E.2d 600 (1995) (under maxim of expressio unius est exclusio alterius, expression of one thing is exclusion of another). Since the legislation specifically sets forth the powers of RCHPC, the power to convey property may not be implied from the statute.

*Evins v. Richland Cty. Historic Pres. Comm'n*, 341 S.C. 15, 19, 532 S.E.2d 876, 878 (2000).

"Under the maxim of *expressio unius est exclusio alterius* (the expression of one thing implies the exclusion of another) the inclusion of provisions for a referendum in certain circumstances means a referendum is not contemplated in other circumstances." *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 644, 528 S.E.2d 647, 652 (1999).

"Further, the maxim *expressio unius est exclusion alerius* [*sic*] provides that the expression of one thing implies the exclusion of another or its alternative." *Hughes v. W. Carolina Reg'l Sewer Auth.*, 386 S.C. 641, 647, 689 S.E.2d 638, 641 (Ct. App. 2010) (citing *State v. Leopard*, 349 S.C. 467, 473, 563 S.E.2d 342, 345 (Ct. App. 2002)).

> 578, 582 (2000). As we explained in *Hodges v. Rainey*: "'The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded.['"]

*Riverwoods, LLC v. Cty. of Charleston*, 349 S.C. 378, 384, 563 S.E.2d 651, 655 (2002) (emphasis added). So too here.

"The enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded." *Stewart v. Richland Mem'l Hosp*., 350 S.C. 589, 594-95, 567 S.E.2d 510, 513 (Ct. App. 2002) (following *Riverwoods*) (internal quotation marks omitted). So too here.

Here, the legislature expressed one thing, "contributions from a political party through its party committees or legislative caucus committees" and thereby excluded another thing, "contributions from a political party through other means." The lower court, if engaged in statutory construction, should have applied the well-established principle of *espressio uni est exclusio alterius,* found that the actions here do not come within the exception provided by Section -1316 to the prohibitions of Section -1314, and should have concluded that therefore, Section -1314 applies.

Because the contributions at issue here exceed the limits of Section -1314, the lower court should have found in Appellants' favor.

#### 4. The Rule Against Reading Statutory Language as Mere Surplusage Mandates a Decision in Appellants' Favor.

The rule of statutory construction that prohibits reading language as mere surplusage mandates a ruling in Appellants' favor.

This rule is well established in South Carolina. "It is never to be supposed that a single word was inserted in the law of this state without the intention of thereby

conveying some meaning." *Davenport v. City of Rock Hill*, 315 S.C. 114, 117, 432 S.E.2d 451, 453 (1993) (citing *Ravenel v. Dekle*, 265 S.C. 364, 218 S.E.2d 521 (1975)). *See also Bowles v. Bradley*, 319 S.C. 377, 383-84, 461 S.E.2d 811, 815 (1995) (following *Davenport*) (rejecting a reading of a statute that would render text "mere surplusage."); *Hinton v. S.C. Dep't of Probation, Parole and Pardon Serv*s., 357 S.C. 327, 592 S.E.2d 335 (Ct. App. 2004) (the Court should seek a construction that gives effect to every word of a statute rather than adopting an interpretation that renders a portion meaningless).

The main order below conflicts with this rule. It reads Section 8-13-1316 as if it created an exception for "political parties" to contribute more than the limits allowed by Section -1314, regardless of whether the contribution comes from its "party committee" or "legislative caucus committee." The order thus read out of the statute its repeated qualification, "through its party committees or legislative caucus committees."

The order below reads Section 8-13-1316 as if it stated (text that is struck through is text omitted from the lower court's analysis),

> Notwithstanding Section 8-13-1314(A)(1), within an election cycle, a candidate may not accept or receive contributions from a political party ~~through its party committees or legislative caucus committees,~~ and a political party ~~through its party committees or legislative caucus committees~~ may not give to a candidate contributions which total in the aggregate more than:
>
> (1) fifty thousand dollars in the case of a candidate for statewide office; or
>
> (2) five thousand dollars in the case of a candidate for any other office.

