

# EXHIBIT A

to

## **Respondents' Motion to Dismiss**

Appellate Case No. 2020-000851

*Petition for Motion for Preliminary Injunction,  
Complaint for Declaratory and Injunctive Relief,  
and Motion to Expedite Discovery*

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

JONATHON HILL and JONATHON HILL )  
FOR SC HOUSE DISTRICT 8; )

Case No. 2020-CP-\_\_\_\_\_

Plaintiffs, )

**SUMMONS**

vs. )

THE SOUTH CAROLINA REPUBLICAN )  
PARTY and VAUGHN PARFITT, )

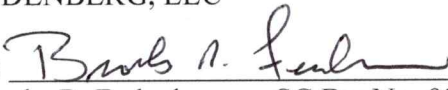
Defendants. )

TO THE DEFENDANTS ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

LAW OFFICE OF BROOKS R.  
FUDENBERG, LLC

June 06, 2020  
Charleston, South Carolina

by:   
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Attorney for the Plaintiff

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTH JUDICIAL CIRCUIT

)  
) JONATHON HILL and JONATHON HILL  
) FOR SC HOUSE DISTRICT 8;

) Case No. 2020-CP-\_\_\_\_\_

)  
) Plaintiffs,

)  
) vs.

) **PETITION AND MOTION FOR**  
) **PRELIMINARY INJUNCTION,**  
) **COMPLAINT FOR**  
) **DECLARATORY AND**  
) **INJUNCTIVE RELIEF,**  
) **AND MOTION TO**  
) **EXPEDITE DISCOVERY**

)  
) THE SOUTH CAROLINA REPUBLICAN  
) PARTY and VAUGHN PARFITT,

)  
) Defendants.  
)

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Plaintiffs Jonathon Hill and Jonathon Hill For SC House District 8 hereby file this petition and motion for a preliminary injunction, complaint for declaratory and injunctive relief, and motion for expedited discovery and an expedited schedule. Plaintiffs would respectfully show unto the Court as follows:

**PARTIES, JURISDICTION, AND VENUE**

1. Plaintiff Jonathon Hill is a resident of Anderson County, South Carolina, a Member of the South Carolina House of Representatives, and a candidate for reelection as the District 8 Representative to the House.
2. He seeks the Republican Party nomination for that position.
3. He is a “candidate” within the meaning of South Carolina Code § 8-13-1300(4).
4. Plaintiff Jonathon Hill For SC House District 8 is the officially-recognized campaign committee supporting his re-nomination and reelection.
5. Jonathon Hill for SC House District 8 is a “committee” within the meaning of South Carolina Code § 8-13-1300(6).

6. Defendant South Carolina Republican Party is a “political party” within the meaning of South Carolina Code § 8-13-1300(26). Its principal office is located within Richland County, at 1913 Marion Street, Columbia, South Carolina, 29201.

7. Defendant Vaughn Parfitt is the only opponent of Mr. Hill in the race for the Republican nomination to the District 8 seat.

8. Defendant Parfitt is a “candidate” within the meaning of South Carolina Code § 8-13-1300(4).

9. Plaintiffs allege violations of Title 8, Chapter 13 of the South Carolina Code, the “Ethics, Government Accountability, and Campaign Reform” act (“Act”), including violations of S.C. Code Ann. § 8-13-1314, which prohibits any person from providing more than one thousand dollars per election cycle to any candidate for the state House of Representatives, and prohibits any candidate or person acting in concert with a candidate from accepting such contributions. Plaintiffs allege that Defendant South Carolina Republican Party violates the Act by contributing more than one thousand dollars this election cycle to the candidacy of Vaughn Parfitt, specifically by paying for the production and mailing of many thousands of mailers supporting the candidacy of Mr. Parfitt, and that candidate Parfitt, and persons acting in active concert with him, violate the Act by accepting such contributions.

10. The Republican Party primary election is scheduled for June 9, 2020, which is less than fifty days from the date of this document.

11. The Court has jurisdiction over the subject matter of this dispute pursuant to Article V, Section 11 of the South Carolina Constitution, the Uniform Declaratory Judgment Act, S.C. Code Ann. § 15-53-10 et seq., and the South Carolina Ethics, Government Accountability,

and Campaign Reform Act, S.C. Code Ann. § 8-13-100 et seq., see esp. §§ 8-13-320(10)(b)(1) and 18-13-530(5).

12. S.C. Code Ann. § 8-13-320(10)(b)(1) provides, in particularly relevant part (emphasis added),

No complaint may be accepted by the [State Ethics] commission concerning a candidate for elective office during the fifty-day period before an election in which he is a candidate. During this fifty-day period, any person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction, or both. Within ten days, a rule to show cause hearing must be held, and the court must either dismiss the petition or direct that a mandamus order or an injunction, or both, be issued. A violation of this chapter by a candidate during this fifty-day period must be considered to be an irreparable injury for which no adequate remedy at law exists.

13. S.C. Code Ann. § 18-13-530 similarly provides, in particularly relevant part (emphasis added),

a complaint may not be accepted by the ethics committee [of either house] concerning a member of or candidate for the appropriate house during the fifty-day period before an election in which the member or candidate is a candidate. During this fifty-day period, any person may petition the court of common pleas alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction, or both. Within ten days, a rule to show cause hearing must be held, and the court must either dismiss the petition or direct that a mandamus order or an injunction, or both, be issued. A violation of this chapter by a candidate during this fifty-day period must be considered to be an irreparable injury for which no adequate remedy at law exists.

14. S.C. Code Ann. § 8-13-100, Paragraph 12, provides, in particularly relevant part, “‘Election’ means: (a) a general, special, primary, or runoff election; . . .”

15. Therefore, because it is within the fifty-day period prior to the primary election, and because primary elections are “elections” pursuant to S.C. Code Ann. § 8-13-100 for purposes of conferring jurisdiction on the Court of Common Pleas, this Court has jurisdiction over this matter.

16. For identical reasons, neither the State Ethics Commission nor any legislative-branch ethics committee has any jurisdiction over this matter.

17. Venue is proper in Richland County pursuant to South Carolina Code § 15-7-30(C), because the most substantial part of the acts and omissions giving rise to the allegations in this matter occurred in Richland County, South Carolina, because the complained-of mailers were all mailed under a non-profit postal permit registered in Richland County, see Exhibits 1(A-C), and because Defendant Republican Party maintains its principal office in Richland County.

### FACTUAL BACKGROUND

18. The Republican Party primary election is scheduled for June 9, 2020.

19. Vaughn Parfitt is the only opponent of Mr. Hill in the race for the Republican nomination to the District 8 seat.

20. On three separate occasions during this election cycle, Defendant South Carolina Republican Party has sent mailers supporting the candidacy of Vaughn Parfitt to mailing lists of persons that Defendant South Carolina Republican Party has identified as likely voters in the District 8 Republican primary. Each was sent at non-profit mailing rates using the South Carolina Republican Party's non-profit mailing permit. Samples of each mailer are attached as Exhibits 1(A)-(C).

21. On information and belief, these mailings occurred on or around April 29th (1A), May 4th (1B), and May 26th (1C), respectively.

22. On information and belief, the cost of preparing, printing, and mailing the three Parfitt mailers was more than five thousand dollars.

23. Each of these three mailers states that it is "PAID FOR BY SCGOP AND AUTHORIZED BY VAUGHN D. PARFITT FOR SC HOUSE" (capitalization in original).

24. Candidate Vaughn Parfitt's Pre-Election Campaign Disclosure, available at <https://apps.sc.gov/PublicReporting/IndividualCandidate/PrintView.aspx>, shows no payments to the South Carolina Republican Party that would offset the costs of these mailers.

#### APPLICABLE LAW

25. S.C. Code Ann. § 8-13-1314 prohibits any "person" from providing more than one thousand dollars per election cycle to any candidate for the state House of Representatives. Entitled, "Campaign contribution limits and restrictions," Section 8-13-1314 provides, in particularly relevant 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:

**(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

**(c)** one thousand dollars in the case of a candidate for any other office[.]

26. The restrictions of S.C. Code Ann. § 8-13-1314 apply to Defendant South Carolina Republican Party, as South Carolina Republican Party is a "person" within the meaning of the statute. See SC Code Ann. § 8-13-1300 (entitled, "Definitions"), paragraph (25) (emphasis added), "'Person' means an individual, . . . a company, committee, an association, a corporation, club, labor organization, or any other organization or group of persons acting in concert."

27. S.C. Code Ann. § 8-13-1314 similarly prohibits "a candidate or anyone acting on his behalf" from accepting such a contribution.

28. The term “contribution” as defined by the statute includes an “in-kind contribution or expenditure, a deposit of money, or anything of value made to a candidate or committee to influence an election[.]” S.C. Code Ann. § 8-13-1300(7).

29. 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.” S.C. Code Ann. § 8-13-1300(12).

30. The term “candidate” as defined by S.C. Code Ann § 8-13-1300(4) includes “a person who seeks appointment, nomination for election, or election to a statewide or local office.”

31. Plaintiff Jonathon Hill and Defendant Vaughn Parfitt are each a “candidate” within the meaning of Section 8-13-1300.

32. S.C. Code Ann. § 8-13-1316 allows a party to contribute, through its party committees or legislative caucus committees, no more than \$5,000 to a candidate during an election cycle, and allows a candidate to accept or receive up to that amount per election cycle through a party committee or legislative caucus committee. On information and belief, the contributions at issue here were not through any such committee. However, if the funds were contributed by a party committee, the expenditures would still be above the \$5,000 maximum, and Defendants would still be in violation of the Ethics Act.

33. A violation of Chapter 8 by a candidate during the fifty days prior to the election is an irreparable injury for which no adequate remedy at law exists. S.C. Code §§ 8-13-320(10)(b)(1) and 8-13-530(5) each state, in identical wording, “A violation of this chapter by a candidate during this fifty-day period must be considered to be an irreparable injury for which no adequate remedy at law exists.”

34. The United States Postal Service Regulations require that political entities that hold non-profit mailing licenses must produce and pay for the mailers out of their own funds. They may not be reimbursed for the costs of a mailer. Nor may others provide to the political party funds that are earmarked for a mailer on behalf of a specific candidate. United States Postal Service, Domestic Mail Manual (“DMM”) § 703.1.6.1 (stating, “An organization authorized to mail at the Nonprofit USPS Marketing Mail prices may mail only its own matter at those prices. An authorized organization may not delegate or lend the use of its authorization to mail at the Nonprofit USPS Marketing Mail prices to any other person or organization.”); DMM § 703.1.6.10 (entitled, “Political Mailings”) (emphasis added),

A qualifying political committee under 1.3 may mail election-related materials, such as candidate endorsements, at the Nonprofit USPS Marketing Mail prices if the materials are exclusively of the qualifying political committee. Political mailings may not be made at the Nonprofit USPS Marketing Mail prices when a political candidate or anyone else not authorized to mail at the Nonprofit USPS Marketing Mail prices assists the qualifying political committee with the preparation or mailing of such materials, or pays any of the costs of preparation or mailing, or provides any consideration to the qualifying political committee in return for the mailing being made.

See also DMM § 703.1.3 and 1.3.1(b) (including “A state committee of a political party” as qualifying to be a “political committee” under 1.3.)

**PETITION AND MOTION FOR A PRELIMINARY INJUNCTION  
(Rule 65(a), SCRCP)**

35. Each of the foregoing paragraphs is incorporated herein.

36. Rule 65 of the civil rules provides that no temporary injunction shall be issued without notice to the adverse party. Rule 65(a), SCRCP. “A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the

merits, and that there is no adequate remedy at law.” Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010).

37. Defendant Vaughn Parfitt is a “candidate” within the meaning of South Carolina Code Ann. § 8-13-1300(4).

38. Defendant South Carolina Republican Party has violated South Carolina Code Ann. Section 8-13-1314 by providing expenditures or other things of value in excess of one thousand dollars during this election cycle to Vaughn Parfitt in his campaign.

39. Defendant South Carolina Republican Party has done so repeatedly.

40. Defendant South Carolina Republican Party has done so repeatedly within the 50 days prior to an election, specifically, the forthcoming Republican primary of June 9th, 2020.

41. Defendant Vaughn Parfitt has violated South Carolina Code Ann. Section 8-13-1314 by accepting expenditures or other things of value in excess of one thousand dollars to Vaughn Parfitt in his campaign.

42. He has done so repeatedly.

43. He has done so repeatedly within the 50 days prior to the June 9th election.

44. In the alternative, those operating in concert with Mr. Parfitt have accepted, on his behalf, such expenditures or things of value, repeatedly, within 50 days of an election.

45. In the alternative, if the funds were contributed to the Parfitt campaign by a party committee, the expenditures were still over the \$5,000 maximum, see § 8-13-1316.

46. Absent a preliminary injunction, declaratory relief, and a permanent injunction from the Court, Representative Hill and the constituents he seeks to continue to serve will suffer an irreparable injury for which there is no adequate remedy at law. Allowing Defendants to continue their unfair and illegal acts will inhibit the conduct of a fair, lawful electoral process.

47. A preliminary injunction should issue here because Defendant South Carolina Republican Party is illegally helping one candidate against another by communicating with voters in anticipation of the June 9 primary, and Defendant Vaughn's campaign is illegally accepting the assistance. As such, Plaintiff Hill has already been irreparably harmed, but that harm will continue and be exacerbated by each additional illegal communication sent by the South Carolina Republican Party. Once disseminated to the electorate, there is no relief at law.

48. Accordingly, a preliminary injunction should issue mandating that Defendant South Carolina Republican Party and its officers, agents, servants, and employees cease and desist in mailing documents or otherwise supporting the candidacy of Vaughn Parfitt until after the conclusion of the June 9 primary, and mandating that Vaughn Parfitt, and all those acting in active concert with him, including his campaign's officers, agents, servants, and employees cease and desist accepting any such assistance. S.C. Code §§ 8-13-320(10)(b)(1) and 8-13-530(5) (each stating, in especially pertinent part, "A violation of this chapter by a candidate during this fifty-day period must be considered to be an irreparable injury for which no adequate remedy at law exists.").

**FOR A FIRST CAUSE OF ACTION  
(Declaratory Relief)**

49. Each of the foregoing paragraphs is incorporated herein.

50. Pursuant to South Carolina Code Ann. § 15-53-20, the Court should declare that South Carolina Republican Party has violated the Ethics Act and continues to violate the Ethics Act by making in-kind contributions to Vaughn Parfitt in excess of the limitation imposed by South Carolina Code Ann. § 8-13-1314 and that Vaughn Parfitt and persons acting in concert with him have violated and continue to violate the law by accepting those contributions.

51. Further, the Court should determine and declare the precise dollar amount the South Carolina Republican Party has illegally contributed to Mr. Parfitt's campaign in excess of the legal contribution limit and the precise number of voter contacts resulting from those expenditures.

**FOR A SECOND CAUSE OF ACTION  
(Injunctive Relief)**

52. Each of the foregoing paragraphs is incorporated herein.

53. Pursuant to South Carolina Code § 15-53-120, the Court should enter a temporary and, after a plenary merits hearing, permanent injunction enjoining the South Carolina Republican Party from any further violation of South Carolina Code Ann. § 8-13-1314, and any such further relief necessary to conform Defendant's conduct to the law and effectuate the orders and judgment of this Court.

**MOTION FOR EXPEDITED DISCOVERY**

54. Pursuant to Rules 16, 26, and 57 of the civil rules, Plaintiffs move for a discovery order requiring the South Carolina Republican Party to produce documents at the temporary injunction hearing.

55. Specifically, the Court should require the South Carolina Republican Party to produce the following documents, electronically stored information, and tangible things:

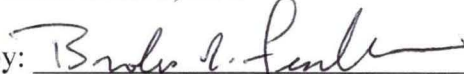
- a. All invoices for all expenditures made this election cycle relating to State House District 8.
- b. All receipts, checks, and other documents indicating payments made this election cycle relating to State House District 8.

**PRAYER**

WHEREFORE, Plaintiffs Jonathon Hill and Jonathon Hill For SC House District request that the Court grant their petition and motion for expedited discovery and order and declare that:

- i. A hearing on Plaintiffs' motion for a preliminary injunction be set as soon as possible;
- ii. The South Carolina Republican Party is temporarily enjoined from any further expenditures intended to assist any candidate to prevail in the primary election for State House District 8;
- iii. The South Carolina Republican Party must take immediate, affirmative action to suspend any expenditures in progress related to the primary elections in House District 8;
- iv. The South Carolina Republican Party must produce at the hearing on the preliminary injunction the records identified above;
- v. The South Carolina Republican Party has violated the Ethics Act in an amount and incidents the number of which will be determined by the Court during a final hearing;
- vi. The South Carolina Republican Party be enjoined as set forth above;
- vii. Plaintiff recover all fees, costs, damages, or penalties allowable by law; and
- viii. The Court order any further relief it deems just and proper.

LAW OFFICE OF BROOKS R.  
FUDENBERG, LLC

by: 

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# EXHIBIT B

to

## **Respondents' Motion to Dismiss**

Appellate Case No. 2020-000851

*Order Setting Hearing on Preliminary  
Injunction and Discovery Order*

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FOR THE FIFTH JUDICIAL CIRCUIT

)  
) JONATHON HILL and JONATHON HILL  
) FOR SC HOUSE DISTRICT 8,  
)

) Case No. 2020-CP-40-02636

) Plaintiffs,  
)

) vs.  
)

) **ORDER SETTING HEARING**  
) **ON PRELIMINARY**  
) **INJUNCTION AND**  
) **DISCOVERY ORDER**

) THE SOUTH CAROLINA REPUBLICAN  
) PARTY and VAUGHN PARFITT,  
)

) Defendants.  
)  
)

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This matter is before the Court on a verified petition and motion for preliminary injunction, complaint for declaratory and injunctive relief, and motion to expedite discovery, filed by Plaintiffs Jonathon Hill and Jonathon Hill For SC House District 8 against the South Carolina Republican Party and Vaughn Parfitt. Plaintiff Hill is a candidate for the State House of Representatives. Plaintiff Jonathon Hill For SC House District 8 is the official campaign committee advancing his candidacy. Defendant Parfitt is his opponent in the South Carolina Republican primary to be held on June 9th. For the reasons that follow, Plaintiffs’ motion for a discovery order is **GRANTED** and a hearing on the petition and motion for a preliminary injunction is set before the Honorable Jean H. Toal for **Friday, June 5, 2020 at 10:00 am at the Richland County Courthouse, Courtroom 2A, located at 1701 Main Street, Columbia, South Carolina.**

Plaintiffs’ petition and complaint alleges the South Carolina Republican Party is violating the South Carolina Ethics Act by paying for mailers in support of Parfitt. Specifically, Plaintiff alleges that the South Carolina Republican Party is limited to expending not more than \$1,000 per election cycle in support to a given campaign, see S.C. Code Ann. § 8-13-1314, whereas the South Carolina Republican Party has expended more than \$5,000 in support of Mr. Parfitt’s campaign.

A “contribution” under state law includes “in-kind contribution[s] or expenditure[s], . . . or anything of value made to a candidate or committee to influence an election[.]” S.C. Code Ann. § 8-13-1300(7). Plaintiffs similarly allege that Mr. Parfitt violated S.C. Code Ann. § 8-13-1314 by accepting the contributions.

In support of the allegations, Plaintiffs’ petition and complaint include exemplars of the mailers, each of which declare that they are “PAID FOR BY SCGOP AND AUTHORIZED BY VAUGHN D. PARFITT FOR SC HOUSE.”

Rule 65 of the civil rules provides that no temporary injunction shall be issued without notice to the adverse party. Rule 65(a), SCRCP. “A preliminary injunction should issue only if necessary to preserve the status quo ante, and only upon a showing by the moving party that without such relief it will suffer irreparable harm, that it has a likelihood of success on the merits, and that there is no adequate remedy at law.” Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586–87, 694 S.E.2d 15, 17 (2010).

Having considered the verified petition and complaint and reviewed the applicable law, the Court finds an expedited hearing on Plaintiffs’ motion for a temporary injunction is warranted as there appears to be evidence of ongoing violations of the Ethics Act in the form of in-kind contributions, specifically, mailers advocating for the election of a candidate for the Republican nomination for State House District 8, that appear to exceed the contribution limits imposed by South Carolina Code § 8-13-1314. The Court finds further that the primary election set for Tuesday, June 9, 2020 is quickly approaching and failure to maintain the status quo by temporarily enjoining the South Carolina Republican Party from engaging in further electioneering in State House District 8 would constitute an irreparable injury because there is no remedy at law (or in equity) once the South Carolina Republican Party’s message is disseminated

to the voters. Accordingly, the Court finds it appropriate and necessary to convene a hearing on this matter to consider Plaintiffs' request for a temporary injunction.

Accordingly, along with the Summons and Complaint, Plaintiff shall serve a copy of this Order and hearing notice on the South Carolina Republican Party and Vaughn Parfitt in accordance with Rule 4.

Further, as to Plaintiffs' motion to expedite discovery, the Court GRANTS Plaintiffs' request and ORDERS the Defendants to bring the documents requested by Plaintiff's motion to expedite discovery to the temporary injunction hearing. See Rule 26(d), SCRCPP (authorizing the court to enter orders concerning the sequence and timing of discovery).