The order below renders the repeated qualification as mere surplusage. This was error.[15] By following the rule against reading statutory language as mere surplusage, the lower court should have given effect to the words "through its party committees or legislative caucus committees," and concluded that Respondents' actions do not fit within the exception created by Section -1316. It should then have applied Section -1314 and found in favor of Appellants.

### 5. Sound Policy Reasons Underlie the Limitation on the Exception.

The Court need not, and Appellants maintain properly should not, evaluate the soundness of the legislature's decision to limit the exception to political parties' operations that occur through party committees or legislative caucus committees. *Odom; Corey D.,* 339 S.C. at 120, 529 S.E.2d at 27; Benat*,* 286 S.C. at 134, 333 S.E.2d at 58. However, if the Court is interested in the policy rationale behind the legislative direction, a most obvious reason the Legislature could have chosen to restrict the allowance for the larger contributions to those contributions coming via a committee is to avoid putting that power in the hands of one man or woman (the chair of a political party). That is simply too much power for one person to have. Allowing parties to raise unlimited sums,[16] and allowing one person to decide which campaigns to direct that money to, would allow that one person to in effect become a king-maker. It would require all candidates in that party to seek his or her favor, or face possible election reprisals.

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[15] And even following the lower court's analysis, the lower court erred as the Respondents admit the contributions exceeded five thousand dollars.

[16] Unlike candidates, political parties and caucuses have *no limit* in the amount of money they can receive from a single donor during an election cycle. Cf. S.C. Code Ann. § 1314(A)(1) (limiting statewide candidates to contributions of $3,500 per election cycle and less-than-statewide candidates to $1,000 per election cycle).

But whether that is a good reason, a bad reason, or something in between does not matter, for chairpersons of political parties acting alone do not come within the exception that Section -1316 provides to the otherwise-universal restriction of Section -1314.

### C. *A Fortiori,* Respondent Parfitt Violated State Election Law.

The above applies in full to Respondent Parfitt's actions here. One need not even reach the question of the definition of "person" to hold that Respondent Parfitt violated the law. Section 8-13-1314(A) of the South Carolina code provides, in relevant part,

> (A) Within an election cycle, a candidate or anyone acting on his behalf shall not solicit or accept, . . .
>
> (1) a contribution which exceeds:
>
> . . . .
>
> (c) one thousand dollars in the case of a candidate for any [less-than-statewide] office; . . .

It does not matter from whom or what the candidate or those on his behalf accept the contributions; they simply cannot do it.

### Conclusion to Part I.

The lower court erred in not applying the statute as written. If the lower court were to engage in statutory construction, it again erred by construing the statute to create a constitutional issue, by construing the statute in opposition to the cardinal principle of statutory analysis and the acknowledged legislative intent, and by construing the statute in conflict with the principle of *espressio uni est exclusio alterius* and the rule against reading language – let alone repeated language – as mere surplusage.

Under each of these principles, the lower court should have held that Respondents are bound by the limitations of Section -1314 and found them in violation because the contributions totaled more than one thousand dollars.

Alternatively, the lower court, upon holding that Section -1316 was applicable, should have applied it, and held that Respondents violated Section -1316 because the contributions totaled more than five thousand dollars, as discussed in Part II of this Brief.

## II. THE CONSTITUTIONAL ISSUE: WHILE THE BROADER TERM "COMMITTEE" IS OVERLY BROAD, IT DOES NOT FOLLOW THAT THE NARROWER TERMS, "PARTY COMMITTEE" AND "LEGISLATIVE CAUCUS COMMITTEE," ARE OVERLY BROAD. [17]

Having held that Section -1316 of the Act applies, the lower court then held that section to be unconstitutional. This was error. Because Section -1316 is not unconstitutional, then, if Section -1316 applies, Respondents are in violation of the $5,000 contribution limit allowed by that section. The lower court erred in holding that political parties may contribute unlimited funds to candidates.

### Respondents Bear a Burden of Persuasion Beyond a Reasonable Doubt.

The Supreme Courts of the United States and of South Carolina have each instructed that courts are not to be indifferent between holding a legislative enactment to be constitutional and holding it to be unconstitutional. Rather, a court is to make every presumption in favor of the provision's constitutionality, with a heavy burden on the part of those urging the unconstitutionality of the provision. *Ogden v. Saunders*, 25 U.S. (12

[17] Appellants understand that the constitutionality of our election law is a matter of great public importance. Appellants respectfully suggest that if the Court desires to reach the constitutional issue, it first rule for Appellants on the statutory grounds argued above, and then, in the nature of *State v. Easler*, 327 S.C. 121, 131, 489 S.E.2d 617, 623 (1997) and *Vora v. Lexington Med. Ctr.,* 354 S.C. 590, 597 n.5, 582 S.E.2d 413, 417 (2003), where the Court in its discretion addressed issues not necessarily essential to the resolution of the case before it, in order to provide guidance, address the constitutional issue. *See also State v. Aldret*, 333 S.C. 307, 313 n.3, 509 S.E.2d 811, 813 (1999) (similar); *Singleton v. Mullins Lumber Co.,* 234 S.C. 330, 344, 108 S.E.2d 414, 421 (1959) (similar).

Wheat.) 213, 270 (1827); *In re Treatment & Care of Luckabaugh*, 351 S.C. 122, 134-35, 568 S.E.2d 338, 344 (2002).

*Ogden* stated,

> It is but a decent respect due to the wisdom, the integrity, and the patriotism of the legislative body, by which any law is passed, to presume in favour of its validity, until its violation of the constitution is proved beyond all reasonable doubt. This has always been the language of this Court[.]

*Ogden v. Saunders*, 25 U.S. (12 Wheat.) 213, 270 (1827) (emphasis added).

*Luckabaugh* similarly stated, "A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." *In re Treatment & Care of Luckabaugh,* 351 S.C. 122, 134-35, 568 S.E.2d 338, 344 (2002) (quoting *Joytime Distribs. and Amusement Co., Inc. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999)) (emphasis added). *See also id.* (citing *Gold v. South Carolina Bd. of Chiropractic Exam'rs*, 271 S.C. 74, 245 S.E.2d 117 (1978)) ("Every presumption is made in favor of a statute's constitutionality.")

Respondents cannot meet their burden, for as shown below, Section 8-13-1316 is clearly constitutional.

## A. *Krawcheck*

The lower court based its decision on *SC Citizens for Life v. Krawcheck*, 759 F. Supp. 2d 708 (D.S.C. 2010). [18] Two related holdings of *Krawcheck* are of interest here: That the definition of "committee" in Paragraph 6 of Section 8-13-1300 was

[18] A second "*Krawcheck*" order issued two years after the first, and involved similar issues. *S. Carolinians For Responsible Gov't v. Krawcheck,* 854 F. Supp. 2d 336 (D.S.C. 2012). (Kenneth Krawcheck was a Commissioner of the South Carolina Ethics Commission, *id.* at 337, which is why his name is in both cases). There, Judge Margaret B. Seymour "reache[d] the same conclusion as Judge Wooten as to this issue." *Id*. at 343.

unconstitutionally overly broad; and that it would be inappropriate to impose a limiting construction upon that term.

### 1. *Krawcheck* Held the Term "Committee," Defined in Section 8-13-1300, Paragraph 6, to Be Unconstitutionally Overly Broad.

First, *Krawcheck* held that the term "committee," as defined in Section 8-13-1300(6), was unconstitutionally overly broad.[19] The federal district court distinguished between communications that are "unambiguously related to the campaign of a particular . . . candidate," which therefore "have a sufficiently close relationship to the government's acknowledged interest in preventing corruption to be constitutionally regulable," on the one hand, and "issue advocacy," which may not properly be regulated, on the other hand. *Id*. at 714 (internal quotation marks omitted) (alteration in original.) The court was concerned about groups that primarily engage in issue advocacy and that might make an occasional, minor

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[19] That paragraph of the statute states,

> "Committee" means an association, a club, an organization, or a group of persons which, to influence the outcome of an elective office, receives contributions or makes expenditures in excess of five hundred dollars in the aggregate during an election cycle. It also means a person who, to influence the outcome of an elective office, makes:
>
> (a) contributions aggregating at least twenty-five thousand dollars during an election cycle to or at the request of a candidate or a committee, or a combination of them; or
>
> (b) independent expenditures aggregating five hundred dollars or more during an election cycle for the election or defeat of a candidate.
>
> "Committee" includes a party committee, a legislative caucus committee, a noncandidate committee, or a committee that is not a campaign committee for a candidate but that is organized for the purpose of influencing an election.