**AND IT IS SO ORDERED.**

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The Honorable Alison Renee Lee  
Circuit Court Judge, Fifth Judicial Circuit

Date: \_\_\_\_\_.

Time: \_\_\_\_\_.

Columbia, South Carolina.

*Electronic signature to follow*



Richland Common Pleas

**Case Caption:** Jonathon Hill , plaintiff, et al vs South Carolina Republican Party ,  
defendant, et al  
**Case Number:** 2020CP4002636  
**Type:** Order/Other

IT IS SO ORDERED!

s/ Alison Renee Lee, Chief Administrative Judge  
for 2020

# EXHIBIT C

to

## **Respondents' Motion to Dismiss**

Appellate Case No. 2020-000851

*Defendant Parfitt's Response in Opposition to  
Motion for Temporary Injunction*

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF RICHLAND ) FIFTH JUDICIAL CIRCUIT

Jonathan Hill and Jonathan Hill for SC ) Civil Action No. 2020-CP-40-02636  
 House District 8, )  
 )

Plaintiffs, ) **DEFENDANT VAUGHN PARFITT'S**  
 ) **RESPONSE IN OPPOSITION TO**  
 vs. ) **PLAINTIFFS' MOTION FOR**  
 ) **TEMPORARY INJUNCTION**

South Carolina Republican Party and )  
 Vaughn Parfitt, )  
 )  
 Defendants. )

The defendant, Vaughn Parfitt, submits this response in opposition to the motion for temporary injunction. For the reasons that follow, the Court should deny the motion because the plaintiffs, Jonathan Hill and Jonathan Hill for SC House District 8, cannot succeed on the merits.

**I. BACKGROUND**

This action arises out of a series of communications disseminated in anticipation of the June 9, 2020 Republican primary for South Carolina House District 8. The plaintiffs filed a lawsuit in this Court on June 3, 2020, seeking to enjoin the South Carolina Republican Party (the Party) from engaging in political speech allegedly detrimental to Hill’s reelection campaign for House District 8. Hill also named his opponent, Vaughn Parfitt, as a defendant. The plaintiffs filed a verified petition, motion for temporary injunction, complaint for declaratory and injunctive relief, and motion to expedite discovery pertaining to the House District 8 race. That same day, the circuit court issued an order setting a hearing on the petition and motion for preliminary injunction for June 5, 2020. The circuit court also granted the plaintiffs’ motion to expedite discovery and required the Party to bring all invoices for expenditures made relating to House District 8.

## II. STANDARD

“The remedy of an injunction is a drastic one and ought to be applied with caution.” Strategic Res. Co. v. BCS Life Ins. Co., 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006). “An applicant for a preliminary injunction must allege sufficient facts to state a cause of action for injunction and demonstrate that this relief is reasonably necessary to preserve the rights of the parties during the litigation.” Allegro, Inc. v. Scully, 400 S.C. 33, 45, 733 S.E.2d 114, 121 (Ct. App. 2012). For the Court to grant a preliminary injunction, the plaintiffs must establish (1) they “would suffer irreparable harm if the injunction is not granted,” (2) they “will likely succeed on the merits of the litigation,” and (3) no adequate remedy at law exists. Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc., 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). “A preliminary injunction should issue only if necessary to preserve the status quo ante.” Poynter Invs., Inc. v. Century Builders of Piedmont, Inc., 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010).

## III. ARGUMENT

At the outset, the plaintiffs point out—and the defendants concede—that irreparable harm and an inadequate remedy of law are presumed under the statute. See S.C. Code Ann. §§ 8-13-320(b)(1) & -530(5). This case therefore turns on the likelihood of success on the merits. As explained below, the plaintiffs cannot succeed on the merits because their interpretation of the statutes at issue is incorrect.

“The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly].” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). “The determination of legislative intent is a matter of law.” Lambries v. Saluda Cty. Council, 409 S.C. 1, 10, 760 S.E.2d 785, 789 (2014) (quoting Media Gen. Commc’ns, Inc. v. S.C. Dep’t of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 529 (2010)). “If a statute’s language is plain and unambiguous

and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has not right to look for or impose another meaning.” Miller v. Doe, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994).

“It is well settled that statutes dealing with the same subject matter are in para materia and must be construed together, if possible, to produce a single, harmonious result.” Joiner ex rel. Rivas v. Rivas, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000); see also Senate ex rel. Leatherman v. McMaster, 425 S.C. 315, 322, 821 S.E.2d 908, 912 (2018) (recognizing the Court “must read the statute so that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous” (quoting CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011))). When “there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” Denman v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010) (quoting Spectre, LLC v. S.C. Dep’t of Health & Env’tl. Control, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010)).

Title 8, Chapter 13, Article 13 of the South Carolina Code specifically governs campaign finance practices in this state. Under the definitional section of Article 13, the Party is a “political party.” S.C. Code Ann. § 8-13-1300(26) (stating a political party is “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”). But it is also a “committee.” S.C. Code Ann. § 8-13-1300(6) (defining a committee, in relevant part, as “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,” and noting it also “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”).

With these principles in mind, the Court should deny the plaintiffs’ motion for a temporary injunction because they cannot succeed on the merits of their claim that the Party’s expenditures in House District 8 violate the State Ethics Act.<sup>1</sup>

**A. The definition of “committee” is no longer viable.**

As a preliminary matter, the spending caps in the State Ethics Act are inapplicable to the Party because the U.S. District Court for the District of South Carolina has twice held that the definition of “committee” found in subsection 8-13-1300(21) of the South Carolina Code is unconstitutionally overbroad. See S.C. Citizens for Life v. Krawcheck, 759 F. Supp. 2d 708, 727 (D.S.C. 2010) (Krawcheck I); S. Carolinians for Responsible Gov’t v. Krawcheck, 854 F. Supp. 2d 336, 343 (D.S.C. 2012) (Krawcheck II). In Krawcheck I, the district court found that “South Carolina cannot constitutionally impose committee restrictions on any group that distributes a communication that qualifies under [subsection] 8-13-1300(31)(c) without regard for the group’s major purpose.” 759 F. Supp. 2d at 727. The Krawcheck II court similarly concluded the definition of “committee” was “overbroad and facially unconstitutional.” 854 F. Supp. 2d at 343. No parties appealed either decision.

As noted above, the Party is a “committee” under the State Ethics Act. See S.C. Code Ann. §§ 8-13-1300(6) & (26). Because the General Assembly has not enacted a new statute that revives the definition of “committee” to pass constitutional muster, the Party is not constrained by the limitations on campaign expenditures in Title 8, Chapter 13.

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<sup>1</sup> That the Party’s communications favored Parfitt is of no consequence because they were made in the 45 days preceding the June 9, 2020 Republican primary. Parfitt thus did not “accept” contributions or do anything improper.

**B. The Party's communications were lawful.**

But even if this Court determines the Party is constrained by these provisions, a plain reading of subsection 8-13-1300(31)(c) reveals the Party has no spending limitations on its distribution of “communications”—paid radio and television advertisements and mailers—during the 45-day period leading up to the election. Subsection 8-13-1300(31)(c) broadly defines “influence the outcome of an election” to include the following:

any communications made, not more than forty-five days before an election, which promotes or supports a candidate or attacks or opposes a candidate, regardless of whether the communication expressly advocates a vote for or against a candidate. For purposes of this paragraph, “communication” means (i) any paid advertisement or purchased program time broadcast over television or radio; (ii) any paid message conveyed through telephone banks, direct mail, or electronic mail; or (iii) any paid advertisement that costs more than five thousand dollars that is conveyed through a communication medium other than those set forth in subsections (i) or (ii) of this paragraph. “Communication” does not include news, commentary, or editorial programming or article, or communication to an organization’s own members.

S.C. Code Ann. § 8-13-1300(31)(c) (Supp. 2017).

Here, the Party has engaged in communications that fall squarely within the ambit of subsection 8-13-1300(31)(c) because they were made within 45 days of the election. To be sure, subsection 8-13-1300(7) exempts from the definition of “contribution” anything of value given to a committee used to pay for subsection 8-13-1300(31)(c) communications within 45 days of the election. S.C. Code Ann. § 8-13-1300(7) (Supp. 2017). A plain reading of the statute reveals the Party is, therefore, permitted to raise and spend unlimited funds during the 45-day period leading up to an election. See Hodges, 341 S.C. at 85, 533 S.E.2d at 581; Miller, 312 S.C. at 447, 441 S.E.2d at 321. Under subsection 8-13-1300(31)(c), the Party’s communications—by definition—are not “influencing the outcome of an elective office” because they are within the 45 days.

Although subsection 8-13-1300(7) uses “influence an election” and subsection 8-13-1300(31)(c) uses “influence the outcome of elective office,” this has to mean the same thing. See Rivas, 342 S.C. at 109, 536 S.E.2d at 375 (asserting “that statutes dealing with the same subject matter are in para materia and must be construed together, if possible, to produce a single, harmonious result”).

Subsection 8-13-1300(31)(c) unambiguously expands the general rule and reflects the General Assembly’s intent for a different rule to apply during the 45-day period before an election. See Denman, 387 S.C. at 138, 691 S.E.2d at 468–69 (“Where there is one statute addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect.” (quoting Spectre, LLC, 386 S.C. at 372, 688 S.E.2d at 852)). To construe subsection 8-13-1300(31)(c) otherwise would render the statute meaningless. Cf. Senate ex rel. Leatherman, 425 S.C. at 322, 821 S.E.2d at 912 (quoting CFRE, LLC, 395 S.C. at 74, 716 S.E.2d at 881).

Accordingly, the funds spent on subsection 8-13-1300(31)(c) communications are not “contributions” under the Act. Although the Party is restricted by the \$5,000 direct contribution limit found in section 8-13-1316 of the South Carolina Code (Supp. 2017), the Party may spend any amount on subsection 8-13-1300(31)(c) communications in the 45 days leading up to an election because these are not “contributions” under South Carolina law. Subsection 8-13-1300(31)(c) unambiguously expands the general rule limiting contributions to a candidate and reflects the General’s Assembly intent for a different rule to apply during the final 45 days leading up to an election.

Thus, as a matter of law, the Party’s expenditures on subsection 8-13-1300(31)(c) communications before the House District 8 Republican primary do not run afoul of the State

Ethics Act, and the plaintiffs are not entitled to a temporary injunction.<sup>2</sup>

**C. Previous legislative attempts to adopt the plaintiffs' interpretation have failed.**

Parfitt would also point the Court to a bipartisan bill that failed to make it out of the full House Judiciary Committee this legislative session.<sup>3</sup> See H.B. 4203, 123d Gen. Assemb., 1st Sess. (S.C. 2019).

On March 7, 2019, Representative Gary E. Clary introduced a bill designed to impose restrictions on the ability of the parties and legislative caucus committees to spend money on behalf of candidates during the forty-five days leading up to an election. See 2019 S.C. House J. 73. To accomplish this goal, House Bill 4203 sought to amend the definitions of “committee” and “contribution” in section 8-13-1300 as they relate to campaign practices. See H.B. 4203. Had the bill passed, subsection 8-13-1300(31)(c) “communications” would have fallen under the definition of “contribution” and, therefore, been subject to the normal per-cycle limitations. See id. In other words, the bill would have changed the statute to reflect what the plaintiffs erroneously believe it says now. The bill failed.

Our supreme court has long held “it is the General Assembly’s prerogative to modify or repeal legislation and to make policy decisions.” Amisub of S.C., Inc. v. S.C. Dep’t of Health & Env’tl. Control, 407 S.C. 583, 597, 757 S.E.2d 408, 415 (2014). After all, courts “do not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly.” Keyserling v. Beasley, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996). “It is presumed that the

---

<sup>2</sup> Notably, the specific statute under which Hill seeks to invoke this Court’s jurisdiction says nothing about obtaining a declaratory judgment. It only allows for a “mandamus or injunction, or both.” S.C. Code Ann. § 8-13-530(5); see also S.C. Code Ann. § 8-13-320(b)(1). A plain reading of the statute thus reveals the plaintiffs are not entitled to the declaratory relief sought in the complaint. See Pls.’ Compl. at ¶ 51.

<sup>3</sup> Indeed, this is but one example of the numerous bills filed over the past several years seeking to address the issue that have not passed.

[General Assembly] is familiar with prior legislation, and that if it intends to repeal existing laws[,] it would . . . expressly do so . . . .” Shirley’s Iron Works, Inc. v. City of Union, 403 S.C. 560, 572, 743 S.E.2d 778, 784 (2013) (quoting Hodges, 341 S.C. at 88, 533 S.E.2d at 583). And it is well-settled that courts have no authority to “effect through judicial means what is solely within the authority of the [General Assembly].” Justice v. Pantry, 330 S.C. 37, 45, 496 S.E.2d 871, 875 (Ct. App. 1998); see also S.C. CONST. art. I, § 8 (“In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other.”).

Here, as noted above, legislative attempts to amend the relevant provisions of the State Ethics Act have failed. Cf. Retail Servs. & Sys., Inc. v. S.C. Dep’t of Revenue, 419 S.C. 469, 482 n.17, 799 S.E.2d 665, 671 n.17 (2017) (Kittredge, J., dissenting) (“not[ing] that legislative attempts to amend or repeal the [s]tatutes have been unsuccessful” and stating it appeared the appellant was “attempting to accomplish through the Court what it has been unable to achieve properly through the General Assembly”); see generally Joseph v. S.C. Dep’t of Labor, Licensing & Regulation, 417 S.C. 436, 469, 790 S.E.2d 763, 780 (2016) (Beatty, J., dissenting) (“emphasiz[ing] that all legislative attempts to overturn” the Court’s interpretation of a statute “have failed,” even though the General Assembly “is free to correct any misinterpretation,” and its “failure to do so in ten years is evidence that it agrees with this Court’s interpretation of” the statute).

The General Assembly’s decision not to pass House Bill 4203 is telling and only further supports the defendants’ interpretation of the pertinent statutes in the State Ethics Act. If the plaintiffs’ interpretation were correct, then why did a bipartisan coalition of House members, all of whom are attorneys, introduce and cosponsor legislation to amend the law governing

contributions and subsection 8-13-1300(31)(c) communications? House Bill 4203 was not merely an exercise in throat-clearing. It would have represented a sea change in the rules governing campaign finance practices in this state—altering the framework under which candidates, parties, and caucuses have been operating for years—by codifying what the plaintiffs want the statutes to say into law. But the bill failed. And the plaintiffs are not permitted to seek through judicial means what failed on the legislative front.

The Party's expenditures on subsection 8-13-1300(31)(c) communications were consistent with a plain reading of the State Ethics Act. In the absence of a new law changing the status quo, such as House Bill 4203, the plaintiffs' argument fails, and they cannot succeed on the merits of this litigation.

**D. The Court must require an appropriate bond.**

If the Court is inclined to grant an injunction, the plain language of Rule 65(c), SCRCF, requires the imposition of a bond:

Except in divorce, child custody, and non-support actions where the giving of security is discretionary, no restraining order or temporary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the State or of an officer or agency thereof.

Rule 65(c), SCRCF. Here, the plaintiffs do not belong to any of the classes of individuals or entities excluded from the bond requirement.

Our appellate courts have held for centuries that the failure to require a bond constitutes reversible error. See, e.g., Headdon v. State Hwy. Dep't, 197 S.C. 118, \_\_\_, 14 S.E.2d 586, 588 (1941) (holding the failure to require a bond prior to issuing an order that effectively continued a temporary restraining order constituted error); Hunt v. Smith, 18 S.C. Eq. 277, 280 (1 Rich. Eq.)

(1845) (reversing and holding the lower court should have refused to issue an injunction because the applicant failed to comply with the law by not giving bond with sufficient security). To the extent the plaintiffs believe only a “nominal bond” is necessary, our supreme court has previously held that a “circuit court’s order requiring only a nominal security bond does not satisfy Rule 65(c) because it erroneously assumes the injunction is proper instead of providing an amount sufficient to protect appellants in the event the injunction is ultimately deemed improper.” Atwood Agency v. Black, 374 S.C. 68, 73, 646 S.E.2d 882, 884 (2007). Simply put, a bond is required, and it cannot be merely nominal.

With that issue settled, the question becomes what amount is sufficient for the payment of such costs and damages as the defendants may incur. Included in these costs are attorneys’ fees, which are recoverable under South Carolina law in an action seeking to overturn an injunction. See Chambers v. Long, 132 S.C. 179, \_\_\_, 128 S.E. 853, 854 (1925) (“That an attorney’s fee for the dissolution of an injunction may be recovered as damages, under the bond, is settled by the cases of Livingston v. Exum, 19 S. C. 229; Hill v. Thomas, 19 S. C. 230; Britt v. McCormick, 117 S. C. 8, 108 S. E. 179; 14 R. C. L. 486.”). The defendants respectfully defer to the Court as to what bond is sufficient, in the interests of justice, for the plaintiffs to post before any order granting injunctive relief is effective.

#### IV. CONCLUSION

In sum, the Court should deny the plaintiffs’ motion for temporary injunction because the Party’s expenditures on the House District 8 Republican primary in support of Parfitt did not violate the State Ethics Act and, therefore, they cannot succeed on the merits of this litigation.

*(Signature page to follow)*

Respectfully submitted,

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*Attorneys for Defendant Vaughn Parfitt*

Columbia, South Carolina  
June 4, 2020

# EXHIBIT D

to

## **Respondents' Motion to Dismiss**

Appellate Case No. 2020-000851

*Transcript of Record*

State of South Carolina )  
County of Richland )

In the Court of Common Pleas  
Fifth Judicial Circuit  
2020-CP-40-02636

Jonathon Hill and Jonathon )  
Hill for SC House District 8, )  
Plaintiffs, )

vs. )

The South Carolina Republican )  
Party and Vaughn Parfitt, )  
Defendants. )

Transcript of Record

June 5, 2020  
Columbia, South Carolina

B E F O R E:           The Honorable Jean Hoefer Toal,  
                          Chief Justice (Retired),  
                          serving as Acting Circuit Court Judge

A P P E A R A N C E S:

Brooks R. Fudenberg, Esquire  
Thomas M. Fernandez, Esquire  
Attorneys for Plaintiffs

Robert E. Tyson, Jr., Esquire  
Vordman Carlisle Traywick, III, Esquire  
Attorneys for Defendants

Maryann S. Nevers, CVR-M-CM, RVR  
Circuit Court Reporter  
Certified Verbatim Reporter - Master  
Certificate of Merit  
Realtime Verbatim Reporter

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Proceedings . . . . . 4

TESTIMONY - WITNESS

Jonathon Hill,

    Direct Examination by Mr. Fudenberg. . . . . 13

    Cross-Examination by Mr. Tyson . . . . . 26

Drew McKissick,

    Direct Examination by Mr. Fudenberg . . . . . 29

Vaughn Parfitt,

    Direct Examination by Mr. Fudenberg. . . . . 39

    Cross-Examination by Mr. Tyson . . . . . 52

    Redirect Examination by Mr. Fudenberg. . . . . 63

    Recross-Examination by Mr. Tyson . . . . . 65

Drew McKissick,

    Direct Examination by Mr. Fudenberg . . . . . 66

Ruling by the Court . . . . . 112

Certificate Page. . . . . 118

E X H I B I T S

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| <u>NO.</u> | <u>DESCRIPTION</u>                           | <u>I.D.</u> | <u>EVID.</u> |
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| P-1        | Mailing                                      | 4           | 7            |
| P-2        | Mailing                                      | 4           | 7            |
| P-3        | Mailing                                      | 4           | 7            |
| P-4        | Mailing                                      | 4           | 7            |
| P-5        | Mailing                                      | 4           | 7            |
| P-6        | Mailing                                      | 4           | 7            |
| P-7        | Pre-Election Report Mailing                  | 4           | 7            |
| P-8        | Invoice-Stoneridge Group                     | 4           | 7            |
| P-9        | E-mail-Sunshine Solutions                    | 4           | 7            |
| P-10       | Order Setting Hearing and<br>Discovery Order | 49          | 50           |
| P-11       | Petition/Motion/Complaint                    | 50          | 50           |
| P-12       | Mailing                                      | 60          | 63           |
| P-13       | Mailing                                      | 60          | 63           |
| D-1        | Invoice                                      | 4           | 7            |

## TRANSCRIPT OF RECORD

1  
2 (Whereupon, the proceeding was commenced at 1:22 p.m.)

3 (Whereupon, prior to the commencement of the  
4 proceedings, Plaintiff's Exhibits No. 1 through 9 and  
5 Defendant's Exhibit No. 1 were premarked for  
6 identification.)

7 THE COURT: This is an emergency hearing being  
8 conducted in the matter of *Jonathon Hill and Jonathon Hill*  
9 *for South Carolina House District 8, plaintiffs v. The*  
10 *South Carolina Republican Party and Vaughn Parfitt.* The  
11 case is 2020-CP-40-02636. Counsel, Mr. Fudenberg, is  
12 present, along with his client, Representative Jonathon  
13 Hill, the plaintiff. And at counsel table in addition?