S.C. Code Ann. § 8-13-1300(6).

contribution to a candidate, and about organizations such as businesses that might do the same. *Id*. at 716. The Krawcheck court was particularly concerned about the numerous disclosure requirements the Ethics Act placed on these organizations. *Id*. at 713-14, 716. Such "'burdensome disclosure requirements'" are "significant burdens" that might cause these groups to forego issue advocacy in order to avoid those burdens. *Id.* at 718 -19 (quoting *Nat'l Right to Work Legal Defense and Educ. Found. v. Herbert*, 581 F. Supp. 2d 1132 (D. Utah 2008)). Therefore, the definition of "committee" improperly applied to these groups. *Id.* at 717-20.

Moreover, the definition was so broad – it chilled so much constitutionally protected speech – that it "simply sweep[s] too far." *Id*., at 720.[20] It was therefore facially unconstitutional. *Id.*

### 2. *Krawcheck* Declined to "Rewrite State Law" As Would Have Been Required for Imposing a Limiting Construction.

The *Krawcheck* court declined to provide a limiting construction, as doing so for Paragraph 6 of Section 8-13-1300 would be in effect to rewrite state law. The *Krawcheck* court recognized that at times, a statutory provision that can be read in more than way – one reading allowing it to be constitutional on its face, and another reading making it facially unconstitutional – can be saved by applying a limiting construction, but only if the section is "readily susceptible" to such a construction. *Id*. at 720 (internal quotation marks omitted). The court held that Paragraph 6 of Section 8-13-1300,

[20] The test for declaring a statute facially overbroad in the first amendment context is whether "a substantial number of its applications are unconstitutional, judged in relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 473, 130 S. Ct. 1577, 1587 (2010) (quoting *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449, n.6, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008)) (internal quotation marks omitted).

defining "committee," was not readily susceptible to such a construction. *Id*. A federal court "'will not rewrite a state law[.]'" *Id*. (quoting *Virginia v. American Booksellers Ass'n, Inc.,* 484 U.S. 383, 397, 108 S. Ct. 636, 98 L. Ed. 2d 782 (1988)). The writing of state statutory provisions is a matter for the state legislature. *Id.* The *Krawcheck* court thus refused to rewrite the provision. *Id.*

## B. Section 8-13-1316 Is Not Unconstitutional.

Appellants accept *Krawcheck* as binding precedent, but present a view of the constitutional issue that differs importantly from both the lower court in this case (holding the contribution limits of -1316 to be unconstitutional) and the reasoning articulated in *Richard A. Harpootlian v. South Carolina Senate Republican Caucus*, Case No. 2018-CP-40-05370 (Oct. 19, 2018) (holding the reverse).

### 1. The Meaning of "Overly Broad"

To hold a statutory term to be unconstitutionally overly broad does not mean the statute is so vague or ambiguous that people of reasonable sense must guess at its meaning. Nor does it mean it is so broad that one must guess at what is included. Nor does it mean that it has a contagion that affects every word next to it in a statute.

To hold a statutory term to be overly broad in the first amendment context simply means that the term includes too many things that, constitutionally, it should not include. *E.g., United States v. Stevens*, 559 U.S. 460, 473, 130 S. Ct. 1577, 1587 (2010). In *Krawcheck*, that was groups that lacked the essential connection to political campaigns needed to justify the restrictions placed on them by the Ethics Act.

However, just because a broader term is overly broad, it does not follow that narrower terms are overly broad. Here, just because the broad term, "committee," is

overly broad, it does not follow that the narrower terms, "party committee" and "legislative caucus committee," are overly broad.

Figure 1 illustrates this graphically.

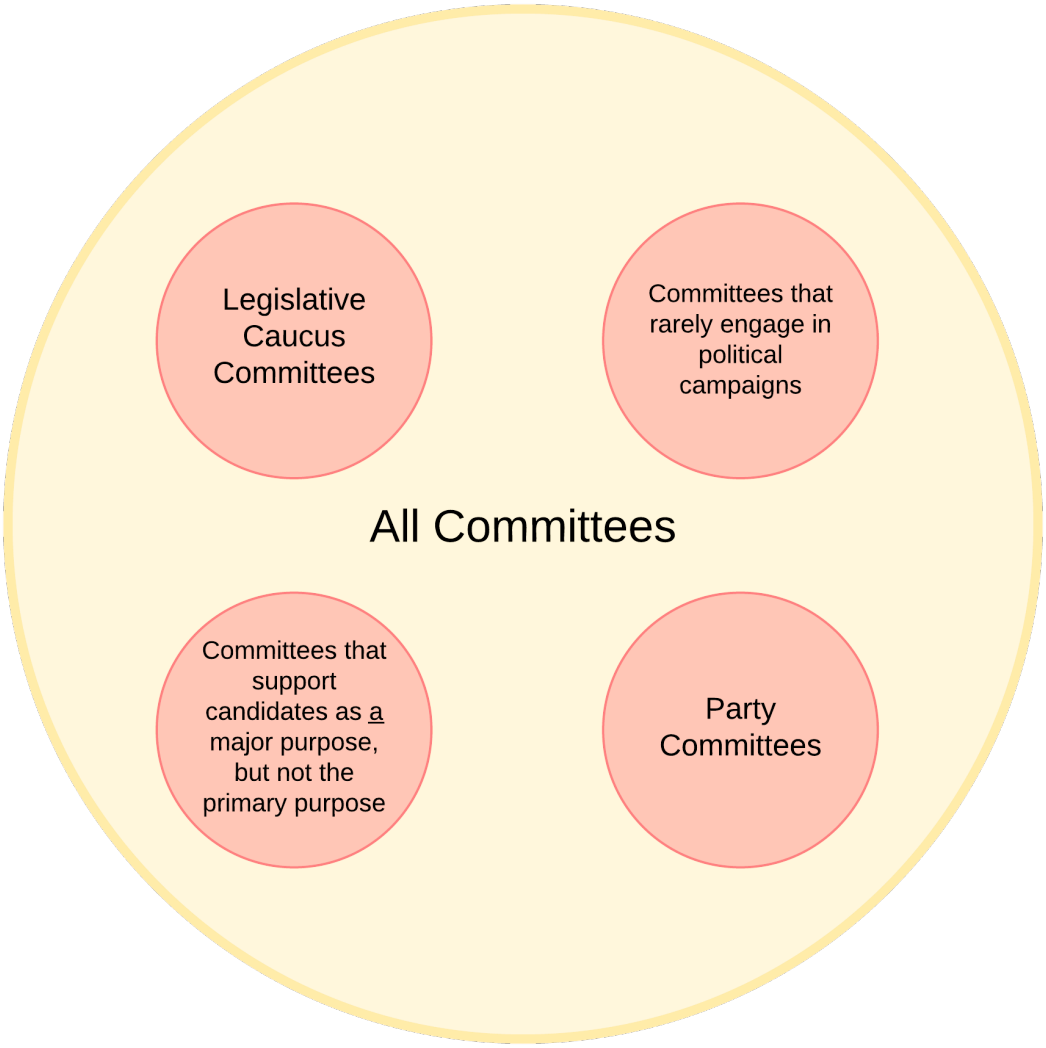


Figure 1

As shown in the above diagram, it is entirely possible for the phrase "[All] Committees" to be overly broad, and the narrower term "Party Committees" not to be overly broad at all.

In common-sense terms, a regulation that required "all residences" to hire exterminators might be overly broad, while a regulation that requires "all residences with vermin infestations" to do so might not be overly broad. A statute that stated, "no horse may be made to walk at more than 5 miles per hour" might be overly broad; a statute that stated, "no lame horse may be made to walk at more than 5 miles per hour" might not be. A statute that stated, "All drivers stopped by law enforcement must take a breath test" might be overly broad; a statute that stated, "All drivers arrested for drunk driving must take a breath test" might not be. In first amendment terms, a rule requiring "all Americans" to submit their writings about the CIA to the Government for pre-publication clearance might be overly broad; a rule requiring "All Americans who worked for the CIA" to do so might not be. *Cf. Snepp v. United States*, 444 U.S. 507, 509 n.3, 100 S. Ct. 763, 765 (1980) (analogous issue).