14 MR. FUDENBERG: It's Tom Fernandez.

15 MR. FERNANDEZ: Tom Fernandez, ma'am.

16 THE COURT: Tom Fernandez, an attorney in the office  
17 of Mr. Fudenberg?

18 MR. FUDENBERG: He's an attorney, but he's not in my  
19 office, Your Honor.

20 THE COURT: All right. An associated attorney on this  
21 matter ---

22 MR. FUDENBERG: Yes.

23 THE COURT: --- for the plaintiff.

24 For the defense Mr. Rob Tyson is here, along with Mr.  
25 Lisle Traywick. They are representing the South Carolina

1 Republican Party and Vaughn Parfitt. They are accompanied  
2 by, Mr. Tyson?

3 MR. TYSON: Yes, ma'am, Your Honor. Mr. Drew  
4 McKissick, the chairman of the South Carolina Republican  
5 Party ---

6 THE COURT: Welcome ---

7 MR. TYSON: --- is here.

8 THE COURT: --- Mr. McKissick. And we're very -- very  
9 grateful to you for interrupting what I know is a very busy  
10 time for you to come and be present at this hearing. Thank  
11 you ---

12 MR. MCKISSICK: Happy to ---

13 THE COURT: --- so much.

14 MR. MCKISSICK: --- be here. Thank you.

15 MR. TYSON: And, Your Honor, also we have Mr. Vaughn  
16 Parfitt and his wife ---

17 MS. PARFITT: Cindy.

18 MR. TYSON: --- Cindy are also here.

19 THE COURT: Very good. Please be seated.

20 And, Mr. Parfitt, I appreciate very much your  
21 interrupting other important business to get down the road  
22 here to this hearing. This makes this a complete hearing  
23 for whatever review might be necessary, and I'm deeply  
24 grateful for your presence.

25 All right. This hearing is being conducted pursuant

1 to the guidelines specific in the orders of Chief Justice  
2 Donald W. Beatty pertaining to nonjury hearings conducted  
3 during this time of the COVID-19 emergency in this state  
4 and is also being conducted pursuant to the guidance and  
5 safety directions of the law enforcement authorities for  
6 the City of Columbia and for the County of Richland, South  
7 Carolina, in connection with business being conducted in  
8 the Richland County Judicial Center.

9 I again appreciate the cooperation of all parties in  
10 maintaining social distance and in cooperating with the  
11 guidance of our authorities as you enter the courtroom.  
12 Thank you so much.

13 All right. Mr. Fudenberg, you may proceed.

14 MR. FUDENBERG: Thank you, Your Honor. Your Honor, we  
15 have stipulated to all the exhibits. We've got those all  
16 agreed to come in.

17 THE COURT: Very good. And I have a copy, Mr.  
18 Fudenberg, of -- all right. The plaintiff's exhibits in  
19 these -- in this matter, Exhibits 1 -- I've got 1, 2, 3, 4,  
20 5 ---

21 MR. FUDENBERG: We have nine, Your Honor.

22 THE COURT: All right. Okay. Just a minute. I have  
23 Exhibits 1 through -- I have a group of documents labeled  
24 Exhibits 1 through 9. I will hope that they would be  
25 specifically labeled by the court reporter as to the number

1 on each one of them as the matters are referred to.

2 And I also have Defendant's Exhibit 1. And I take it  
3 that that embraces everything that the defendant will offer  
4 at the moment.

5 MR. TYSON: Yes, Your Honor. That's right.

6 THE COURT: Very -- very good. These exhibits are  
7 admitted without objection and pursuant to agreement of the  
8 parties.

9 (Whereupon, Plaintiff's Exhibits No. 1 through 9 and  
10 Defendant's Exhibit No. 1 were entered into evidence.)

11 THE COURT: Now, I don't know that I have got a  
12 complete copy of all these things, Mr. Fudenberg.

13 (Off the record briefly.)

14 THE COURT: All right. You may proceed, sir.

15 MR. FUDENBERG: Thank you, Your Honor. As Your Honor  
16 noted, the defendants did bring that one exhibit. That is  
17 the sum total of the documents that they have brought with  
18 them pursuant to the order.

19 Just a few minutes ago, defendants offered and I  
20 accepted to stipulate to the party having spent more than  
21 \$5,000 on the mailers for Mr. Parfitt. Is that ---

22 THE COURT: Very good. Defendant's Exhibit No. 1  
23 indicating an -- total expenditure of \$2,656.50 to  
24 Starboard Communications Agency, an invoice to Hope Walker  
25 of the South Carolina GOP. And I take it that the parties

1 are stipulating that this is the amount of expenditures  
2 made by the defendants on behalf ---

3 MR. FUDENBERG: No, ma'am.

4 THE COURT: No?

5 MR. FUDENBERG: No. We are stipulating that there  
6 were more than \$5,000 total spent. This was -- this was  
7 just postage, this -- what they gave us.

8 THE COURT: Oh, this is just postage. You're saying  
9 that the total amount expended, of which this exhibit is a  
10 part, does not exceed ---

11 MR. FUDENBERG: Does ---

12 THE COURT: --- 5,000 or it does exceed?

13 MR. FUDENBERG: Does exceed. Yes, ma'am. It -- it  
14 exceeds 5,000 as the ---

15 THE COURT: Does exceed \$5,000; in other words, the  
16 expenditures exceed \$5,000 in total. But the only thing  
17 offered by defendant at this time is a postage recordation?

18 MR. FUDENBERG: Yes, ma'am.

19 THE COURT: All right.

20 MR. FUDENBERG: Is that ---

21 MR. TRAYWICK: That -- that's right, Your Honor. If I  
22 can make one clarification: that that's within the 45 days  
23 leading up to the election, the ---

24 THE COURT: Oh, right. Right. And that's the  
25 expenditure area that's averred in the summons and

1 complaint.

2 MR. TRAYWICK: That's right. Yes, Your Honor.

3 THE COURT: Very good.

4 MR. TRAYWICK: Thank you.

5 THE COURT: All right, Mr. Fudenberg.

6 MR. TRAYWICK: Because the ---

7 THE COURT: You may ---

8 MR. TRAYWICK: --- these started ---

9 THE COURT: --- proceed.

10 MR. TRAYWICK: --- 4/29.

11 MR. FUDENBERG: Okay. The -- could -- that was news  
12 to me. I thought we were stipulating it was more than  
13 5,000 total. But if it's \$5,000 in that time period, it's  
14 still \$5,000 total. So I'm -- I'm fine.

15 THE COURT: Well, that -- all right, sir.

16 MR. FUDENBERG: Yeah. Okay. Your Honor, in this --  
17 given the stipulation, I don't see a need to call any  
18 witnesses. I would be glad to, of course, if Your Honor  
19 would like to get some testimony. But we've both agreed  
20 that, if it's fine with you, we will not call witnesses  
21 because of this recent stipulation.

22 THE COURT: Mr. Fudenberg ---

23 MR. FUDENBERG: Yes, ma'am.

24 THE COURT: --- I have gone to a great deal of effort  
25 this morning to have a representative of the party here and

1 the candidate here as defendants. And I did that because  
2 of your indication that you desired to have them here to  
3 examine them.

4 MR. FUDENBERG: Yes, ma'am. And that -- that was to  
5 prove that it was more than \$5,000. And ---

6 THE COURT: Yes, sir.

7 MR. FUDENBERG: --- just a few minutes ago, they've  
8 conceded that.

9 THE COURT: And you don't perceive that there are any  
10 other factual issues related to the regulation of the  
11 defendants in this matter that pertain to the standards  
12 that are enunciated in the cases that are applicable here?

13 MR. FUDENBERG: Just to be clear, the stipulation is  
14 \$5,000 on -- on these mailers ---

15 THE COURT: Yes, sir.

16 MR. FUDENBERG: --- that were sent out.

17 THE COURT: Yeah. You're missing ---

18 MR. FUDENBERG: Okay.

19 THE COURT: --- what I'm asking.

20 MR. FUDENBERG: Yes, ma'am.

21 THE COURT: The -- I hear something buzzing here. I'm  
22 going to take a momentary break here.

23 MR. FUDENBERG: Okay.

24 (Off the record briefly.)

25 THE COURT: You -- you may resume the podium, Mr.

1 Fudenberg.

2 MR. FUDENBERG: Yes, ma'am.

3 THE COURT: Mr. Fudenberg, the averments of the  
4 pleading filed by the defense have to do with the  
5 applicability of declarations of the United States District  
6 Court and of the Fourth Circuit relative to the \$5,000  
7 provision that you mentioned as that relates to what it  
8 regulates and to whether the defendant -- the South  
9 Carolina Republican Party is covered by the provisions of  
10 the Ethics Act either relating to political parties or  
11 relating to committees or both. Those are based on what  
12 the federal district court did, questions partially driven  
13 by the facts of the case and partially driven by the law of  
14 the case.

15 And those facts relate, in part, to what kind of  
16 organization is being talked about, what the definition of  
17 the Ethics Act covers, and what kind of expression was  
18 being made, whether a general advocacy, as the *Citizens for*  
19 *Life* did, or a political-inquiry document or whether it was  
20 a specific advocacy. And I will leave it to the lawyers to  
21 argue what the correct term of art is, but a specific  
22 advocacy of a particular candidate and the acceptance by  
23 that candidate of advocacy on that candidate's behalf by a  
24 specific organization.

25 If you don't think those issues are ---

1 MR. FUDENBERG: Well, no.

2 THE COURT: --- issues in this case and that they need  
3 any ---

4 MR. FUDENBERG: Okay.

5 THE COURT: --- facts to undergird them, that's up to  
6 you. But it would've saved us all a lot of time had you  
7 decided that the only fact you think is pertinent is the  
8 amount of money. But you try you own case in the way you  
9 want to.

10 MR. FUDENBERG: Okay. Well, in -- in that case, Your  
11 Honor, I -- I -- I will call some witnesses, if that's okay  
12 with you.

13 THE COURT: Well, I'm not requiring ---

14 MR. FUDENBERG: No.

15 THE COURT: --- you to.

16 MR. FUDENBERG: I understand.

17 THE COURT: But ---

18 MR. FUDENBERG: Okay. I -- I call Jonathon Hill, the  
19 plaintiff.

20 THE COURT: All right, sir.

21 Representative Hill, I think you're being called to  
22 the witness stand, sir.

23 THE PLAINTIFF: Here?

24 THE COURT: You come around to the -- come around  
25 here. And stop -- stop right there and turn around and

1 face the clerk and she will give the oath.

2 JONATHON HILL, having been first duly sworn,  
3 testified as follows:

4 DEPUTY CLERK OF COURT: Thank you. Have a seat up  
5 here in the witness stand, please.

6 THE WITNESS: (Complied.)

7 DEPUTY CLERK OF COURT: And state your name for the  
8 record.

9 THE WITNESS: Representative Jonathon Hill.

10 DIRECT EXAMINATION

11 BY MR. FUDENBERG:

12 Q Mr. Hill, what is your occupation?

13 A I am a member of the State House of Representatives  
14 and also a self-employed software developer.

15 Q Okay. And in the State House of Representatives,  
16 you're the representative for which district?

17 A House District 8 from Anderson County.

18 Q Okay. Are you seeking the Republican Party nomination  
19 to that position?

20 A I am.

21 Q Okay. Is anyone else seeking the ---

22 A Yes.

23 Q --- the Republican Party -- who is that?

24 A Mr. Parfitt.

25 Q Is there anyone, other than you and Mr. Parfitt, who

1 is seeking that nomination?

2 A No.

3 Q Okay. So it's just you and Mr. Parfitt; is that  
4 correct?

5 A Yes.

6 Q Okay. Will the -- will the Republican Party  
7 nomination to that seat be decided by a primary election?

8 A Yes.

9 Q Okay. When is that election to be held?

10 A June 9th.

11 Q Okay. In your opinion, is the race between you and  
12 Mr. Parfitt a close race?

13 A I can't say. I don't have enough information to say.  
14 It's been a competitive race; I will say that.

15 Q Okay. Did the South Carolina Republican Party send  
16 mailers supporting Mr. Parfitt in his race against you to  
17 likely voters in the upcoming primary?

18 A Yes.

19 Q Okay. How many such mailers are you aware of?

20 A I'm aware of eight.

21 Q Okay. How many do you have samples of?

22 A I have samples of six.

23 Q Okay. I would like to give you Plaintiff's Exhibits 1  
24 to 6. Can you tell us, please, what No. 1 is?

25 A This would be No. 1.

1 Q Okay.

2 THE COURT: Speak up a little bit, Representative  
3 Hill.

4 THE WITNESS: This would be No. 1, Your Honor.

5 THE COURT: Yes, sir.

6 Q What is that? Identify it for us.

7 A I'm sorry?

8 Q Tell us what it is, please.

9 A This is a mailer advertising Vaughn Parfitt's  
10 campaign. Best I -- as far as I know, it was delivered to  
11 mailboxes on the 29th of April, approximately.

12 Q Okay. Does it advocate for Mr. Parfitt to be elected  
13 to be -- to win the primary?

14 A It clearly does. It includes Mr. Parfitt's photo, his  
15 logo ---

16 Q Okay.

17 A --- the name of his campaign. It says to vote yes for  
18 Mr. Parfitt. And it also says that it was -- it -- it  
19 includes his name in the disclosure, as well as the S.C.  
20 GOP's name.

21 Q And what does that disclosure say?

22 A The S.C. -- or the disclosure reads: Paid for by S.C.  
23 GOP and authorized by Vaughn D. Parfitt for S.C. House.

24 Q Okay.

25 A Return address: 1913 Marion Street, Columbia, 29201.

1 Q Okay. Would you consider this to be an electioneering  
2 mailer?

3 A Absolutely.

4 Q Is its purpose to advocate for Mr. Parfitt and against  
5 yourself?

6 A Clearly.

7 Q Okay. Anything else to say about that one?

8 A No.

9 Q What about Exhibit 2, please?

10 A Exhibit 2, best we can tell, went out approximately  
11 May 2nd. This is encouraging absentee voting, to go ahead  
12 and request your absentee ballot online, and to vote -- to  
13 cast it for Mr. Vaughn Parfitt. It says on the reverse:  
14 However you decide to cast your ballot, remember to vote  
15 for Vaughn Parfitt in the June 9th Republican primary  
16 election.

17 Q So this is a direct request for people to vote for Mr.  
18 Parfitt; is ---

19 A It is.

20 Q --- that correct? Okay.

21 A This, if I may ---

22 Q Yes.

23 A --- also, includes the same disclosure as the previous  
24 one.

25 Q Thank you. Anything else on this one?

1 A No.

2 Q Do all of these exhibits that are mailers include the  
3 same disclosure?

4 A They do.

5 Q Okay. Would you please tell us about Exhibit 3?

6 A Exhibit 3, best I can tell, went out and was delivered  
7 to mailboxes on May 26th, approximately; includes the same  
8 disclosure; includes the candidate, candidate's logo; on  
9 the reverse, a side-by-side comparison of the two of us.  
10 And at the bottom, it says: "Vote Vaughn Parfitt on June  
11 9th."

12 Q Okay.

13 A And ---

14 Q And is that comparison intended to be favorable to Mr.  
15 Parfitt and unfavorable to you?

16 A Yes.

17 Q Thank you. Anything else on this one?

18 A No. It includes the same disclosure, but that's --  
19 we've established that's true on all six.

20 Q Okay. What about the next one?

21 A The next one?

22 Q Yeah.

23 A So this next one ---

24 Q Give us the exhibit number, please. Exhibit 4?

25 A I believe ---

1 Q Five?

2 A Yes.

3 Q Okay.

4 A Exhibit 4. Yes. This one would've been delivered  
5 approximately June 1st. And it's a -- another postcard  
6 advertising ---

7 Q Uh-huh.

8 A --- South Carolina Commissioner of Agriculture Hugh  
9 Weathers' endorsement of Mr. Parfitt.

10 Q Uh-huh.

11 A And it includes the same disclosure.

12 Q Uh-huh.

13 A And it includes the text: "That's why I'm asking you  
14 to elect Vaughn Parfitt in the Republican primary for state  
15 representative on June 9th" in bold text.

16 Q Okay. So does it say anything negative about you or  
17 intended to be negative about you?

18 A Yes.

19 Q Okay.

20 A Yes. It -- he expresses his disapproval of my voting  
21 record on a bill.

22 Q Okay. Would you read the last sentence of the mailer,  
23 please?

24 A The last sentence on the mailer says: "On Tuesday,  
25 June 9th, you have an opportunity to send a new Republican

1 state representative to Columbia to represent you. I am  
2 delighted to join the leadership of the South Carolina  
3 Republican Party, the Republican leaders in the House of  
4 Representatives, and the more than 40 other Republican  
5 members of the legislature in supporting Vaughn Parfitt for  
6 state representative. Signed, Hugh Weathers." It includes  
7 his signature.

8 Q Thank you. Anything else on this one?

9 A No.

10 Q What about the next one, No. 5?

11 A Okay. So this one would've gone out June 3rd.

12 Q Okay.

13 A And it includes my photo, along with former President  
14 Barack Obama. And on ---

15 Q What -- what ---

16 A --- the reverse ---

17 Q What -- what do you take the import of that to, having  
18 you ---

19 A Well ---

20 Q --- with Obama?

21 A --- the -- the -- the bold text says: "What do  
22 Jonathon Hill and Barack Obama have in common?" So  
23 clearly, this mailer seeks to establish a link.

24 Q Okay.

25 A And on the reverse it, you know, discusses the

1 election of -- or the -- or the race for appellate judge,  
2 Alison Lee, from several years ago and features the  
3 opposition by two -- I'm sorry -- by at least one of South  
4 Carolina's U.S. senators in opposition to her nomination to  
5 a federal-court seat. And it talks about how Republican  
6 legislators -- and I -- I'm reading word for word here --  
7 "Republican legislators rejected Lee when she ran in 2019  
8 for the Court of Appeals." And at the bottom it says:  
9 "Call Jonathon Hill at 864-245-3885." My correct number is  
10 -5885. It says: "Ask him why he chose to support liberal  
11 Alison Lee."

12 Q So is the import of this, comparing you to Barack  
13 Obama, is that intended to be negative for these Republican  
14 primary voters?

15 A That would negative. Yes, sir.

16 Q And are they saying that because you support Alison  
17 Lee, they -- these voters should vote against you?

18 A That is exactly what this mail is intended to say.

19 Q Thank you. Anything else on this one?

20 A No.

21 Q Okay. What about the next one, please?

22 A The -- this one went out June 4th and features -- at  
23 the bottom it says: "Vote Vaughn Parfitt on June 9th." On  
24 the reverse it says: "Vote no to Jonathon Hill" -- for a  
25 number of listed reasons.

1 Q Okay.

2 A This one includes, like the others, the same  
3 disclosure.

4 Q So this was a -- a direct vote for Vaughn and vote  
5 against Hill; is that correct?

6 A That is correct.

7 Q Anything else about this one?

8 A No.

9 Q Okay. Thank you. Have you ever sent out mailers on  
10 behalf of any of your own campaigns?

11 A I have.

12 Q Approximately how many different mailers have you  
13 sent?

14 A This year or total?

15 Q Total.

16 A Total, okay. Let's say approximately 17 to 18 ---

17 Q Okay.

18 A --- from 2014 until now.

19 Q Are you knowledgeable about the cost of printing and  
20 postage for political mailers in ---

21 A I am.

22 Q --- South Carolina?

23 A Yes.

24 Q Okay. Can you tell the Court whether it costs more  
25 than \$1,000 to prepare and mail the Vaughn Parfitt mailers

1 that we're here about today?

2 A The -- the six that we just discussed?

3 Q The six we just discussed.

4 A Yes, absolutely.

5 Q Okay. Can you tell the Court whether it costs more  
6 than \$5,000 to prepare and mail these mailers, those six?

7 A I -- I believe that it did. And they have conceded  
8 that fact.

9 Q Okay. Will you -- can -- would you rather discuss it  
10 with the six mailers we knew about or the one -- the total  
11 we know about now?

12 A The total we know about now would give the complete  
13 picture.

14 Q Okay. Please explain how you reach the -- well, first  
15 ask you: I -- it's sort of implicit. Can you tell the  
16 Court whether the -- the parties spent more than \$5,000 to  
17 prepare and mail these mailers?

18 A I believe the party did spend more than \$5,000 on  
19 these eight mailers. Yes.

20 Q Okay. Please explain how you've reached that  
21 conclusion.

22 A So to reach that conclusion, in -- in my experience,  
23 based on quotes I have obtained from various prints shops,  
24 as well as invoices that I have paid in the past, that  
25 prices for printing would range anywhere from -- for this

1 size and this type of mail, full-color, 6-by-11, what we  
2 call in the industry a slick -- or what the post office  
3 calls a postcard, I believe -- the printing price for that  
4 would be anywhere from the range of 25 to 35 cents or so  
5 per piece.

6 And so as the defense-exhibit invoice shows, that  
7 approximately -- and I don't have it in front -- the total  
8 in front of me here -- but approximately 25,000 of these  
9 have gone out. And if you do the math on that, we're  
10 talking thousands and thousands of dollars, well in excess  
11 of the 5,000 threshold for printing alone. And that's not  
12 even including the postage, which is in excess of \$2400.