Just because the term "committee" is overly broad, it does not mean that the narrower term, "party committee," is overly broad.

The same analysis applies to the term "Legislative caucus committee." It too is narrower than the term "Committee." A holding that the broader term is overly broad does not mean that narrower terms are overly broad.

### 2. No Term in Section 8-13-1316 Is Overly Broad. The Section Is Constitutional.

Determining whether a term is overbroad, [21] in the First Amendment context, involves weighing the valid applications of the term against the invalid applications. The test is whether "a substantial number of its applications are unconstitutional, judged in

[21] No claim has been made that the terms "party committee" or "legislative caucus committee" are unconstitutional in any other regard.

relation to the statute's plainly legitimate sweep." *United States v. Stevens*, 559 U.S. 460, 473, 130 S. Ct. 1577, 1587 (2010) (quoting *Washington State Grange v. Washington State Republican Party,* 552 U.S. 442, 449, n.6, 128 S. Ct. 1184, 170 L. Ed. 2d 151 (2008)) (internal quotation marks omitted). It is difficult to conceive of a single instance in which requiring a political party to act through party committees or caucus committees, when it wants to make a contribution of $5000 to a single campaign, would so burden the party as to justify even an as-applied challenge, and even more difficult to conceive of so many of such instances as would overwhelm Section 8-13-1316's "plainly legitimate sweep."

First, any burden placed on political parties' participation in campaigns by the requirement that they act through committees when contributing more than one thousand dollars to specific candidates for non-federal, non-statewide, office, is minor.

Second, requiring political parties to act through their party committees or legislative caucus committees when they want to contribute more than the -1314 limits to a candidate, rather than allowing a party chairperson to hold such power, is eminently reasonable.

Third, any burden on such contributions to political candidates is directly related to the interest in regulating contributions tied to direct electioneering that *Krawcheck* held to be the only legitimate state interest in regulating political contributions and expenditures. *Krawcheck*, 759 F. Supp. 2d at 714.[22]

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[22] *S.C. Citizens for Life, Inc. v. Krawcheck*, 759 F. Supp. 2d 708, 714 (D.S.C. 2010) (quoting *North Carolina Right to Life Inc., v. Leake*, 525 F.3d 274, 281 (4th Cir. 2007)),

> As the Fourth Circuit noted, this holding is based on the recognition that "only unambiguously campaign related communications have a sufficiently

Section 8-13-1316 of the South Carolina Code is constitutional. The lower court erred in holding the reverse.

### 3. The Rule Against Judicial Rewriting of Statutes Militates in Favor of Holding that Section 8-13-1316 Is Constitutional.

The *Krawcheck* court declined to issue a limiting construction because it did not desire to "rewrite a state law." *Id*. at 720. To do so might be seen as unseemly judicial interference within the domain of another branch of government. Here, on the other hand, the terms "party committee" and "legislative caucus committee" were written by the Legislature itself.

If anything, striking the language written by the Legislature would be unseemly judicial interference.

**Conclusion to Part II.B.**

A broader term being too broad does not mean that narrower terms are too broad. The language at issue here is not overly broad. It was written by the Legislature itself and raises no constitutional problem. Allowing legislatively-created language to stand is the opposite of rewriting state law. Striking the language would be judicial overreach. If the Court reaches the federal constitutional question, it should hold that Section 8-13-

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> close relationship to the government's acknowledged interest in preventing corruption to be constitutionally regulable."

The mailers at issue here meet that test. "[R]emember to vote for Vaughn Parfitt in the June 9th Republican primary" (Ex. 2); "Vote Vaughn Parfitt on June 9th" (Ex. 3); "That's why I'm asking you to elect Vaughn Parfitt in the Republican primary for state representative on June 9th" (Ex. 4); "Call Jonathon Hill at ***-***-****. Ask him why he chose to support liberal Allison [*sic*] Lee" (Ex. 5); "Vote Vaughn Parfitt" (Ex. 6). *See also* the testimony of Party Chairman Drew McKissick that these mailers were intended to advance Respondent Parfitt's candidacy at the expense of Appellant Hill's. Tr. 31:5-9.

1316 is not overly broad, and therefore is not unconstitutional, because of the narrower terms that already exist.

It should therefore hold that if Section -1314's one thousand dollar limits do not apply, then -1316's five thousand dollar limits do, and the Respondents are in violation of S.C. Code Section 8-13-1316.

## C. Two Alternative Analyses

Appellants offer two alternative analyses, in the event the Court is not inclined towards the above analysis.

### 1. The Lower Court Did Not Rule in Accord with Its Own Stated Logic.

The lower court did not rule in accord with its own stated logic. The lower court's central application of *Krawcheck* is, "If the definition of 'committee' is struck from the SC Ethics Act, then the regulations and restrictions of Section 8-13-1316 on the accepting or giving of candidate contributions of more than $5,000.00 are invalidated." (Order, p. 3). However, accepting the "if" part of the statement, i.e., "If the definition of 'committee' is struck from the SC Ethics Act," does not yield the "then" part, i.e., "then the regulations and restrictions of Section 8-13-1316 on the accepting or giving of candidate contributions of more than $5,000.00 are invalidated."

As written, Section 8-13-1316 provides,

> (A) Notwithstanding Section 8-13-1314(A)(1), within an election cycle, a candidate may not accept or receive contributions from a political party through its party committees or legislative caucus committees, and a political party through its party committees or legislative caucus committees may not give to a candidate contributions which total in the aggregate more than [specified amounts.]

Striking through the term, "committee," produces the following result:

> (A) Notwithstanding Section 8-13-1314(A)(1), within an election cycle, a candidate may not accept or receive contributions from a political party through its party or legislative caucus, and a political party through its party or legislative caucus may not give to a candidate contributions which total in the aggregate more than [specified amounts.][23]

There simply is no *Krawcheck* issue, as the offending term "committee" has been read out of the statute.

Under this construction, a political party may give the larger contributions either through itself or through its legislative caucus. A candidate may receive the larger contributions either from the party itself, or from its legislative caucus.

The limit, either way, is $5,000 in State House races:

> **(A)** Notwithstanding Section 8-13-1314(A)(1), within an election cycle, a candidate may not accept or receive contributions from a political party through its party or legislative caucus, and a political party through its party or legislative caucus may not give to a candidate contributions which total in the aggregate more than:
>
> **(1)** fifty thousand dollars in the case of a candidate for statewide office; or
>
> **(2)** <u>five thousand dollars in the case of a candidate for any other office</u>.

Thus, striking the term "committee" from the section allows political parties to directly provide contributions to House candidates beyond the thousand dollar limitation of -1314, as Respondent Party did here, but caps those contributions at five thousand dollars.

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[23] The language stricken through is shown in the following:

> (A) Notwithstanding Section 8-13-1314(A)(1), within an election cycle, a candidate may not accept or receive contributions from a political party through its party ~~committees~~ or legislative caucus ~~committees~~, and a political party through its party ~~committees~~ or legislative caucus ~~committees~~ may not give to a candidate contributions which total in the aggregate more than [specified amounts.]

Therefore, one option for the Court is to literally strike the word "committee" everywhere it appears in the Act. Under this approach, because the contributions Respondents gave and received exceed five thousand dollars, Respondents are once again in violation of the law.

#### 2. Adopting the *Harpootlian* Analysis Yields a Conclusion in Favor of Appellants.

If the Court is dissatisfied with the analysis above, Appellants would urge the Court to adopt Judge L. Casey Manning's analysis in *Richard A. Harpootlian v. South Carolina Senate Republican Caucus,* Case No. 2018-CP-40-05370 (Oct. 19, 2018). The *Harpootlian* court held the statute constitutionally applied on facts similar to the facts in the present case.