13 Q Thank you. Anything else on that?

14 A No.

15 Q Okay. I would like to give you what's been marked as  
16 Exhibit 7, Plaintiff's Exhibit 7.

17 A Yes.

18 Q Can you tell us what that is?

19 A So this is Mr. Parfitt's most recent campaign  
20 disclosure, Amendment 1, filed on May 25th, for the  
21 election of June 9th.

22 Q Okay. And what does that show? Why is it relevant?

23 A This shows the number of -- total number of  
24 contributions and expenditures by his campaign.

25 Q Is there anything in that list that could be payment

1 for these mailers ---

2 A There is ---

3 Q --- one of these mailers?

4 A There's nothing in his list of expenditures that  
5 corresponds to anything that would be connected to these  
6 mailers that we've been discussing that have the SCGOP's  
7 disclosure.

8 Q Thank you. Anything more on that?

9 A No.

10 Q Okay. I'd like to give you what's been marked --  
11 looks like a D, but it's an 8, Plaintiff's 8. What is  
12 that, please?

13 A So this is an invoice of my own ---

14 Q Okay.

15 A --- from the 2016, the general race.

16 Q When -- when you say of your own, you mean an invoice  
17 you sent to somebody or somebody sent it to you?

18 A An invoice I paid, an invoice ---

19 Q Okay.

20 A --- that was sent to my campaign ---

21 Q Good.

22 A --- for mail that I sent out on my own behalf ---

23 Q Uh-huh.

24 A --- in -- in 2016 for the general race. This shows a  
25 print cost of 31 cents per mailers that -- that I sent.

1 Q Okay. And I'd like to give you, finally, what's been  
2 marked as Plaintiff's No. 9. Please tell us what that is.

3 A So this would be a quote that I obtained from a local  
4 print shop here in Columbia, a rather large, well-  
5 established ---

6 Q Uh-huh.

7 A --- print shop, which I have done business with  
8 before, inquiring about their printing and postage rates  
9 for two different types of mail. And when I contacted  
10 them, I asked them to quote me on the printing costs for  
11 5300 pieces. And that printing cost that they quoted for  
12 6-by-11 postcard, double-sided, full color would have --  
13 they show in the quote \$1,338, which, if you divide that by  
14 5300, comes out to approximately 25 cents each in printing  
15 costs.

16 Q Okay. Is there anything else you'd like to tell the  
17 Court before I stop questioning you?

18 A Nothing comes to my mind.

19 Q No further questions.

20 THE COURT: All right. Let me be sure I understand  
21 the sequence of these things. The Plaintiff's Exhibit 8 is  
22 the invoice to Jonathon Hill's campaign for a mailer, the  
23 \$7,142.80? And the Plaintiff's Exhibit 9 is the Sun  
24 Solutions estimate for postcards? Is that right?

25 MR. FUDENBERG: is that right?

1 THE WITNESS: Yes.

2 MR. FUDENBERG: Okay.

3 THE WITNESS: Yes, Your Honor.

4 THE COURT: Okay. I -- I just wanted to be sure I had  
5 the sequencing of these. All right.

6 All right. Anything further, Mr. Fudenberg?

7 MR. FUDENBERG: No. No, ma'am.

8 THE COURT: All right.

9 MR. FUDENBERG: No, Your Honor.

10 THE COURT: Mr. Tyson, your witness.

11 CROSS-EXAMINATION

12 BY MR. TYSON:

13 Q Hello, Mr. Hill.

14 MR. TYSON: If it ---

15 A Hello.

16 MR. TYSON: If it please the Court.

17 Q My name's Rob Tyson, as you've heard, representing Mr.  
18 Parfitt and -- and the state party. I've just a couple of  
19 questions for you. You're running for the Republican Party  
20 -- to be the Republican Party nominee for House District 8,  
21 correct?

22 A That is correct.

23 Q And have you gotten any contributions from the state  
24 Republican political party?

25 A I have not.

1 Q Have you gotten any contributions from the state  
2 political party of the Constitution Party?

3 A I have.

4 Q How many years have you been in the legislature?

5 A Six.

6 Q And -- and would it be accurate that when I look  
7 through your history of sponsoring legislation, that I only  
8 saw one bill that you had sponsored that was concerning  
9 elections and/or campaign -- campaign finance?

10 A Bills that I have filed, that would be correct. Yes.

11 Q Okay. The -- I think it was Exhibit No. 1 that --  
12 Plaintiff's Exhibit No. 1. What was the date that was on  
13 that ---

14 A I think ---

15 Q --- of when it was mailed? When it was dropped?

16 A Exhibit No. 1, best I can ascertain, landed in  
17 mailboxes approximately April 29th.

18 Q Okay. And is that within 45 days of the primary,  
19 which is being held on June the 9th?

20 A Yes.

21 Q Okay. I think it was Exhibit No. 7, which was Mr.  
22 Parfitt's disclosure report. Is -- is that right? Do you  
23 have that before you?

24 A I do.

25 Q And when -- and when was that filed?

1 A The filing date shown was May 25th.

2 Q So wouldn't it be true that the majority of these  
3 flyers that we just went through would not show up on that  
4 campaign report, right?

5 A It is not clear that that would be the case. It is  
6 possible. It depends on when mailers were invoiced and  
7 paid. Also, I will point out that these show that they  
8 were paid for by the SCGOP, not by Mr. Parfitt. And other  
9 mailers besides these have gone out that have the campaign  
10 disclosure that Mr. Parfitt paid for them. So I have no  
11 reason to conclude that any expenditures on this or any  
12 other campaign disclosure by Mr. Parfitt would have  
13 anything to do with these first six exhibits.

14 Q But the -- how about 3, 4, 5, and 6? Their dates are  
15 all after May the 25th, based on your testimony from a few  
16 minutes ago, correct?

17 A The date they were delivered, yes.

18 Q Okay.

19 A That does not necessarily mean that they were invoiced  
20 on those dates.

21 Q Thank you, Mr. Hill.

22 A Thank you.

23 MR. TYSON: No further questions, Your Honor.

24 MR. FUDENBERG: No further questions.

25 THE COURT: Very good. You may come down, Mr. Hill.

1 Thank you, sir.

2 (Whereupon, the witness exited the witness stand.)

3 MR. FUDENBERG: Your Honor, Congressman Hill calls  
4 Drew McKissick.

5 THE COURT: Calls who?

6 MR. FUDENBERG: Drew McKissick.

7 THE COURT: Drew McKissick?

8 Mr. McKissick, come around and face the clerk and she  
9 will administer the oath.

10 (Whereupon, the witness came forward.)

11 DREW MCKISSICK, having been first duly sworn,  
12 testified as follows:

13 DEPUTY CLERK OF COURT: Thank you. Have a seat in the  
14 witness stand, please.

15 THE WITNESS: (Complied.)

16 DEPUTY CLERK OF COURT: State your name for the  
17 record.

18 THE WITNESS: Drew McKissick.

19 DIRECT EXAMINATION

20 BY MR. FUDENBERG:

21 Q Mr. McKissick, what is your occupation?

22 A State chairman of South Carolina Republican Party.

23 Q Is that a full-time job?

24 A Yes.

25 Q Okay. I would like to show you what's been marked as

1 Defendant's Exhibit 1.

2 A Uh-huh.

3 Q Can you identify that?

4 A That is an invoice to the South Carolina Republican  
5 Party.

6 Q Okay. How much does it say was invoiced there?

7 A \$2656.50.

8 Q Okay. And that's for how many mailers?

9 A Well, on the invoice it counts, one, two, three, four,  
10 five, six, seven -- counts eight.

11 Q Okay. Do you know of any other mailers on behalf of  
12 Vaughn Parfitt?

13 A No, I do not.

14 Q Okay. Do you know whether the total price to the  
15 party, including printing of the mailers, for the mailers  
16 is more than \$5,000?

17 A I would assume so.

18 Q Okay. Do you see any ---

19 A I have not seen any invoices ---

20 Q Okay.

21 A --- or received one. But yeah. Based on past  
22 experience, I would assume that it would be.

23 Q And given the numbers of copies that are listed there,  
24 it just wouldn't make sense to say that ---

25 A Well ---

1 Q --- printing them was ---

2 A Well, again, either that or, you know, I probably  
3 should, you know, continue to use the same vendor, because  
4 it would be a really good price.

5 Q Okay. Okay. Are -- were these mailers intended to  
6 advance Mr. Parfitt's candidacy?

7 A Absolutely.

8 Q At the expense of Mr. Hill's?

9 A Absolutely.

10 Q Do each of these mailers say to vote for Mr. Parfitt?

11 A Well, I -- without looking at each and every  
12 individual one, most of them probably did.

13 Q Yeah. Let's take a look ---

14 A But I ---

15 Q --- at them.

16 A --- guess we could go through, if you want to ---

17 Q Yeah.

18 A --- individually. Sure.

19 Q Please. Wait. Did I give you too much there? I ---

20 A All right.

21 Q --- you got the other papers. I'm sorry.

22 A Uh-huh.

23 Q Okay. Good. Very good. So I've handed you what's  
24 been marked as Plaintiff's 1 through 6. To make this  
25 quick, do you see any mailer that does not say vote for

1 Vaughn Parfitt?

2 A Well, this one just says vote on June 9th. It doesn't  
3 specifically say vote for Vaughn.

4 Q Okay. Which one is that?

5 A That's Exhibit 1.

6 Q Exhibit 1?

7 A Near as I can tell. But it's a lot to read here on  
8 the stand, quite frankly, but I don't have my reading  
9 glasses with me.

10 THE COURT: Turn the -- turn the reverse of it, sir.

11 THE WITNESS: This side?

12 THE COURT: The -- now ---

13 THE WITNESS: I think ---

14 THE COURT: --- let's be sure that I got the same  
15 thing he's got. Because I've got one that shows Exhibit 1.

16 MR. FUDENBERG: Yep.

17 THE COURT: It has on the front side what you just  
18 read, Mr. McKissick. And then, it has a reverse.

19 THE WITNESS: Correct.

20 THE COURT: And the reverse says:

21 "ParfittfortheHouse.com. Vote June the 2nd -- June the  
22 9th." You see that?

23 THE WITNESS: Right. Here I ---

24 THE COURT: All right.

25 THE WITNESS: --- it said -- yeah. It says: "Vote

1 June 9th." Correct.

2 (Off the record briefly.)

3 Q Do you see where, on the -- on the page with the  
4 address, on -- on Mr. Parfitt's picture, it says "Yes"?

5 A Yes, I do.

6 Q What is that supposed to mean?

7 A Yes.

8 Q Okay.

9 A I didn't design the piece but ---

10 Q But it means ---

11 A I'm ---

12 Q --- to vote for him.

13 A I mean, I'm -- I'm just looking at what's on the card

14 ---

15 Q Yes.

16 A --- here. So ---

17 Q Okay.

18 A --- I mean, I -- I -- I see, you know, if you get to

19 Exhibit 2, it does have "Vote for Vaughn Parfitt" on the

20 back side on ---

21 Q Okay.

22 A --- the bottom on Exhibit 2.

23 Q What about Exhibit 3?

24 A All right. Let me get to that one. I see, on the

25 front, it says: "Vote June 9th." On the back ---

1 Q See at the very -- almost to the very bottom?

2 A Let's see. "Vote Vaughn Parfitt" at the bottom on the

3 ---

4 Q Okay.

5 A --- back of Exhibit 3.

6 Q Okay.

7 A I see Exhibit 4.

8 Q Uh-huh.

9 A Nothing on the front to that effect. On the back --  
10 let's see. It just indicates that Commissioner Weathers  
11 would like people to join in him in voting for Vaughn  
12 Parfitt ---

13 Q Uh-huh.

14 A --- for state representative.

15 Q Okay. What about the last sentence of the first  
16 paragraph?

17 A Last sentence of the first paragraph -- let me get  
18 back and read that. That's a little small.

19 Q On that same page, the ---

20 A "Vaughn Parfitt in the Republican primary" ---

21 Q I'm sorry.

22 A --- "Elect" ---

23 Q Say again?

24 A --- "Vaughn" -- it says: "Elect Vaughn" -- you are  
25 correct.

1 Q I -- I'm talking about on -- on this page?

2 A Oh. I was looking at this one.

3 Q Yeah. Yeah. The ---

4 A Yeah.

5 Q The -- the back of it.

6 A Right.

7 Q You see -- you see the -- the first paragraph?

8 A Yeah. It says: "Elect Vaughn Parfitt."

9 Q Okay. It says: "That's why I'm asking you to elect  
10 Vaughn Parfitt"?

11 A Yeah.

12 Q Okay. Good enough. What about the next one?

13 A All right. Number 5.

14 Q Uh-huh.

15 A I do not see a "Vote for Vaughn Parfitt" on this  
16 particular piece.

17 Q Okay. But is this intended to assist Mr. Parfitt's

18 ---

19 A Well, this ---

20 Q --- campaign?

21 A --- you know, pieces, you know, are sometimes intended  
22 to draw voters to question the opposition.

23 Q Right.

24 A So that's -- as I understand it, that's what this is  
25 intended to do.

1 Q In order to help Mr. Parfitt's campaign?

2 A Well, if -- depending on the impression that the voter  
3 took away from this and the questions that they had  
4 answered by ---

5 Q Okay.

6 A --- the other candidates. So ---

7 Q But -- but the intent behind this is to assist Mr.  
8 Parfitt's ---

9 A The -- the ---

10 Q --- campaign?

11 A Every -- everything is intended to assist -- assist a  
12 candidate ---

13 Q Okay.

14 A --- period ---

15 Q So -- so ---

16 A --- whenever you're ---

17 Q --- so do ---

18 A --- actually running a campaign.

19 Q Okay.

20 A But ---

21 Q Just -- just ---

22 A Yeah.

23 Q --- to be clear: This mailer that we're talking about  
24 now ---

25 A This one?

1 Q Yeah.

2 A Yes. Uh-huh.

3 Q This was intended to advance Mr. Parfitt's campaign;  
4 is that correct?

5 A Well, yes.

6 Q Okay.

7 A Yes.

8 Q Thank you. And what about the last one?

9 A Is that this one?

10 Q Uh-huh.

11 A It says: "Vote yes for Anderson. Vote Vaughn  
12 Parfitt" ---

13 Q Uh-huh.

14 A --- on the front. Yes.

15 Q And the bottom you see it says "Vote" ---

16 A Vote, yes. Uh-huh.

17 Q Okay. So the only one that you are -- is there any of  
18 these that you think, then, does not say "Vote for Vaughn  
19 Parfitt," other than the -- Number 5, where it's talking  
20 about Mr. Hill?

21 A Well, there were one or two that I thought said "Vote  
22 June 9th." I mean, I would grant that it's inferred ---

23 Q Okay.

24 A --- based on the content of the package ---

25 Q Okay.

1 A --- that you'd want to vote for the person whose ---

2 Q Okay.

3 A --- name is on the card.

4 Q Suppose we exclude those two. Would the cost of the  
5 mailers, including postage, be more than 5,000?

6 A You know, without seeing a final invoice, I can't say

7 ---

8 Q Yeah.

9 A --- for sure. But, you know, my impression would be  
10 most likely.

11 Q Okay. Okay.

12 A Again, that's just based on past experience ---

13 Q Uh-huh.

14 A --- with direct mail.

15 Q Who can authorize these expenditures for the party?

16 A That would be myself.

17 Q Yourself, not the committee?

18 A What's that?

19 Q Not the executive committee?

20 A No.

21 Q Okay. Who did authorize these expenses?

22 A That would be me.

23 Q Okay. No further questions.

24 A Okay.

25 THE COURT: Mr. Tyson ---

1 MR. TYSON: No questions ---

2 THE COURT: --- your witness.

3 MR. TYSON: --- Your Honor.

4 THE COURT: Very good. You may come down, Mr.

5 McKissick.

6 (Whereupon, the witness exited the witness stand.)

7 MR. FUDENBERG: I'd like to call Mr. Vaughn Parfitt.

8 THE COURT: Mr. Parfitt, come around and the clerk  
9 will administer the oath.

10 (Whereupon, the witness came forward.)

11 VAUGHN PARFITT, having been first duly sworn,  
12 testified as follows:

13 DEPUTY CLERK OF COURT: Thank you. Have a seat in the  
14 witness stand, please.

15 THE WITNESS: (Complied.)

16 DEPUTY CLERK OF COURT: And state your name for the  
17 record.

18 THE WITNESS: My name is Vaughn Parfitt.

19 DIRECT EXAMINATION

20 BY MR. FUDENBERG:

21 Q Yeah. Mr. Parfitt, what is your occupation?

22 A I'm a doctor of optometry.

23 Q Okay. And are you a political candidate?

24 A I'm sorry?

25 Q Are you a political candidate?

1 A I am.

2 Q And what position are you running for?

3 A House District 8, House of Representatives.

4 Q In South Carolina?

5 A Yeah.

6 Q In the Republican primary?

7 A Yes.

8 Q Is your sole opponent Mr. Hill?

9 A I believe there's an independent. But I don't know if  
10 that -- that's not in the Republican Party. So in the  
11 Republican Party primary, yes.

12 Q Okay. I'd like to show you what's been marked as  
13 Plaintiff's Exhibits 1 through 6.

14 A Thank you.

15 Q Are you familiar with these exhibits?

16 A Yes.

17 Q Okay. Do you know of any other mailers that were sent  
18 out on your behalf by the GOP?

19 A No.

20 Q Other than -- not -- not -- other than those six, you  
21 don't know of any?

22 A I -- not off the top of my head. No.

23 Q Okay.

24 A Do you have more?

25 Q Well, I have what's been marked as Defendant's Exhibit

1 1. Here we go. Do you see it has additional that aren't  
2 in -- in our list, that aren't in our set?

3 A (No audible response.)

4 Q Okay. If -- if you know of all those on the list?

5 A I'm sorry?

6 Q Are you familiar with all of those on that list?

7 THE COURT: Speak up a little bit, Mr. Fudenberg ---

8 MR. FUDENBERG: Yes, ma'am.

9 THE COURT: --- please. Thank you.

10 MR. TYSON: Mr. Fudenberg or -- what -- what exhibit  
11 or what list is that ---

12 MR. FUDENBERG: I -- I ---

13 MR. TYSON: --- that you're ---

14 MR. FUDENBERG: --- that's -- I didn't mean list. I  
15 meant -- meant the six exhibits that we gave to him. And  
16 then, I showed him your -- your list.

17 MR. TYSON: Okay.

18 MR. FUDENBERG: So ---

19 MR. TYSON: Got you.

20 MR. FUDENBERG: --- let me -- let ---

21 MR. TYSON: Thank you.

22 MR. FUDENBERG: --- me ask it again.

23 Q Are you familiar with any mailers sent on your behalf  
24 by the Republican Party that are not on Defendant's Exhibit  
25 1?

1 A Not to the best of my memory. No.

2 Q Okay. There were so many that were sent, you can't  
3 keep track of them all; is that correct?

4 A It's been a confusing couple of months.

5 Q Okay. Good. How did these mailers come about?

6 A I'm sorry?

7 Q How did these mailers come about?

8 A They were designed by Starboard Communications. They  
9 send the proofs to me. I look at them. My main concern,  
10 that they're factual; I approve them if so. And they're  
11 sent back to Starboard Communications.

12 Q And then, how does the SCGOP get its name on them?

13 A I'm sorry?

14 Q Why does the SC ---

15 THE COURT: I -- just a second. Mr. Fudenberg, you  
16 have a tendency to drop your voice.

17 MR. FUDENBERG: I'm sorry.

18 THE COURT: He's got a plexiglass plate so that I --  
19 we need to hear, as do your opposing counsel. So speak up,  
20 please, sir.

21 MR. FUDENBERG: Yes, ma'am. Yes, ma'am.

22 Q So you said that you gave these -- you -- you talked  
23 to this communications company and they sent you an invoice  
24 and you approved it?

25 A (No audible response.)

1 Q My question is: How did the South Carolina GOP's name  
2 get put on it?

3 A I do not know. That -- I -- I deal with Starboard  
4 Communications.

5 Q Okay. And do you pay Starboard Communications ---

6 A Yes ---

7 Q --- directly?

8 A --- I do.

9 Q So these were mailed under a nonprofit mailing  
10 license; is that correct?

11 MR. TYSON: Object, Your Honor. Calls for a legal  
12 response.

13 MR. FUDENBERG: I'll ask him to look at the documents.  
14 It says so ---

15 THE COURT: Well, just ---

16 MR. FUDENBERG: --- itself.

17 THE COURT: --- just a second. The question is?

18 MR. FUDENBERG: How did the SCGOP's name get on these.

19 THE COURT: Right.

20 MR. FUDENBERG: And -- and ---

21 THE COURT: And if he ---

22 MR. FUDENBERG: --- said ---

23 THE COURT: --- knows, he can -- he ---

24 MR. TYSON: But that ---

25 THE COURT: --- he ---

1 MR. TYSON: --- that ---

2 THE COURT: Wait a minute ---

3 MR. TYSON: Whoops. I'm sorry.

4 THE COURT: --- Mr. Tyson.

5 MR. TYSON: Yes, ma'am. Excuse me.

6 THE COURT: I've overruled the objection. He may  
7 answer, if he knows, how the nonprofit organization U.S.  
8 postage-paid Permit 1234 appeared on that mailer. If he  
9 knows, he can answer that.

10 MR. TYSON: Thank you, Your Honor.

11 A I do not know.

12 Q Okay. Can I ask you to look at No. 6, in the top-  
13 right-hand corner.

14 A That would be this one?

15 Q Yes, sir.

16 A Okay.

17 Q Top-right-hand corner, do you see where it says:  
18 "Nonprofit org U.S. postage-paid Permit 1234"?

19 A I see that.

20 Q Okay. And your testimony is you have no idea how that  
21 got on there?

22 A I'm not involved in the logistics of these mailers.

23 Q Okay.

24 A I -- I ---

25 Q Okay.

1 A --- pay Starboard Communications to do that.

2 Q And you pay them for the postage?

3 A Yes.

4 Q Okay. Does the party pay any part of this?

5 A I cannot attest to that.

6 Q Who would know?

7 A I would think Starboard Communications. All my  
8 dealing's with Starboard Communications.

9 Q Okay. Have you paid any of these invoices?

10 A Yes, I have.

11 Q Okay.

12 MR. FUDENBERG: Your Honor, give me one moment?

13 THE COURT: Yes.

14 (Off the record briefly.)

15 Q Do you have Defendant's Exhibit -- here it is.

16 THE COURT: Mr. Fudenberg, you're going to have to  
17 speak up, now.

18 MR. FUDENBERG: Yeah.

19 Q Do you have Defendant's Exhibit 1?

20 A Yes.

21 Q Okay. You see that this is an invoice from Starboard  
22 Communications?

23 A I'm sorry?

24 Q Do you see that this is an invoice from ---

25 A Yes.

1 Q Do you see it says: "Bill to Hope Walker"?

2 A I do.

3 Q At SCGOP?

4 A I do.

5 Q Okay. So didn't you just tell me that the invoices  
6 are all sent to you directly?

7 A That's -- from my memory, yes.

8 Q Well, but it appears that's not correct, is it?

9 A I don't know that I can come to that conclusion.

10 THE COURT: You're going to have to speak up too.

11 A I -- I don't know that I can come to that conclusion.

12 Q Okay. So your testimony is that you don't know  
13 whether you were invoiced for these mailers that are  
14 Plaintiff's 1 through 6; is that correct?

15 A I don't remember.

16 Q Okay.

17 A I mean ---

18 Q And you don't remember about -- I said 1 through 6.  
19 Is there any of them that you remember whether you were  
20 invoiced for?

21 A Oh, yes. I've paid invoices.

22 Q Not -- no. Of -- of these exhibits, Plaintiff's 1 --  
23 1 through 6.

24 A I can't tell you any specific invoice that I paid.

25 Q Okay. Had you -- can you tell us any that you --

1 whether you received any invoice in regards to Plaintiff's  
2 Exhibits Nos. 1 through 6?

3 A I can't specifically connect one to the other.

4 Q Okay. Okay.

5 A I can't tell you something I don't know.

6 Q Okay. Did you talk with the South Carolina Republican  
7 Party about these mailers?

8 A No.

9 Q You didn't talk to Mr. McKissick about them?

10 A No.

11 Q Didn't talk to Hope about them?

12 A No.

13 Q Talked to nobody about them?

14 A Starboard Communications.

15 Q Okay. So if I understand your testimony, you're  
16 saying that you sent out thousands of mailers to likely  
17 voters in your district, stating that they were paid for by  
18 the SCGOP, and you have no idea whether they were, in fact,  
19 paid for by the SCGOP?

20 A I assume that, because it says so, that's who paid for  
21 them. But I don't have explicit knowledge of the logistics  
22 of -- of that operation.

23 Q Okay. And to your knowledge -- well, let me back up.  
24 This ---

25 A I don't know what the relationship is between

1 Starboard Communications and the people that they deal  
2 with.

3 Q Did somebody with the South Carolina Republican Party  
4 advise you to do business with Starboard Communications?

5 A No.

6 Q Okay. Defendant's Exhibit 1, as we've discussed, is  
7 an invoice to Hope Walker with the SCGOP. Now, you were  
8 directed to bring any and all invoices -- to bring all  
9 invoices and receipts relating to these mailers. Is it  
10 your testimony, then, that you have received no invoices  
11 and have no receipts for payment ---

12 A I was ---

13 Q --- for those ---

14 A --- not directed to do anything.

15 Q May I read to you ---

16 A I was told to be here, and that's it.

17 Q Were you served with a copy of our summons and  
18 complaint?

19 A I was.

20 Q Okay. And did you get a copy of the order setting  
21 hearing on preliminary injunction and discovery order?

22 A I don't know.

23 MR. FUDENBERG: May I ---

24 A I mean, I ---

25 MR. FUDENBERG: --- introduce this an exhibit, Your

1 Honor?

2 THE COURT: Yes, sir.

3 (Whereupon, Plaintiff's Exhibit 10 was marked for  
4 identification.)

5 THE COURT: This will be Plaintiff's Number what?

6 MR. FUDENBERG: Ten.

7 THE COURT: Ten? And this is the order of Judge Lee?

8 MR. FUDENBERG: Yes, ma'am.

9 (Whereupon, Mr. Fudenberg and Mr. Fernandez  
10 conferred.)

11 Q I would like you to look at this exhibit, which is No.  
12 10. And then, when you're ready, please read out loud the  
13 last full paragraph before: "And it is so ordered."

14 MR. TYSON: Where are you, Mr. Fudenberg?

15 MR. FUDENBERG: The last full paragraph of the -- the  
16 -- the whole document -- entire document, just before "And  
17 it is so ordered."

18 A Okay. Do you want me to read that?

19 Q Yes, please.

20 A Okay. (As read): "Further, as to plaintiffs' motion  
21 to expedite discovery, the Court grants plaintiffs' request  
22 and orders the defendants to bring the documents requested  
23 by plaintiffs' motion to expedite discovery to the  
24 temporary-injunction hearing. See Rule 26(d) SCRCF  
25 authorizing the Court to enter order concerning the

1 sequence of timing of discovery."

2 So I'm in error in that. I didn't bring them.

3 Q Okay. Would you ---

4 MR. FUDENBERG: I'd like to introduce a copy of my --  
5 the complaint into the record.

6 THE COURT: Yes, sir.

7 THE COURT: Plaintiff's Exhibit 11, the summons and  
8 complaint in this matter.

9 (Whereupon, Plaintiff's Exhibit 11 was marked for  
10 identification.)

11 THE COURT: Without objection?

12 MR. TYSON: Oh. Yes, ma'am, Your Honor, without  
13 objection.

14 THE COURT: And I take it, Plaintiff's 10, the order  
15 of Judge Lee, same?

16 MR. TYSON: Yes, Your Honor.

17 THE COURT: Very good.

18 (Whereupon, Plaintiff's Exhibits 10 and 11 were  
19 entered into evidence.)

20 Q Now, I'm going to give you this document. You can  
21 look at it as much as you want to. But I'm going to ask  
22 you, then, to read into the record, on page 10, Paragraph  
23 55 of -- the entire paragraph, including the subparagraphs.

24 A You want me to read the whole thing?

25 Q No. You -- I'm -- you look at the whole thing, if you

1 need to refresh your memory. But I'm asking you only to  
2 read into the record page 10, that one -- that one  
3 paragraph, with -- with the Parts a and b.

4 A Page 10?

5 Q Yes, sir.

6 A Which paragraph?

7 Q The one that has the a and b in it.

8 A (As read): "Specifically, the Court should require  
9 the South Carolina Republican Party to produce the  
10 following documents, electronically stored information, and  
11 tangible things:

12 "All invoices and all expenditures made this election  
13 cycle relating to State House District 8;

14 "All receipts, checks, and other documents indicating  
15 payments made this election cycle relating to the State  
16 District -- House District 8."

17 Q Thank you. Okay. So if I -- if I understand your  
18 testimony, it's that you have no recollection as to who  
19 paid for what on these, and you have no recollection as to  
20 whether there are invoices or receipts relating to these  
21 mailers that say "SCGOP" and no recollection as to how  
22 SCGOP got its name on the ---

23 A I do not ---

24 Q --- mailer?

25 A --- know the relationship between Starboard

1 Communications and SCGOP. I received invoices from  
2 Starboard Communications for work that they did for me, and  
3 I paid those invoices. That's what I know.

4 Q Okay. All right.

5 MR. FUDENBERG: One minute, Your Honor.

6 (Off the record briefly.)

7 MR. FUDENBERG: No further questions, Your Honor.

8 THE COURT: All right. Mr. Tyson?

9 MR. TYSON: Thank you, Your Honor.

10 THE COURT: All right. Cross-examination.

11 CROSS-EXAMINATION

12 BY MR. TYSON:

13 Q All right, Mr. Parfitt. Let's go right back to those  
14 exhibits, where I think you said you were in error. Let's  
15 clean this up real quick-like. Do you have Exhibit 10 and  
16 11 still in front of you? Yeah. That's 11. And 10 was  
17 the -- 10 was the -- okay. This is the order, and this is  
18 the complaint. So let's start with ---

19 A Okay.

20 Q --- let's start with Exhibit No. 10.

21 A Okay.

22 Q And that's -- what is that styled on the -- on the  
23 front? What is the title of that page?

24 A (As read): "Order Setting Hearing on Preliminary  
25 Injunction and Discovery Order."

1 Q Okay. So there -- Judge Lee -- let's be clear --  
2 issued the date of this preliminary injunction. And so  
3 we're here on an injunction, correct?

4 A Correct.

5 Q And she also issued an -- a discovery order, requiring  
6 some documents to be produced, correct?

7 A Correct.

8 Q All right. Let's go to that. Mr. Fudenberg asked you  
9 to read that. I think it's on page 3, is where he asked  
10 you to read.

11 A Right.

12 Q And it's the last paragraph. And it says: "Orders"  
13 -- or what does it say? Read it out loud one more time.  
14 Let's be clear.

15 A (As read): "Further, as to plaintiffs' motion to  
16 expedite discovery, the Court grants plaintiffs' request  
17 and orders the defendants to bring the documents requested  
18 by plaintiffs' motion to expedite discovery to the  
19 temporary-injunction hearing. See Rule 26(d) SCRCP  
20 authorizing the Court to enter order concerning the  
21 sequence of timing of discovery."

22 Q So the -- the question -- the -- that reads: It  
23 orders the defendants to bring the documents requested by  
24 plaintiffs' motion to expedite discovery, right?

25 A Right.

1 Q All right. Let's go look at the motion to expedite  
2 discovery. That's going to be in the complaint, Exhibit

3 ---

4 A All right.

5 Q --- Number 11. And let's flip over to the back where  
6 that was that Mr. Fudenberg asked you to read. And it's

7 ---

8 A Page 10.

9 Q --- it starts page 10. And it's Paragraphs 54 and 55.  
10 And let me ask you the two questions as you look at that.

11 Do you see your name in there, Defendant Parfitt, and  
12 anywhere in Paragraph 54 or Paragraph 55?

13 A No, I do not.

14 Q So as I read that, it's they move for a discovery  
15 order, requesting the South Carolina Republican Party to  
16 produce documents in Paragraph 54, correct?

17 A Correct.

18 Q So when you said a second ago you were in error, that  
19 you were required to produce documents, that's not  
20 accurate, is it? They ---

21 A No.

22 Q --- didn't request any documents ---

23 A No.

24 Q --- from you?

25 Okay. And -- and then, how about the next paragraph?

1 (As read): "Specifically, the Court should require the  
2 South Carolina Republican Party to produce the following  
3 documents." You're not the South Carolina Republican  
4 Party, are you?

5 A No, I am not.

6 Q Okay. So let's be clear. Don't want any  
7 misunderstanding about whether you violated any order or  
8 not. You weren't directed by this Court to bring any  
9 documents, correct?

10 A Not that I know of.

11 Q Okay. We had a little confusion, too, on Mr.  
12 Fudenberg's questions. And I want to go back and just make  
13 sure I understand that. He -- he asked you questions about  
14 how the flyers -- how the production of the flyers came  
15 about. And as I understood his question to you, your  
16 answer was that they were sent to you and you reviewed  
17 them, correct?

18 A Electronically. Yes.

19 Q Okay. The flyers? The mailers, Exhibits ---

20 A Yes.

21 Q --- 1 through ---

22 A Yes.

23 Q --- 6?

24 Okay. And you looked for ---

25 A The -- the proofs.

1 Q The proofs. And you ---

2 A Right.

3 Q --- looked for accuracy, right?

4 A Right.

5 Q And you made comments back on them or whatever?

6 A Right.

7 Q Did the Republican Party also look at those documents?

8 A I have no idea.

9 Q The question was -- then he asked you about invoices  
10 for those flyers. And then, that's where he said you had  
11 just testified to that. I think we got confused on that.  
12 Let's look at Exhibit No. 1. That's the invoice ---

13 A Right.

14 Q --- from the Starboard Communications to the GOP,  
15 correct?

16 A Correct.

17 Q And this is for the postage that he asked Witness Hill  
18 about, and then he asked Witness McKissick about, correct,  
19 for the postage for those flyers?

20 A Correct.

21 Q Okay. And so it's clear that they were invoiced. As  
22 your testimony said, Starboard Communications invoiced the  
23 state Republican Party for the postage of those documents,  
24 right?

25 A Correct.

1 Q Okay. How about in your -- in your Exhibit No. 7?

2 That is your preelection disclosure form, correct?

3 A Correct.

4 Q So if we flip over to page 9 of 10 -- it's the next-  
5 to-last page.

6 A Okay.

7 Q You see that?

8 A (No audible response.)

9 Q Do -- you see the expenditures at the top?

10 A That's page 9?

11 Q Yes, sir. The next-to-last ---

12 A All right.

13 Q --- page is where -- I -- I might have it -- I might  
14 have a different one. No, sir. Go to -- go to the -- yes,  
15 sir, that page.

16 A Okay.

17 Q That -- I'm sorry. That might be the last one on the  
18 exhibit. I might have a -- a different one. But it --  
19 it's titled "Expenditures" at the top, right?

20 A Correct.

21 Q And what are expenditures? What are they, generally?

22 A The -- that -- generally, these are invoices from  
23 Starboard Communications.

24 Q And so if you look down three or four, there -- there  
25 -- how many are there? One, two, three, four, five, six of

1     them, I guess.

2     A     Correct.

3     Q     Three of them are to Starboard Communications,  
4     correct?

5     A     Correct.

6     Q     And the next-to-the-last one is for postage.  You see  
7     that?

8     A     Correct.

9     Q     For that eight -- or nearly \$8,000?

10    A     Correct.

11    Q     And what did that go toward?

12    A     I'm sorry?

13    Q     And what was that postage?  Were -- was that on your  
14    mailers?

15    A     I would assume so.

16    Q     Okay.  It wouldn't be on these mailers that Starboard  
17    Communications ---

18    A     No.

19    Q     --- did that?

20            So they -- you had separate mailers too, right?  
21    You've had other pieces of mail ---

22    A     Oh.  Yes.

23    Q     --- besides what the state Republican ---

24    A     Absolutely.

25    Q     --- Party ---

1 A Yes.

2 Q Okay. But there was some confusion over what -- what  
3 was being paid and what wasn't. And I just want to clear  
4 it up. The flyers that are Exhibits 1 through 6 -- or 1  
5 through 7, we've got a -- an invoice from the Starboard  
6 Communications for the postage of those ---

7 A Postage.

8 Q --- correct?

9 A Correct.

10 Q And if we look at them, those are the specific flyers  
11 that we've just discussed, right?

12 A Right. Right.

13 Q And then, there's \$8,000 -- nearly \$8,000 that you  
14 paid toward your own postage for your own flyers, correct?

15 A Correct.

16 Q At -- at -- and let me ask you, just on this  
17 complaint: The complaint doesn't take any exception to  
18 your expenditures, does it?

19 A Not that I know of.

20 Q It's complaining about the receipts, but not how you  
21 spent your money, right?

22 A Correct.

23 Q Okay.

24 MR. TYSON: Thank you, Your Honor. No further  
25 questions.

1 THE COURT: All right, sir.

2 Mr. Fudenberg, redirect?

3 MR. FUDENBERG: Yes, ma'am.

4 (Whereupon, Mr. Fudenberg and Mr. Tyson conferred.)

5 MR. FUDENBERG: Your Honor, I'd like to introduce two  
6 more exhibits. And they said okay.

7 THE COURT: You -- speak up, sir.

8 MR. FUDENBERG: Yes, ma'am. I'd like to introduce  
9 into evidence two additional flyers that say "Paid for by  
10 Vaughn D. Parfitt."

11 THE COURT: All right, sir.

12 MR. FUDENBERG: They -- they've agreed.

13 THE COURT: All right. Let's get them marked.

14 MR. FUDENBERG: Yeah.

15 THE COURT: This is Plaintiff's Exhibits ---

16 THE COURT REPORTER: Your Honor, these will be 12 and  
17 13.

18 THE COURT: --- 12 and 13. And these are campaign  
19 materials. And they bear the designation "Paid for by  
20 Vaughn Parfitt"?

21 MR. FUDENBERG: A little more complicated. "Vaughn D.  
22 Parfitt for -- for S.C. House."

23 THE COURT: Let me see them after she marks them.

24 (Whereupon, Plaintiff's Exhibits 12 and 13 were marked  
25 for identification.)

1 MR. FUDENBERG: Yes, ma'am.

2 MR. TYSON: Mr. Fudenberg, do you have any copies that  
3 I could see too?

4 MR. FUDENBERG: I do not.

5 MR. TYSON: No?

6 (Whereupon, Mr. Fudenberg and Mr. Hill conferred.)

7 MR. TYSON: Your -- Your Honor, I -- I'd just say, now  
8 that I've looked at it, I'm not sure how these things are  
9 relevant to what we have before us today.

10 THE COURT: I haven't seen them yet.

11 MR. TYSON: Oh, I'm ---

12 THE COURT: So I'm ---

13 MR. TYSON: --- sorry.

14 THE COURT: --- going to ---

15 MR. TYSON: Excuse me.

16 THE COURT: --- have to ---

17 MR. TYSON: I'm sorry.

18 THE COURT: --- see them.

19 MR. TYSON: I thought you were looking down at them.  
20 I apologize.

21 THE COURT: That's not a problem.

22 MR. TYSON: Yeah.

23 THE COURT: I -- I just need to -- that's ---

24 MR. TYSON: Excuse me.

25 THE COURT: --- precisely why I wanted to see them.

1 MR. TYSON: Yeah. I -- I jumped the gun, Your Honor.  
2 Excuse me.

3 Mr. Fudenberg?

4 THE COURT: She's handing them ---

5 MR. FUDENBERG: Oh.

6 THE COURT: --- to you, Mr. Fudenberg. If you would  
7 bring ---

8 MR. FUDENBERG: Thank you, ma'am.

9 THE COURT: --- them to me. Let's kind of pay  
10 attention to what we're doing here.

11 MR. FUDENBERG: Yes, ma'am.

12 THE COURT: We'll be here a long time.

13 Mr. Fudenberg, I've got to look at them first.  
14 There's a relevancy objection.

15 MR. FUDENBERG: Of course.

16 THE COURT: All right. Number 12 is -- Plaintiff's  
17 Exhibit 12 -- "Shame on you, Representative Jonathon Hill.  
18 Paid for by Vaughn D. Parfitt, S.C. House; PRSRT STD U.S.  
19 postage-paid Permit 799, Columbia, South Carolina."

20 The reverse side is: "In the Republican primary,  
21 let's replace Jonathon Hill. Let's make our schools  
22 safer."

23 All right. That's No. 12.

24 Number 13: "State Representative Jon-NO-thon Hill  
25 voted no to teachers, law enforcement, etc. Paid for by

1 Vaughn D. Parfitt for S.C. House; PRSRT STD U.S. postage-  
2 paid Permit 799, Columbia, South Carolina."

3 The reverse is: "Vote no to state -- to state  
4 representative Jonathon Hill."

5 All right. I overrule the objection, and the  
6 documents are admitted.

7 (Whereupon, Plaintiff's Exhibits 12 and 13 were  
8 entered into evidence.)

9 MR. FUDENBERG: Thank you, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. FUDENBERG:

12 Q I'm handing you what's been marked as Plaintiff's --  
13 Plaintiff's ---

14 THE COURT: You're going ---

15 Q --- Exhibit 12.

16 THE COURT: --- to have to speak up, Mr. Fudenberg.  
17 You're in a courtroom. You're going to have to pay  
18 attention to the fact that you're speaking to all of us,  
19 please, sir.