### D. Affirming the Order Below Would Lead to Absurd and Unacceptable Results.

Affirming the order below would lead to absurd results. If every section of the Ethics, Government Accountability, and Campaign Reform Act that contains the word "committee" is to be struck, even where the word is part of a narrower term such as "legislative caucus committee" or "ethics committee," then the ethics committees of the two Houses are unconstitutional. The Ethics Committees will be without the powers provided to them by Section 8-13-530 of the South Carolina Code. They will no longer be able to receive complaints about members of the Legislature, investigate those complaints, recommend punishments and sanction members. We will be, if anything, in worse shape than during the "Wild West" atmosphere that led to "Lost Trust."

There will be no more restrictions on General Assembly members serving on State boards and commissions. Section § 8-13-770 of the South Carolina Code, entitled

"Members of General Assembly prohibited from serving on state boards and commissions; exceptions," provides (emphasis added),

> A member of the General Assembly may not serve in any capacity as a member of a state board or commission, except for the State Fiscal Accountability Authority, the Advisory Commission on Intergovernmental Relations, the Legislative Audit Council, the Legislative Council, the Legislative Services Agency, the Judicial Council, the Commission on Prosecution Coordination, the South Carolina Tobacco Community Development Board, the Tobacco Settlement Revenue Management Authority, the South Carolina Transportation Infrastructure Bank, the Commission on Indigent Defense, the South Carolina Research Authority, and the joint legislative committees.

Members of the General Assembly may then serve on any state board or commission, increasing the opportunity for corruption, and subverting the beneficent principle of separation of powers.

Second, affirming the order below leads to other unacceptable results.

"Integrity in elections is foundational. It is that recognition of the importance of the integrity of public elections that leads us to grant relief at this time." *Anderson v. S.C. Election Comm'n,* 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012).

If unlimited contributions to candidates via political parties are to be allowed, the Ethics Act's protections against "Lost Trust" style corruption would be completely destroyed. The breadth and consequence of the holding below cannot be overstated. Under the *narrowest* reading, it greenlights unlimited money funneled through political parties that can be spent on a coordinated campaign to directly advocate for the election or defeat of a candidate. Put differently, you can buy an election so long as the money washes through a political party.

The Ethics and Campaign Reform Act was enacted soon after the "Lost Trust" revelations that led to corruption convictions of numerous House and Senate leaders. It replaced the prior statute that had allowed a "Wild West" style of contributions, corruption, and bribery. With recent revelations of corruption once again at the highest levels of the legislative branch, the last thing South Carolina needs is an unnecessary invalidation of more of the statute.

This gives unusual weight to the rule requiring a court to seek ways to hold the section constitutionally permissible.

**Conclusion to Part II**

Rather than affirm an order that will lead to unlimited donations, controlled by party chairpersons, in opposition to the intent of the Ethics, Government Accountability, and Campaign Reform Act, the Court should strive to find an analysis that allows as much of the statute as possible to survive. The Court may and should do so by following basic constitutional precepts and hold that a term being overbroad does not mean that narrower terms are the same.

## CONCLUSION

For the above reasons, and such other reasons as may be apparent to the Court, the Court should reverse the rulings below and remand for declaratory judgment stating that Respondents have violated the law and an injunction preventing them from doing it again.

The Court should hold that the plain language of the statute limits donations from groups of persons acting in concert to one thousand dollars per election cycle in State

House races, and that as the Respondents here admit to contributions exceeding one thousand dollars in the current cycle, Respondents are in violation of the law.

It should further hold that there is no need to consider the constitutionality or lack thereof of the term "committee" in this case, as no "party committee" or "legislative caucus committee," actual or purported, has been claimed to have anything to do with the actions at issue here. The meanings and constitutionality of these terms, and of the unqualified term "committee," are simply irrelevant to deciding the dispute between the parties.

If the Court decides the constitutional issue, it should hold that a federal court declaring a broad term unconstitutionally overly broad does not make narrower terms overly broad. As there is nothing unconstitutionally overly broad about the terms "party committee" or "legislative caucus committee," the Court should hold that Section -1316 is constitutional.

Respectfully Submitted,

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