20 MR. FUDENBERG: Thank you, Your Honor.

21 Q Is this a flyer or a mailer that your campaign sent  
22 out?

23 A It looks like it.

24 Q Okay. Do you see where it says "Paid for by Vaughn D.  
25 Parfitt for S.C. House"?

1 A I do.

2 Q Okay. I'd like to give you Plaintiff's Exhibit 13.

3 Is this a mailer that your campaign sent out?

4 A It looks like it.

5 Q Okay. Do you see where it says "Paid for by"?

6 A (No audible response.)

7 Q Do you see where it says ---

8 A Yes, I do.

9 Q Would you read out who it's paid for by?

10 A (As read): "Vaughn D. Parfitt for South Carolina  
11 House."

12 Q Okay. Now, when I was asking you earlier about  
13 invoices and you talked about getting invoices from  
14 Starboard, would those invoices have been for those flyers  
15 or ---

16 A I would ---

17 Q --- other flyers ---

18 A --- assume so.

19 Q --- like them?

20 A I don't have definitive information on it, and I would  
21 assume so.

22 Q Okay. And I'd like to -- you to look -- I think you  
23 have it -- Exhibit 7, which is the -- your campaign's  
24 preelection report, and go to page 9, please.

25 A (Complied.)

1 Q And do you see where there are, on page 9, three  
2 payments to Starboard Communications?

3 A I do.

4 Q Would those have been for mailers that your campaign  
5 itself sent out, not -- not saying -- that don't say on  
6 them "Paid for by SCGOP"?

7 A I would assume so.

8 Q Okay. Would the dates of these Starboard items, May 5  
9 through May 15 -- those don't align with the dates of any  
10 of the six mailers that we presented as Plaintiff's 1 to 6,  
11 do they?

12 A I don't know.

13 Q Okay.

14 A If you say so. I'm -- I don't know.

15 Q Okay. No further questions.

16 THE COURT: All right. Mr. Tyson?

17 MR. TYSON: Just one question, quickly, Your Honor.

18 RE CROSS-EXAMINATION

19 BY MR. TYSON:

20 Q The -- these two exhibits, Mr. Parfitt, do you -- were  
21 there additional flyers that you sent out, besides these  
22 two, the last two that they -- he just showed you? Not the  
23 Republican Party ones that we went through, but were there  
24 others?

25 A I don't know.

1 Q Okay.

2 MR. TYSON: Thank you, Your Honor. No further  
3 questions.

4 THE COURT: All right. You may come down, Mr.  
5 Parfitt.

6 (Whereupon, the witness exited the witness stand.)

7 THE COURT: Mr. Fudenberg?

8 MR. FUDENBERG: Your Honor, I'd like to recall Mr.  
9 McKissick.

10 THE COURT: All right. Mr. McKissick?

11 (Whereupon, the witness came forward.)

12 THE COURT: On recall, remember that you're still  
13 under oath.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Thank you, sir.

16 DREW MCKISSICK, having been previously duly  
17 sworn, testified as follows:

18 DIRECT EXAMINATION

19 BY MR. FUDENBERG:

20 Q Mr. McKissick, I believe you heard Mr. Parfitt testify  
21 that he didn't know how the SCGOP's name got on those  
22 mailers that we presented as Plaintiff's 1 to 6.

23 A Right.

24 Q Do you have any idea how those mailers would have  
25 gotten the SCGOP name on them?

1 A Absolutely.

2 Q Please explain that to the Court.

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

5 Q Okay. So it's your testimony that you were paying for  
6 the mailing and the ---

7 A For those.

8 Q --- production?

9 A That's why they said "Paid for by the South Carolina  
10 Republican Party."

11 Q Okay.

12 (Off the record briefly.)

13 Q No further questions.

14 A Thank you.

15 MR. TYSON: No questions, Your Honor.

16 THE COURT: Mr. Tyson?

17 MR. TYSON: No, ma'am.

18 THE COURT: Thank you, Mr. McKissick. You may come  
19 down.

20 THE WITNESS: Thank you.

21 (Whereupon, the witness exited the witness stand.)

22 THE COURT: All right. Mr. Fudenberg?

23 MR. FUDENBERG: I have no more witnesses to call, Your  
24 Honor.

25 THE COURT: All right. The plaintiff rests.

1 Mr. Tyson?

2 MR. TYSON: Your Honor, I'm going to -- Mr. Traywick  
3 is going to argue the -- the response for the -- on the  
4 legal arguments of the ---

5 THE COURT: Well, right. I just need, on the record,  
6 that you rest and then you may do that.

7 MR. TYSON: Oh. Yeah. Yes, Your Honor. Then -- then  
8 ---

9 THE COURT: All right.

10 MR. TYSON: --- we definitely rest too. I'm sorry.

11 THE COURT: Plaintiff and defendant rest. All right.  
12 (Off the record briefly.)

13 THE COURT: All right. Court will be at ease. We'll  
14 take a break until quarter of, and then we'll hear the  
15 closing arguments.

16 MR. FUDENBERG: Thank you, Your Honor.

17 THE COURT: And I will tell y'all that, as I normally  
18 do, I rule from the bench. So I'll be prepared to make a  
19 ruling and we'll see how much other need for it to be  
20 reduced to writing, other than what I recite in the record  
21 there will be.

22 But understand that I will hear your oral arguments.  
23 I'll probably ask you some questions during the course of  
24 those oral arguments. And then I will rule today at the --  
25 before the proceedings are closed.

1           Very good.

2           MR. TYSON: Thank you.

3           THE COURT: Please be at ease.

4           MR. TRAYWICK: Thank you, Your Honor.

5           MR. FUDENBERG: Thank you, Your Honor.

6           (Off the record from 2:32 p.m. until 2:50 p.m.)

7           THE COURT: All right. Closing arguments. Mr.  
8 Fudenberg, we'll hear from you as the moving party first.

9           MR. FUDENBERG: Thank you, Your Honor. Your Honor, we  
10 are here about Chapter 8 -- Title 8, Chapter 13, campaign  
11 contributions, etc. The entire point of the statutory  
12 scream -- scheme is to prevent unlimited contributions.

13           The defendant party has taken the position that it can  
14 give all the money it wants to, which is -- simply is not  
15 the law. The testimony is clear that the Republican Party  
16 made more than \$5,000 in relevant expenditures. The  
17 mailers were clearly electioneering under the *Krawcheck*  
18 cases that the defendants cite.

19           If you advocate for a party -- a candidate or against  
20 a candidate, it comes within the law. It has to be -- it's  
21 speech that is unambiguously campaign related. That's the  
22 test. That's in *Krawcheck I* at 714. And that's the  
23 District of South Carolina, citing the Fourth Circuit in  
24 *North Carolina Right to Life v. Leake*, in turn citing  
25 *Buckley v. Valeo*, which is the major -- a major U.S.

1 Supreme Court case on the issue.

2 So what we have here, clearly, is more than \$5,000 is  
3 expenses that are clearly campaign related. And we turn  
4 now to the law. South Carolina Code 8-1314 says in  
5 Paragraph (A) (as read): "Within an election cycle, a  
6 candidate or anyone acting on his behalf shall not solicit  
7 or accept, and a person shall not give or offer to give a  
8 candidate or person acting on candidate's behalf: (1)" --  
9 and it's got (a), (b), and (c) is the important thing,  
10 which is -- "one thousand dollars in the case of a  
11 candidate for any other office," with (a) and (b) being  
12 statewide office and statewide candidates.

13 So the prohibition is on anybody giving more than  
14 \$1,000. A person, under 8-13-1300 Paragraph (25), means an  
15 individual, etc., etc., an association, a corporation,  
16 club, labor organization, or any other organization or  
17 group of persons acting in concert. Defendant South  
18 Carolina Republican Party is therefore a person within the  
19 meaning of the statute and is obligated to comply with the  
20 election laws of this state.

21 Section 8-13-1314 similarly prohibits a candidate or  
22 anyone acting on his behalf from accepting such a  
23 contribution. And therefore, Mr. Parfitt and his campaign  
24 would -- are banned from accepting such contributions.

25 Section 8-13-1300 Paragraph 7 states that the term

1 contribution, as defined by the statute includes, quote:  
2 in-kind contribution or expenditure, a deposit of money, or  
3 anything of value made to a candidate or committee to  
4 influence an election, unquote.

5 8-13-1300(12) says and expenditure, under the act, is,  
6 quote -- as any quote: purchase, payment, loan,  
7 forgiveness of a loan, an advance, in-kind contribution or  
8 expenditure, a deposit, transfer of funds, gift of money,  
9 or anything of value for any purpose.

10 8-13-1300 Paragraph (4) says the term candidate  
11 includes, quote: a person who seeks appointment,  
12 nomination for election, or election to a statewide or  
13 local office, which includes Defendant Parfitt.

14 8-13-1300 says the same thing as 8-13-100 Paragraph  
15 12, which is that an election -- 8-13-1300 Paragraph 9, I'm  
16 talking about -- says that election means: (a) a general,  
17 special, primary, or runoff election. Therefore, Defendant  
18 Republican Party is forbidden by law to give more than  
19 \$5,000 an election cycle to Mr. Parfitt's campaign or to  
20 any campaign. And Mr. Parfitt's campaign is forbidden by  
21 law from accepting such contributions.

22 Now, defendants make a big deal about the *Krawcheck*  
23 cases. But what those held at core was that the term  
24 "committee" is overly broad -- not vague, but overly broad,  
25 as applied to certain groups that were not inherently or

1 primarily political and that it was unfair to make these  
2 groups comply with the reporting requirements that are  
3 proper for true political organizations if they only gave  
4 as much as, say, a \$500 contribution on a one-time deal to  
5 something. They just -- it was overly broad to be putting  
6 these restrictions on these -- on these organizations.

7 So I don't even really understand why they are arguing  
8 about the term "committee" being unconstitutionally  
9 overbroad. Because the definition of committee is simply  
10 not at issue in this case. Nothing in our complaint relied  
11 on -- on something being a committee.

12 They also leave out some of the law -- some of the  
13 important portions of statutes that they cite. For  
14 example, in Part (B), defendants say that (as read):  
15 "Subsection 8-13-1300(31)(c) broadly defines 'influence the  
16 outcome of an election' to include the following: any  
17 communication made, not more than 45 days before an  
18 election . . ."

19 But they leave out Paragraph (a) of 8-13-1300 ---

20 THE COURT: Paragraph which, now?

21 MR. FUDENBERG: (a) -- let's see. I'm sorry. 8-13-  
22 1300 Paragraph (31), Subparagraph (a).

23 THE COURT: Hang on for a minute. Give it to me one  
24 more time ---

25 MR. FUDENBERG: Yes, ma'am.

1 THE COURT: --- Mr. Fudenberg.

2 MR. FUDENBERG: 8-13-1300 Paragraph (31).

3 THE COURT: Right.

4 MR. FUDENBERG: Okay. Influence the ---

5 THE COURT: Subparagraph ---

6 MR. FUDENBERG: Well, it's Subparagraph (a).

7 THE COURT: All right.

8 MR. FUDENBERG: So (as read): "'Influence the outcome  
9 of elective office' means: (a) expressly advocating the  
10 election or defeat of a clearly identified candidate . . ."

11 And then, they've got (b). And then, it says: "Or (c).

12 Well, they quote (c) and say: Well, (c) doesn't  
13 apply. Well, even if it doesn't apply, we have them on  
14 (a). 8-13-1300(31) -- I'm sorry -- Paragraph (31),

15 Subparagraph (a): "Expressly advocating the election or  
16 defeat of a clearly identified candidate" ---

17 THE COURT: All right. Help me here.

18 MR. FUDENBERG: Yes, ma'am.

19 THE COURT: The -- the -- 1300 is all the definitions.

20 MR. FUDENBERG: Yes, ma'am.

21 THE COURT: They have meaning as they then appear in  
22 the various substantive parts of the statute.

23 MR. FUDENBERG: Yes, ma'am.

24 THE COURT: So you've got a -- a definition of  
25 "influence the outcome of an elective office."

1 MR. FUDENBERG: Uh-huh.

2 THE COURT: Where does that language appear such that  
3 it -- it applies to what you're talking about? You --  
4 you're -- you -- you give the definition, and ---

5 MR. FUDENBERG: Uh-huh.

6 THE COURT: --- that includes advocating the election  
7 or defeat ---

8 MR. FUDENBERG: Uh-huh.

9 THE COURT: --- of a specifically defendant candidate  
10 ---

11 MR. FUDENBERG: Uh-huh.

12 THE COURT: --- which this material clearly did.

13 MR. FUDENBERG: Uh-huh.

14 THE COURT: Now, plug that language into the section  
15 of the code that prohibits the conduct we're talking about  
16 if it's over \$5,000.

17 MR. FUDENBERG: Okay.

18 Let me have 1314, please.

19 THE COURT: 1314 is the -- it -- 8-13-1314 is the  
20 campaign-contribution limits and restrictions, right?

21 MR. FUDENBERG: Yes, ma'am. So they're forbidden to  
22 give more than \$1,000 in the case of ---

23 THE COURT: Well, what I'm asking ---

24 MR. FUDENBERG: Yeah.

25 THE COURT: --- simply is this: Where does the

1 language "influence the outcome of the election" appear in  
2 the substantive section that limits how much of a  
3 contribution -- the -- the substantive section we're  
4 talking about says: "Campaign-contributions limits and  
5 restrictions."

6 MR. FUDENBERG: Yeah.

7 THE COURT: "Within an election cycle, no candidate or  
8 anyone acting on his behalf" ---

9 MR. FUDENBERG: Uh-huh.

10 THE COURT: --- "shall solicit or accept, and no  
11 person" ---

12 MR. FUDENBERG: Uh-huh.

13 THE COURT: --- "shall give or offer to give to a  
14 candidate" ---

15 MR. FUDENBERG: Uh-huh.

16 THE COURT: --- "or person acting on the candidate's  
17 behalf" ---

18 MR. FUDENBERG: Uh-huh.

19 THE COURT: --- "a contribution which exceeds \$1,000  
20 in the case of a candidate for any office."

21 That's the \$1,000 ---

22 MR. FUDENBERG: Yes.

23 THE COURT: --- limit. Now, the \$5,000 limit is 8-13-  
24 1316 ---

25 MR. FUDENBERG: -16. Yes, ma'am.

1 THE COURT: --- right?

2 And it says: Notwithstanding the section we just read

3 ---

4 MR. FUDENBERG: Uh-huh.

5 THE COURT: --- ". . . within an election cycle, a  
6 candidate may not accept or receive contributions from a  
7 political party through its committees or legislative  
8 caucus committees" ---

9 MR. FUDENBERG: Uh-huh.

10 THE COURT: --- "and a political party through it  
11 party committees or legislative caucuses committees may not  
12 give to the candidate contributions which total in the  
13 aggregate more than \$5,000 in the case of a candidate for  
14 any office" ---

15 MR. FUDENBERG: Yes.

16 THE COURT: --- right?

17 Okay. That's a restriction on campaign contributions

18 ---

19 MR. FUDENBERG: Right.

20 THE COURT: --- right?

21 MR. FUDENBERG: Yes.

22 THE COURT: Now, where does the "influence the outcome  
23 of the election" come into play?

24 MR. FUDENBERG: Well, I don't think it does. And this  
25 is an issue that -- that they're raising. And -- and --

1 and they're saying that because of this Paragraph -- well  
2 -- (c) -- Subparagraph (c), that they can do whatever they  
3 want. In the 45 days before an election, I don't think --  
4 I don't see -- really see how it connects to -- to our  
5 case. Because (c) is -- in our case is trumped by ((a).

6 THE COURT: Okay. I understand your argument. You --  
7 you may continue.

8 MR. FUDENBERG: Thank you. Then, they -- they say --  
9 they say that Section -- this is their argument, now --  
10 Subsection 8-13-13 -- it said -- Subsection 8-13-1300  
11 Paragraph (7), they say it exempts from the definition of  
12 contribution anything of value given to a committee used to  
13 pay for subsection communications within 45 says. But  
14 that's not so.

15 What Paragraph 7 of 8-13-1300 actually says -- it says  
16 (As read): "It does not include" -- then go to (b) -- "a  
17 gift, subscription, loan, guarantee upon which collection  
18 is made, forgiveness of a loan, an advance, in-kind  
19 contribution or expenditure, a deposit of money, or  
20 anything of value made to a committee, other than a  
21 candidate committee . . ."

22 And there's been no testimony that this went to some  
23 committee that was not a candidate committee.

24 THE COURT: Okay.

25 MR. FUDENBERG: Okay. Then, finally, they have an

1 argument about legislative intent to be taken from silence  
2 that some people wanted to change the law and others  
3 didn't. That's -- to begin with, the -- an argument about  
4 legislative intent from their not changing the statute is a  
5 weak argument. But more important, we're dealing here with  
6 the plain language of the statute.

7 So this argument from silence about legislative intent  
8 is irrelevant. As Your Honor well knows, we -- the courts  
9 don't get into the -- construing the statute when the  
10 language is clear.

11 So, Your Honor, I would ask you to apply the law as  
12 written, hold that they are in violation for providing with  
13 Mr. Parfitt's campaign more than \$5,000 in this election  
14 cycle, and, accordingly, issue a declaratory judgment and  
15 -- and a preliminary injunction.

16 THE COURT: All right, sir.

17 Mr. Traywick?

18 MR. TRAYWICK: Thank you, Your Honor. May it please  
19 the Court: Lisle Traywick on behalf of Mr. Parfitt and the  
20 South Carolina Republican Party. Always a pleasure to be  
21 with Your Honor.

22 Your Honor, I'm going to jump straight into the guts.  
23 But I do want to take a step back before I do that and --  
24 and, you know, give the backdrop against which we are all  
25 in here. And that's -- that's the motion for the

1 injunction.

2 We conceded right out the gate that the statute under  
3 which he was allowed to open the courthouse doors to -- to  
4 file this motion presumes irreparable harm and an  
5 inadequate remedy at law. So the guts of the case is  
6 unlikely to success [sic] on the merits, and -- and today's  
7 presentations have focused on that.

8 We'll rest on our brief on anything not addressed.  
9 But I do want to say that respectfully, Mr. Fudenberg  
10 misapprehends the state Ethics Act and the nature of our  
11 argument.

12 As Your Honor asked earlier, I think you hit the nail  
13 on the head. Where does "influence the outcome of an  
14 election" come in? And it comes in on what is excluded  
15 from the definition of a contribution in Subparagraph (7).

16 And what that says is: "Any subscription, loan,  
17 guarantee upon -- or a gift -- subscription, loan,  
18 guarantee upon which collection is made, forgiveness of a  
19 loan, advance, in-kind contribution or expenditure to a  
20 committee other than the candidate committee."

21 Money was not directly given to Mr. Parfitt. The  
22 relevant actor here is the SCGOP. So the money was raised  
23 by others and then used by the SCGOP as a committee, as we  
24 contend in our brief. When you read the definitions, the  
25 SCGOP constitutes a committee and, therefore, it enjoys the

1 provisions that exclude from contributions Subsection  
2 (31)(c), communications that are made in the 45 days  
3 leading up to an election.

4 And that's important here. He -- he misstated our  
5 argument earlier. We're not saying we're not subject to  
6 any limitations at any time. That's not true. And that's  
7 why our presentations today have focused on the 45 days  
8 leading up to an election.

9 THE COURT: All right.

10 MR. TRAYWICK: The plaintiff ---

11 THE COURT: Did ---

12 MR. TRAYWICK: --- conceded that.

13 THE COURT: Let me stop you here. Your argument is  
14 centered on 8-13-1300(7)?

15 MR. TRAYWICK: Yes, Your Honor. And (31)(c).

16 THE COURT: It's (7) and (31) ---

17 MR. TRAYWICK: --- (c).

18 THE COURT: --- (c)?

19 MR. TRAYWICK: Yes, Your Honor. And they're called  
20 (31)(c) communications. And they're made in the 45 days  
21 leading up to an election.

22 And so respectfully, (31)(a), although the plaintiffs  
23 contend that that -- that saves the day here, that's a  
24 general statute. And the more specific statute, which is  
25 Subsection (c), applies in the 45-day period leading up to

1 an election and, therefore, that prevails. It's considered

2 ---

3 THE COURT: Well, what -- what I don't see is this:  
4 This whole Section 1300 is a definitional section. And it  
5 includes, in Section (7), a definition -- Subsection (7), a  
6 definition of contribution. And clearly, it includes a  
7 thing of value made to a candidate or committee to  
8 influence an election. That would be the contribution that  
9 the South Carolina Republican Party made, for sure, would  
10 it not?

11 MR. TRAYWICK: Your Honor, we ---

12 THE COURT: Based on that language?

13 MR. TRAYWICK: On that language, we -- we believe it's  
14 -- it's the money that the party spent after being raised  
15 on the mailer to influence the outcome of an election.

16 THE COURT: Right. All right. Contribution means a  
17 gift, subscription, loan, guarantee, forgiveness, in-kind  
18 contribution or expenditure, a deposit of money, or  
19 anything of value made to a candidate or committee to  
20 influence an election. It's very broad. And it clearly  
21 includes the expenditure that was made to produce these  
22 brochures, Items No. 1 through 7, which Mr. McKissick  
23 admits were generated by the South Carolina Republican  
24 Party at his direction and that they cost more than \$5,000  
25 to generate.

1           Now, we know that those things were made to influence  
2 -- they were made to influence an -- excuse me. They were  
3 made to a candidate to influence an election, right?

4           MR. TRAYWICK: Your Honor, we -- we would submit that  
5 these funds were raised by the GOP to then spend ---

6           THE COURT: Wait a minute.

7           MR. TRAYWICK: --- to influence ---

8           THE COURT: The ---

9           MR. TRAYWICK: --- the election.

10          THE COURT: They -- they spent money that the GOP had  
11 for the benefit of Mr. Parfitt, right?

12          MR. TRAYWICK: To influence the outcome of the  
13 election.

14          THE COURT: To influence the outcome of the election  
15 ---

16          MR. TRAYWICK: That's right ---

17          THE COURT: --- right?

18          MR. TRAYWICK: --- Your Honor.

19          THE COURT: And this language covers that, does it  
20 not?

21          MR. TRAYWICK: The -- that makes it lawful. Yes, Your  
22 Honor. That's our contention.

23          THE COURT: Exactly. Oh. Well, no. It covers it.  
24 Whether it's got any restrictions on it is what we got to  
25 get into. Clearly, a -- a contribution includes what the

1       Republicans did here, which was produce these brochures and  
2       put their mailing -- postage-mailing stamp on them and send  
3       them out. That is a contribution to the Parfitt campaign,  
4       correct?

5               MR. TRAYWICK: We respectfully disagree, Your Honor.

6               THE COURT: On what basis?

7               MR. TRAYWICK: That -- this -- the statute  
8       contemplates in terms of influencing the outcome of an  
9       election, not necessarily making it to the candidate. No  
10      money was ---

11              THE COURT: It says ---

12              MR. TRAYWICK: --- ever sent ---

13              THE COURT: --- both of those of those things. This  
14      -- I'm looking right at -- dead at (7). It says:  
15      "Contribution means a gift, subscription, loan, guarantee,  
16      advance, expenditure, deposit of money, or anything of  
17      value." So contribution means anything of value made to a  
18      candidate or committee to influence an election.

19              This is something of value, made to the committee for  
20      Mr. Parfitt or to Mr. Parfitt the candidate. Either way  
21      you go, it's a -- and it's made to influence the election.  
22      I'm not saying there's anything sinful about that.

23              I'm saying that that -- that contribution encompasses  
24      this. We're going to have to look elsewhere to see if  
25      there are any limitations on how much of a contribution can

1 be made. But clearly, this is a contribution, is it not?

2 MR. TRAYWICK: Your Honor, we believe that -- that the  
3 focus would be on the SCGOP, because that's -- that's the  
4 party who receives the money to then make it to influence  
5 the ---

6 THE COURT: The ---

7 MR. TRAYWICK: --- outcome of ---

8 THE COURT: We -- we ---

9 MR. TRAYWICK: --- the election. But ---

10 THE COURT: --- haven't even gotten into where the  
11 money came from.

12 MR. TRAYWICK: Right.

13 THE COURT: What -- the only testimony here has been  
14 that party funds were used to benefit the campaign of Mr.  
15 Parfitt. That -- that was the testimony on the stand, was  
16 it not?

17 MR. TRAYWICK: It was, Your Honor.

18 THE COURT: All right. So we've got that. It meets  
19 the -- let -- let's just assume -- and I'm not asking you  
20 to give away your case or anything.

21 MR. TRAYWICK: That's right, Your Honor.

22 THE COURT: I'm just trying to march through where we  
23 go with this thing. So No. 7, it's a contribution made to  
24 influence an election.

25 MR. TRAYWICK: Yes, Your Honor.

1 THE COURT: All right. And then, we go next to a  
2 definition of "influencing the outcome of the election."  
3 And it's -- includes any communication made not more than  
4 45 days before an election which promotes or supports a  
5 candidate or opposes a candidate.

6 We're -- now, this was -- this was clearly that, was  
7 it not?

8 MR. TRAYWICK: Made -- made less than 45 before. Yes,  
9 Your Honor.

10 THE COURT: Was made less than 45 days, and it was  
11 made to support or oppose a candidate, was it not?

12 MR. TRAYWICK: It -- it was -- it supported Parfitt.  
13 Yes, Your Honor. And -- and yes.

14 THE COURT: And it opposed ---

15 MR. TRAYWICK: Yes, Your Honor.

16 THE COURT: --- Hill. Some of the brochures did one;  
17 some of the brochures did another. But the gist was  
18 either/or.

19 MR. TRAYWICK: That's right, Your Honor.

20 THE COURT: So all seven of the ones we saw as  
21 exhibits -- well, really, and the other two as well -- they  
22 all -- two of them were Mr. Parfitt's. So they're not at  
23 issue here.

24 MR. TRAYWICK: Right. That's right ---

25 THE COURT: But the ---

1 THE COURT: --- Your Honor.

2 THE COURT: --- ones that are at issue regarding the  
3 Republican Party were made to support Parfitt and oppose  
4 Hill, correct?

5 MR. TRAYWICK: To influence the outcome of the  
6 election. Yes, Your Honor.

7 THE COURT: All right. So far, so good. Now, there's  
8 no regulation in there about that. It simply qualifies as  
9 a contribution and it's a communication not made more than  
10 45 days before an election to support or oppose a  
11 candidate. So far, so good.

12 MR. TRAYWICK: Right.

13 THE COURT: We got two definitions.

14 Now, let's turn to the substantive statute and guide  
15 me through that as to how these -- the -- the -- these  
16 words translate into the limitations that are contained in  
17 8-13-1316.

18 MR. TRAYWICK: Thank you, Your Honor. So Subsection  
19 (2) would -- would limit to \$5,000 for any other candidate  
20 -- this isn't a statewide candidate, of course. It's House  
21 District 8. And so that would be the normal per-cycle  
22 limitation, is ---

23 THE COURT: All right.

24 MR. TRAYWICK: --- what we ---

25 THE COURT: So ---

1 MR. TRAYWICK: --- call it.

2 THE COURT: --- just stopping you there, this is a  
3 section that talks about restrictions on campaign  
4 contributions. And that's what he's arguing: that there's  
5 a restriction here.

6 MR. TRAYWICK: That's right, Your Honor.

7 THE COURT: Not saying that the contribution itself is  
8 somehow wrong or -- or can't be done. Might be he's not  
9 happy that his party is opposing him, but that's not the  
10 issue here.

11 MR. TRAYWICK: No, that's not.

12 THE COURT: The issue is simply whether this is a  
13 contribution that is restricted by statute in some kind of  
14 way.

15 MR. TRAYWICK: Yes, Your Honor.

16 THE COURT: So now you've got, notwithstanding  
17 1314(A) (1), which is the one that talks about limits  
18 otherwise, you've got some special limits that apply within  
19 an election cycle from a political party through its party  
20 committees or legislative caucus. And the political party,  
21 through its committees, is limited to \$5,000 in the case of  
22 a candidate for any other office. That's what the words on  
23 the page say, right?

24 MR. TRAYWICK: Yes, Your Honor.

25 THE COURT: Okay.

1 MR. TRAYWICK: For normal per-cycle limitations.

2 THE COURT: Okay. Now, it is your argument, as I  
3 understand it, that that \$5,000 limit does not apply. So  
4 walk me through what the basis of your argument is.

5 MR. TRAYWICK: Sure, Your Honor. And that's -- that's  
6 because of these (31)(c) communications. And I would note  
7 -- and you -- Your Honor certainly doesn't have to give any  
8 weight -- but the House and the Senate Ethics Committees  
9 have so found, with respect to legislative committees, what  
10 -- but as you noted earlier, we're in sort of a -- a new  
11 territory here with the political parties.

12 But the definition of political party in Subsection  
13 (26) includes committee and then references us back to  
14 Subsection (6). And the committee includes an association  
15 and all things that could also be deemed a political party.

16 And therefore, as a committee, the party enjoys the  
17 protections of Subsection (31)(c) communications not being  
18 contributions in that 45 days leading up to an election, as  
19 delineated in Subsection (7). And although it -- it  
20 appears in the definitional section, it is a specific  
21 statute that, we would submit, trumps a more general  
22 statute of general application located elsewhere in the  
23 code.

24 THE COURT: And where does (31)(c) limit or address  
25 the amount of the contribution?

1 MR. TRAYWICK: It does not, Your Honor. We have to go  
2 back to Subsection (7), which -- which ---

3 THE COURT: I'm going ---

4 MR. TRAYWICK: --- says contributions ---

5 THE COURT: --- back to ---

6 MR. TRAYWICK: --- do not include ---

7 THE COURT: --- I'm looking right back at (7). Where  
8 does (7) deal with any limitation on the amount of  
9 contribution? It talks about what the contribution is and  
10 whether it's to influence an election and so forth. (31)  
11 talks about influencing the outcome of the election and  
12 what that means. But where does either of these sections  
13 deal with the dollar limitation?

14 MR. TRAYWICK: Well, Your Honor, it says "contribution  
15 does not include." And since those more general statutes  
16 deal with the contribution limits, essentially, in the 45  
17 days leading up to an election ---

18 THE COURT: Where does it say the contribution --  
19 where does (31)(c) say that the contribution is not -- that  
20 -- that this thing is not a contribution?

21 MR. TRAYWICK: It -- it does not in (31)(c). In  
22 Subsection (7) it specifically references (31)(c).

23 THE COURT: But ---

24 MR. TRAYWICK: It says ---

25 THE COURT: --- in ---

1 MR. TRAYWICK: --- that that's ---

2 THE COURT: Where does ---

3 MR. TRAYWICK: --- excluded.

4 THE COURT: Where in Subsection (7) does it say that  
5 something made to influence an election is not a  
6 contribution?

7 MR. TRAYWICK: At the end of it, Your Honor. And I've  
8 got these printed out, so my apologies. But it starts off  
9 about what contribution means. And then, the second ---

10 THE COURT: It -- it says ---

11 MR. TRAYWICK: --- full sentence ---

12 THE COURT: --- it defines contribution and there's no  
13 question where, if you look at that first language, it's a  
14 thing of value made to a candidate to -- or his committee  
15 to influence an election. Then, you got a bunch of or's.  
16 And then, you got "Contribution does not include" -- and  
17 then, you show me which of -- what language it is that  
18 excludes what we've got here from a contribution.

19 MR. TRAYWICK: Okay. Your Honor, it's a gift,  
20 subscription, loan, guarantee, or we can just go to  
21 advance, in-kind contribution or expenditure. So that  
22 would not be deemed a contribution by the South Carolina  
23 Republican Party during the 45 days leading up to the  
24 election to the Parfitt campaign. That's our contention,  
25 and ---

1 THE COURT: Okay.

2 MR. TRAYWICK: --- that's the guts of our argument.

3 THE COURT: So the language you center in on is the  
4 "contribution does not include (b)" ---

5 MR. TRAYWICK: Right. Yes, Your Honor.

6 THE COURT: --- "anything of value made to a  
7 committee, other than a candidate committee, and is used  
8 for communications not made more than 45 days before the  
9 election to influence the outcome of elective office."

10 Now, what that says is it excludes, you know, anything  
11 of value made to a committee, other than a candidate  
12 committee. But that's not what we're talking about here,  
13 is it?

14 MR. TRAYWICK: I -- we respectfully disagree, Your  
15 Honor. What -- what the focus is on is what the -- is --  
16 is who's spending it. The GOP is spending it. And that's  
17 who had the money. And they're spending this money to  
18 influence the outcome in election.

19 And so because that's not going to a candidate  
20 committee, they're spending it. So the money that they're  
21 bringing in and taking in is not subject to limitation.  
22 And then, they spend it ---

23 THE COURT: But -- but they -- there's not a -- did --  
24 what -- what does (b) -- this (b) says? And it's what  
25 contribution does not include. It says: (b) a gift,

1 subscription, loan, or anything of value made to a  
2 committee, other than a candidate committee, and is used to  
3 pay for communications made not more than 45 days before  
4 the election to influence the outcome of the elective  
5 office."

6 So it says it's anything of value that's made to a  
7 committee, other than the candidate committee, and done not  
8 more than 45 days to -- and wanting to influence -- the --  
9 the exclusion is other than the candidate committee, is it  
10 not?

11 MR. TRAYWICK: It is, Your Honor. But what we're  
12 focusing on is the committee. The committee here is the  
13 SCGOP. And that's who received the money and then spent  
14 it.

15 THE COURT: Well, the SCGOP did -- their -- their  
16 receipt of money is not being challenged here.

17 MR. TRAYWICK: That's right.

18 THE COURT: Their contribution of money of any --  
19 something of value to Mr. Parfitt is what is the subject of  
20 this challenge.

21 MR. TRAYWICK: That's right, Your Honor. But what we

22 ---

23 THE COURT: And ---

24 MR. TRAYWICK: Sorry. Go ahead.

25 THE COURT: --- and -- and, you know, it may well --

1 but I don't know how they receive money. There was no  
2 testimony about that at all up here. But what there was  
3 testimony about is that the SCGOP made the decision to give  
4 something of value to the Parfitt campaign less than 45  
5 days before the election. Isn't that what the testimony  
6 was?

7 MR. TRAYWICK: Something along those lines, Your  
8 Honor. Our -- again, our contention -- I don't -- I don't  
9 want to beat a dead horse here. But our contention is that  
10 the ---

11 THE COURT: I -- I -- I am trying to understand you,  
12 because normally, definitional sections are not where you  
13 go to receive guidance for how a particular restriction on  
14 spending operates. This simply tells you what the various  
15 other verbiage, like contributions and influencing  
16 elections mean.

17 But this contributions definition is what you've got  
18 to have. And all you're telling me is you want me to focus  
19 on something that's not covered here one way or another,  
20 which is how these committees get -- that are being  
21 regulated, how they pay -- how they use their money. It  
22 doesn't talk about how they get their money.

23 It talks about how they use their money. It talks  
24 about within 45 days and to influence an election and to  
25 influence the outcome of an election. So help me out here.

1 MR. TRAYWICK: I -- I understand, Your Honor. And --  
2 and I -- I agree it -- that, you know, it's odd that it  
3 shows up in the definitional section. But, you know, the  
4 state Ethics Act doesn't make for a quick read. It's over  
5 130 pages of the code. And -- and they have tried -- tried  
6 to exempt certain things within these long, long  
7 definitional sections.

8 THE COURT: All right.

9 MR. TRAYWICK: And ---

10 THE COURT: Well, let's then go to one of your other  
11 arguments. And that is the applicability of *Krawcheck*.

12 MR. TRAYWICK: Sure.

13 THE COURT: *Krawcheck v. Citizens for Life* throughout  
14 a definitional section that impacted *Citizens for Life* as  
15 being vague and overbroad -- help me with the applicability  
16 of that to this situation.

17 MR. TRAYWICK: That's right, Your Honor. And in that  
18 case it was a -- a nonprofit. And we have *Krawcheck I* and  
19 *Krawcheck II*. And -- and by the way, Mr. Bowers couldn't  
20 be here today. He litigated both and ---

21 THE COURT: It was a big victory for him and for Mr.  
22 Bopp and all the people that have litigated in that milieu,  
23 primarily for *Citizens for Life* all around the country for  
24 many, many years.

25 MR. TRAYWICK: They're ---

1 THE COURT: I'm well aware of -- of those activities.

2 MR. TRAYWICK: That's right, Your Honor. And -- and  
3 if I briefly just add, he appreciated your offering for him  
4 to attend via video. He had client meetings previously  
5 scheduled.

6 But anyway, I'll turn back to the -- to the *Krawcheck*  
7 decision, as one was in 2010. And that was in front of  
8 Judge Wooten. And then, the other one was in 2012 in front  
9 of Chief Judge -- then-Chief Judge Margaret Seymour.

10 And they did both strike down as constitutionally  
11 facially overbroad the definition of committee found in 8-  
12 13-1300(6) of the South Carolina Code. And *Krawcheck I*  
13 involved a nonprofit that was pro-life, as you indicated.  
14 And then, *Krawcheck II* involved a nonprofit that was pro-  
15 school choice.

16 Here, you know, as -- as they have brought up, the  
17 mailing was for a nonprofit. And so this is an  
18 organization as well who's -- who's entitled to the  
19 protections of that. And -- and I understand Your Honor's  
20 questioning about, you know, the -- earlier to Mr.  
21 Fudenberg.

22 But, you know, we would contend that -- that they're  
23 facially unconstitutional; and -- and again, that we're  
24 kind of beyond the purview of that here, because we're in  
25 the injunction hearing. And so we just have -- have to --

1 you know, they have to show that they're likely to succeed  
2 on the merits.

3 And so this kind of informs the fact that -- that ---

4 THE COURT: Which -- which pieces of language are we  
5 talking about? Because there is a big difference between a  
6 political party -- they're separately treated from  
7 nonprofits that advocate sometimes for causes as well as  
8 for individual candidates and so forth and so on. And it  
9 was that overbreadth that was dealt with so eloquently in  
10 Wooten's opinion, which is kind of -- and in the Fourth  
11 Circuit's opinion in the North Carolina case of *Citizens*  
12 *for Life v. Leake*.

13 MR. TRAYWICK: *Leake*. That's right, Your Honor.

14 THE COURT: And that dealt with the ---

15 MR. TRAYWICK: --- lobbyist.

16 THE COURT: --- inhibiting of freedom of speech and  
17 freedom of expression that comes about when advocacy  
18 groups, who are not political parties as such, but are  
19 nonprofits -- different kinds of nonprofits -- they are  
20 advocacy groups for -- for causes and points of view. And  
21 in the process they may sometimes take positions for and  
22 against candidates, of course, and put out candidate  
23 surveys and things of that nature.

24 And the regulation of their ability to speak, from  
25 *Buckley v. Valeo* on, was what the Supreme Court and then,

1 in these district court and Fourth Circuit cases, said was  
2 a bridge too far. What in -- what is the -- what  
3 constitutional argument do you make about these statutes  
4 and the \$5,000 limitation that impact, as you argued in  
5 your brief, the ability to enforce it as to the Republican  
6 Party?

7 MR. TRAYWICK: Sure, Your Honor. I -- I would note --  
8 and you mentioned the Fourth Circuit case of *Leake*. That  
9 involved lobbyists. And, of course, that ---

10 THE COURT: It did.

11 MR. TRAYWICK: --- that raises all ---

12 THE COURT: But ---

13 MR. TRAYWICK: --- sorts of ---

14 THE COURT: --- although it -- it certainly -- well,  
15 the one I'm thinking about is the Fourth Circuit case out  
16 of North Carolina that involved not the lobbying aspect,  
17 but involved the nonprofit nature of Citizens for Life in  
18 North Carolina.

19 MR. TRAYWICK: Okay. All right. I apologize if I'm  
20 on ---

21 THE COURT: Maybe I ---

22 MR. TRAYWICK: --- the wrong *Leake*, then.

23 THE COURT: --- called the wrong name -- the name of  
24 the wrong case. But that -- that's the one I'm thinking  
25 about.

1 MR. TRAYWICK: Okay. I -- I hear you. All right.  
2 Well, the -- the *Leake* I -- I looked up was -- it dealt  
3 with lobbyists. And certainly, the state's interest in  
4 that is very ---

5 THE COURT: Oh, yeah.

6 MR. TRAYWICK: --- it is unquestioned ---

7 THE COURT: I would agree.

8 MR. TRAYWICK: --- here. That deals with corruption.  
9 That's not necessarily the case here. Here, we're dealing  
10 with a candidate who was kicked out of the House Republican  
11 Caucus. And so the Republican Party sought to intervene  
12 and -- and influence the outcome of the election.

13 THE COURT: Yeah. And I -- it did -- what has not  
14 been argued here -- and I -- I -- I don't think could be  
15 argued, or it would impinge on the parties' freedom of  
16 speech -- is it's not argued that there's anything  
17 inappropriate about the party just picking and choosing  
18 within a primary.

19 MR. TRAYWICK: That's right, Your Honor.

20 THE COURT: That -- that -- that's not argued in any  
21 way in these filings by plaintiff. So whatever the  
22 motivation of the party was for assisting the Parfitt  
23 campaign, that's not an issue here. All we're trying to  
24 figure out is whether this \$5,000 limit impacts what we're  
25 dealing with here.

1           MR. TRAYWICK: That's right. And -- and I -- and we  
2 would argue it would. You know, the *Krawcheck* courts found  
3 that it was facially unconstitutional and -- and it would  
4 thwart the parties' ability to achieve its political aims  
5 and -- and under relatively arbitrary terms. You know, why  
6 5,000 for statehouse versus, you know, 50 for other  
7 candidates and -- and things of that nature.

8           And so that -- that would be our reliance upon  
9 *Krawcheck*. And -- and again, as I distinguished, I think  
10 I'm looking at the wrong *Leake*. But that -- that's okay.  
11 I -- I think that that presents a good case because that  
12 prevents lobbyists from contributing to candidates. And I  
13 think we all agree that there's -- there's sound policy  
14 reasons for that and the state's interests would be  
15 narrowly tailored to that.

16           We -- we would submit that's not -- respectfully not  
17 the case here. It -- it -- it seem rather arbitrary and --  
18 and unconstitutionally overbroad. But -- but even that  
19 aside, Your Honor, we would, in the alternative, submit and  
20 rely upon my arguments earlier, understanding your concerns  
21 with it.

22           And -- and for all those reasons -- the plaintiff  
23 bears the burden of proof. And we would respectfully  
24 submit that they have not met that burden and, therefore,  
25 an injunction, which is a drastic measure, is not warranted

1 here.

2 And -- and also within that, you know, an injunction,  
3 as Your Honor knows, has to reasonably necessary to protect  
4 the interests of the parties in the litigation. The  
5 primary is on Tuesday. We have no -- the -- not we. The  
6 party has no other expenditures forthcoming and -- and is  
7 not going to have any more expenditures.

8 So I -- we would respectfully question whether the  
9 injunction is reasonably necessary to protect the rights of  
10 the parties during the litigation. And then, we would --  
11 we would furthermore note that the litigation will be  
12 rather, as he indicated in an e-mail yesterday to Your  
13 Honor, will -- will be rather brief, as -- as the Supreme  
14 Court issued a writ of prohibition in -- in a similar case  
15 involving a legislative-caucus committee, forbidding the  
16 Court from moving forward with jurisdiction outside the 50-  
17 day window, which, again, was the statute under which the  
18 plaintiffs sought to open the courthouse doors here today.

19 THE COURT: Just zero me in one more time on *Krawcheck*  
20 and its applicability here. I would think it would have to  
21 be with respect to the definitional section that defines  
22 committee, because that was the section that was declared  
23 unconstitutional, was it not?

24 MR. TRAYWICK: That's right, Your Honor.

25 THE COURT: All right. So ---

1 MR. TRAYWICK: And -- and committee here in -- in the  
2 code is defined as: "an association, a club, an  
3 organization, or group of persons which, to influence the  
4 outcome of elective office . . ." And again, that's what  
5 we're saying we -- we've done here and would ---

6 THE COURT: So ---

7 MR. TRAYWICK: --- qualify as a committee.

8 THE COURT: So if the committee definition is  
9 overbroad and is, therefore, unconstitutional and cannot be  
10 used, then how does that affect the rest of these sections  
11 we've been arguing? This isn't a hostile question. I'm  
12 trying to work through this thing and understand how it  
13 hangs together.

14 MR. TRAYWICK: Understood, Your Honor. It -- it would  
15 -- it would not. So what -- what we contend for the  
16 constitutional argument is that if that's struck down, then  
17 -- then the party, which is a committee, would not be  
18 governed by the -- by the provisions ---

19 THE COURT: So you're saying all these regulations  
20 fall if the committee definition has been overbroad; then,  
21 committees cannot be regulated?

22 MR. TRAYWICK: That's right, Your Honor.

23 THE COURT: All right.

24 MR. TRAYWICK: And then, in the alternative ---

25 THE COURT: So ---

1 MR. TRAYWICK: --- if it -- if it withstands scrutiny,  
2 our position is that we qualify as a committee and,  
3 therefore, are entitled to the protections of (31)(c)  
4 communications being not deemed contributions, as defined  
5 in Subsection (7), in the 45 days leading up to the  
6 election.

7 THE COURT: All right, sir. I think I understand your  
8 argument.

9 MR. TRAYWICK: Thank you, Your Honor. And -- and the  
10 ---

11 THE COURT: All right.

12 MR. TRAYWICK: --- last thing, it -- I'd -- I'd rely  
13 on our brief in it. But bond, to the extent the Court is  
14 entertaining the issuance of an injunction, our case law  
15 has -- has made pretty clear that a bond is required and it  
16 may not merely be nominal. And so we would ---

17 THE COURT: So what -- what -- what kind of bond would  
18 you think is appropriate in a matter like this?

19 MR. TRAYWICK: Your Honor, I'd -- I'd certainly think  
20 it's well within your discretion. But, you know, included  
21 within that are attorneys' costs for appeal and things like  
22 that. So, you know, given that there's two defendants and  
23 Mr. Bowers will, in fact, come back someday and assist, I  
24 think probably in the range of 10 or 15 thousand dollars  
25 would be appropriate and fair. But I'd certainly leave it

1 in your discretion.

2 THE COURT: All right, sir.

3 All right, Mr. Fudenberg. Any reply?

4 (Off the record briefly.)

5 THE COURT: Yes, sir.

6 MR. FUDENBERG: Your Honor, thank you. I would point  
7 out, first of all, what Your Honor hit on, which is it  
8 seems that they're saying that if the word "committee" is  
9 unconstitutional, then all these laws fall and there's no  
10 restrictions on the -- on the South Carolina Republican  
11 Party. And that can't be the intent of the law.

12 Second, they're doing something -- it's -- it's almost  
13 a contradiction in terms. They're taking the *Krawcheck*  
14 cases, which distinguished between organizations that are  
15 not like a political party and political parties, and said  
16 it's too -- the *Krawcheck* has said it's too broad because  
17 it includes the other case -- other things like their  
18 political parties. And they're arguing -- you -- and --  
19 and then, *Krawcheck* said that you -- you can do this -- if  
20 you vacate political parties in this matter, but you can't  
21 regulate these other nonprofit groups in this matter.

22 And they're saying, in effect: Well, in that case,  
23 *Krawcheck* says that you can't regulate the political  
24 parties in that matter either. But that's directly  
25 contrary to what *Krawcheck* was talking about.

1           Second, as Your Honor well knows, statements of  
2 counsel are not evidence. There was no testimony that the  
3 party will not make any -- has no plans to make any more  
4 mailers. And finally, we think \$10,000 is -- is too large.  
5 We think it's -- it's much too large.

6           We would suggest something along the lines of \$1,000.  
7 I -- I think a -- a proper amount would be to figure out  
8 how much they think they would be hurt by not being allowed  
9 to make mailers and then give that to us in damages for  
10 each of the seven times they made the mailers that were --  
11 that were illegal.

12           But again, this is, you know, entirely, of course, in  
13 the Court's reason and discretion. And we -- we would  
14 suggest a -- a bond more in the nature of \$1,000. My  
15 client is not a rich man. He's not entering politics --  
16 he's not in politics to become a rich man.

17           So we hope you will -- we -- we know you will do the  
18 right thing. And thank you for your time, Your Honor.

19           THE COURT: Let me ask you this about the *Krawcheck*

20 ---

21           MR. FUDENBERG: Yes, ma'am.

22           THE COURT: --- case. I'm looking at Judge Wooten's  
23 opinion. And in it he talks about that it's overbroad  
24 because it catches in its net Citizens for Life, which is  
25 more of a political-action organization ---

1 MR. FUDENBERG: Uh-huh.

2 THE COURT: --- and that imposing the burdensome  
3 regulatory nature of the requirements put on committees in  
4 disclosure and reporting and so forth on this kind of group  
5 is an unconstitutional restriction on an advocacy group of  
6 this type. But then, it goes on to say: "As a final  
7 matter, the Court does not conclude that it would be  
8 appropriate to apply a limiting construction on S.C. Code  
9 1300(6)" ---

10 MR. FUDENBERG: And so ---

11 THE COURT: --- which is the one I asked about. This  
12 is the foundational definition of what we're regulating,  
13 which is the committee.

14 MR. FUDENBERG: Where are you in -- in the case?

15 THE COURT: It says: "Although it's long been the  
16 tenet of First Amendment law that determining a facial  
17 challenge to a statute, if it's reasonably susceptible to a  
18 narrowing construction that would make it constitutional,  
19 will be upheld. However, the -- the Court finds that  
20 limiting the application of 8-13-1300(6) only to groups  
21 that have the major purpose of influencing the outcome of  
22 an election would be tantamount to rewriting the state  
23 statute. This is particularly true where the committee  
24 definition would invalidate it as a component of a  
25 comprehensive legislative scheme that involves detailed

1 regulations governing all entities that are encompassed by  
2 the statutory definition. The revision of the statutory  
3 scheme is a task best suited to the state legislature, and  
4 the Court concludes that the application of a limiting  
5 construction is not appropriate in this case.

6 "For the reasons set forth herein, the plaintiff's  
7 motion for summary judgment is granted, and the Court  
8 concludes that the definition of committee, located in 8-  
9 13-1300(6)" ---

10 MR. FUDENBERG: Uh-huh.

11 THE COURT: --- "is facially invalid" ---

12 MR. FUDENBERG: Uh-huh.

13 THE COURT: --- "on the ground that the definition is  
14 unconstitutionally overbroad."

15 Now, that language seems to strike out the definition  
16 of committee.

17 MR. FUDENBERG: Okay.

18 THE COURT: And if you strike out the definition of  
19 committee, then the regulatory section we're talking about,  
20 where the \$5,000 limitation is contained, it says:  
21 "Restrictions on campaign contributions received from  
22 political parties . . ."

23 And it says: "Within an election cycle, a candidate  
24 may not accept or receive contributions from a political  
25 party through its party committees or legislative

1 committees and a political party through its party  
2 committees or legislative caucuses may not give . . ."

3 Well, if the definition of committee is overbroad ---

4 MR. FUDENBERG: Uh-huh.

5 THE COURT: --- and it's knocked out, then you don't  
6 have any regulation to put your hands on, do you?

7 MR. FUDENBERG: Well, that would knock out -1316. It  
8 wouldn't knock out -1314.

9 THE COURT: -1314 ---

10 MR. FUDENBERG: Uh-huh.

11 THE COURT: --- talks about a person. And this is a  
12 -- is -- is a limitation of \$1,000 and \$3,000. Are you  
13 saying that the \$1,000 limitation applies ---

14 MR. FUDENBERG: Yes, ma'am.

15 THE COURT: --- to ---

16 MR. FUDENBERG: And -- and the ---

17 THE COURT: I see.

18 MR. FUDENBERG: --- statute defines a person to be any  
19 group of persons acting in concert.

20 THE COURT: I hadn't detected you to have, prior to  
21 this, argued that the limitation was the limitation on  
22 persons. I thought your entire thrust was arguing that it  
23 was the \$5,000 limitation that was at issue here.

24 MR. FUDENBERG: We meant to focus on the \$1,000  
25 limitation. We put in the 5,000 just in case they wanted

1 to argue: Well, you got this other statute here. And we  
2 showed that it was more than 5,000.

3 But the thrust of our argument was the \$1,000  
4 limitation. They kept saying 5,000 just because that  
5 covered both bases.

6 THE COURT: What do you make of the fact that you've  
7 got Subsection (25), which has a -- and this is 8-13-1300.

8 MR. FUDENBERG: Okay.

9 THE COURT: You got Subsection (25), which defines  
10 person.

11 MR. FUDENBERG: Yeah.

12 THE COURT: And that includes an association,  
13 corporation, club, labor organization, or any other  
14 organization or group of person acting in concert.

15 MR. FUDENBERG: Uh-huh.

16 THE COURT: And then, in (26), you got a political  
17 party.

18 MR. FUDENBERG: Uh-huh.

19 THE COURT: A different definition.

20 MR. FUDENBERG: Right.

21 THE COURT: Because it's the definition of an  
22 organization whose candidates appear on the election  
23 ballot.

24 MR. FUDENBERG: Uh-huh.

25 THE COURT: Don't you think that's a pretty clear

1 segregation out of the legislature from a specific kind of  
2 entity, which is a political party that puts people on the  
3 ballot, and these other organizations or individuals who  
4 act in concert.

5 MR. FUDENBERG: Your Honor, I would -- I would most  
6 respectfully disagree.

7 THE COURT: Well, the -- the -- the entire ethics law  
8 makes a big different between those two in terms of  
9 reporting requirements and disclosure and all the rest of  
10 it, would you not agree?

11 MR. FUDENBERG: It does -- it does a -- a -- very many  
12 times. Yeah.

13 THE COURT: I -- I just ---

14 MR. FUDENBERG: But ---

15 THE COURT: If I'm trying to use the old legislative  
16 maxim of construing pieces of the statute *in pari materia*  
17 ---

18 MR. FUDENBERG: Uh-huh.

19 THE COURT: --- then you're going to -- it doesn't  
20 mean anything to have this political party definition if  
21 they're already included in person.

22 MR. FUDENBERG: Well, sure, it does. Because  
23 political parties can do certain things that other regular  
24 persons can't.

25 THE COURT: Well, of course. And the -- in the

1 section we're talking about that contains the \$5,000  
2 limitation, it is a limitation on political parties acting  
3 through committees.

4 MR. FUDENBERG: Yeah.

5 THE COURT: That -- that seems rather ---

6 MR. FUDENBERG: It -- it ---

7 THE COURT: --- clear that it's -- it's the specific,  
8 rather than the general, that controls another legislative  
9 maxim. So this person ---

10 MR. FUDENBERG: Your Honor ---

11 THE COURT: --- thing wouldn't have anything to do ---

12 MR. FUDENBERG: I'm sorry.

13 THE COURT: --- with it.

14 MR. FUDENBERG: The testimony here was that this was  
15 not done through a committee. This was Drew McKissick on  
16 his own.

17 THE COURT: Well, the -- the -- the designation says  
18 that the South Carolina GOP ---

19 MR. FUDENBERG: Uh-huh.

20 THE COURT: --- is the one that paid for it.

21 MR. FUDENBERG: Uh-huh.

22 THE COURT: And Mr. McKissick's testimony is that he  
23 was acting for the party. I don't detect any individual  
24 action on his part as a person. I detect action ---

25 MR. FUDENBERG: Yeah.

1 THE COURT: --- as the executive director of the  
2 party.

3 MR. FUDENBERG: If a committee of the party had done  
4 this, he might have an argument. But he wasn't a committee  
5 of the party. This was one man. A -- a committee, it  
6 means more than one person.

7 THE COURT: All right. Anything further?

8 MR. FUDENBERG: Well, I'll -- if the executive  
9 committee had -- had done this, I -- I could see him having  
10 argument. But no. It was not the executive committee.

11 Nothing further, Your Honor.

12 THE COURT: All right, sir.

13 Be patient with me and stay in place. I will confer  
14 with my law clerk, and I will come back to you shortly.  
15 The Court will be in recess.

16 (Off the record from 3:45 p.m. until 4:57 p.m.)

17 THE COURT: All right. Mr. Fudenberg and Mr. Tyson,  
18 if you would approach, I'm going to give you a copy of what  
19 I'm going to read into the record.

20 (Whereupon, counsel approached the bench.)

21 THE COURT: This is for you, Brooks.

22 Rob, this is for you and your group.

23 Now, let me be sure I've got mine. I have. All  
24 right. Take your seats, please.

25 (Whereupon, counsel complied.)



1 Republican nomination to District -- to the District 8  
2 seat.

3 This -- this matter is before the Court on a verified  
4 petition and motion for preliminary injunction, complaint  
5 for declaratory and injunctive relief, and motion to  
6 expedite discovery, filed by plaintiffs Jonathon Hill and  
7 Jonathon Hill for the S.C. House District 8 against the  
8 South Carolina Republican Party and Vaughn Parfitt.  
9 Plaintiff Hill is a candidate for the state House of  
10 Representatives. Plaintiff Jonathon Hill for the District  
11 8 is the official campaign committee advancing his  
12 candidacy. Defendant Parfitt is his opponent in the South  
13 Carolina Republican Party primary to be held June the 9th.

14 Plaintiffs' petition and complaint alleges that the  
15 South Carolina Republican Party is violating the South  
16 Carolina Ethics Act by paying for mailers in support of  
17 Parfitt. Specifically, plaintiff alleges that the South  
18 Carolina Republican Party is limited to expending not more  
19 than 1,000 or 5,000 dollars per election cycle in support  
20 of a given campaign. See South Carolina Code Sections 8-  
21 13-1314 and 8-13-1316, whereas the South Carolina  
22 Republican Party has expended more than \$5,000 in support  
23 of Mr. Parfitt's campaign.

24 A contribution under state law includes in-kind  
25 contributions or expenditures or anything of value made to

1 a candidate or committee to influence an election.

2 Plaintiffs allege that Mr. Parfitt violated South Carolina  
3 Code Ann. -1314 by accepting the contributions.

4 Section 8-13-1314(a) (1) of the South Carolina Ethics  
5 Act does not control this issue. Definitional sections of  
6 the Ethics Act -- specifically, Sections 8-13-1300(25) and  
7 (26) -- contain the definition of persons and the  
8 definition of political party. It is clear that the  
9 legislature intended to regulate persons and political  
10 parties separately. Thus the restrictions of 8-13-1314 on  
11 personal contributions do not apply to the South Carolina  
12 Republican Party.

13 Plaintiff contends that defendant violated the South  
14 Carolina Ethics Act Section 8-13-1316(a) (2), which forbids  
15 a candidate from accepting a contribution from a political  
16 party through its party's committee in excess of \$5,000 and  
17 forbids a political party through its committee from making  
18 a contribution to a candidate which exceeds \$5,000. It is  
19 stipulated by all parties that the value of the  
20 contributions accepted by candidate Parfitt and given by  
21 the South Carolina Republican Party exceed \$5,000.

22 The constitutionality of the South Carolina Ethics  
23 Act's regulation of committee, as defined in Section 8-3-  
24 1300(6) was challenged in *S.C. Citizens for Life v.*  
25 *Krawcheck*. In this case and in subsequent cases, the

1 federal district court concluded that the definition of  
2 committee is overbroad and facially unconstitutional.  
3 United States District Judge Terry Wooten addressed the  
4 issue of whether or not the definition of committee could  
5 be given a narrowing construction by the Court which would  
6 make it constitutional.

7 Judge Wooten held: "Limiting the application of the  
8 South Carolina 8-13-1300(6) only to groups that have the  
9 major purpose of influencing the outcome of the election  
10 would be tantamount to rewriting the state statute. This  
11 is particularly true in this instance, where the committee  
12 definition invalidated herein is a component of a  
13 comprehensive legislative scheme that involves detailed  
14 regulations governing all entities that are encompassed by  
15 statutory definition. The revision of the statutory scheme  
16 is a task best suited to the state legislature, and the  
17 Court concludes that the application of a limiting  
18 construction is not appropriate in this case."

19 If the definition of committee is struck from the  
20 South Carolina Ethics Act, then the regulations and  
21 restrictions of Section 8 -- oh, I -- there's a typo here.  
22 It should be 13 -- madam court reporter, please correct  
23 that -- 8-13-1316 on accepting or giving of candidate  
24 contributions of more than \$5,000 are invalidated. I  
25 therefore deny the petition for a preliminary injunction on

1 the grounds that the South Carolina Ethics Act contains no  
2 valid provisions which restrict the giving or receiving of  
3 the political contribution at issue in this matter.

4 Therefore, plaintiffs cannot succeed on the merits of this  
5 litigation.

6 It is so ordered.

7 This order will be electronically be filed my law  
8 clerk upon the conclusion of these proceedings.

9 And I say to you, Mr. Fudenberg, and to your client,  
10 Representative Hill: Had the legislature done a job of  
11 dealing with this matter after the ruling in 2010 and stuck  
12 with the intention that they have, you would be completely  
13 right about saying that these contributions exceed what is  
14 permitted. Unfortunately for your situation, because of an  
15 attempt to -- a successful ruling that protected broader  
16 political speech by committees that are not political  
17 parties, such as the South Carolina Citizens for Life, your  
18 situation was swept up in that. And therefore, the  
19 regulation that you have cited cannot be enforced by me.

20 It is certainly something that the legislature needs  
21 to address. I served in that body myself for many years,  
22 and I know how difficult it is sometimes to get corrective  
23 legislation through. And that's too bad.

24 But I must be bound by my oath to uphold the  
25 Constitution. And I do so in this case and appreciate very

1 much the highly professional presentations by parties on  
2 both sides and wish you the very best of luck.

3 Thank you, and court is adjourned.

4 MR. TRAYWICK: Thank you, Your Honor.

5 MR. TYSON: Thank you, Your Honor.

6 (Whereupon, the proceeding was concluded at 5:07 p.m.)

7 **--- END OF TRANSCRIPT OF RECORD ---**

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**CERTIFICATE**

I, the undersigned Maryann S. Nevers, CVR-M-CM, RVR, Official Court Reporter for the Eighth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Circuit Court for Richland County, South Carolina, on the 5th day of June, 2020.

I do further certify that I am neither of kin, counsel, nor interest in any party hereto.



---

Maryann S. Nevers, CVR-M-CM, RVR  
Official Court Reporter

Columbia, South Carolina  
June 15, 2020

# EXHIBIT E

to

## **Respondents' Motion to Dismiss**

Appellate Case No. 2020-000851

*Order Denying Petition for  
Preliminary Injunction*

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

JONATHON HILL and JONATHON HILL )  
FOR SC HOUSE DISTRICT 8, )

Case No. 2020-CP-40-02636

Plaintiffs, )

vs. )

ORDER

THE SOUTH CAROLINA REPUBLICAN )  
PARTY and VAUGHN PARFITT, )

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Defendants. )

Jun 09 2020

SC Court of Appeals

This matter came before the Court on Friday, June 5, 2020 for a hearing on a Motion for Preliminary Injunction, Complaint for Declaratory and Injunctive Relief, and Motion to Expedite Discovery. Present at the hearing were Jonathon Hill ("Plaintiff"), represented by Brooks R. Fudenberg, Esquire. The South Carolina Republican Party and Vaughn Parfitt ("Defendants") was represented by Robert E. Tyson Jr., Esquire and Vordman Carlisle Traywick, III, Esquire.

**BACKGROUND**

Plaintiff is a resident of Anderson County, South Carolina, a Member of the South Carolina House of Representatives, and a candidate for reelection as the District 8 Representative to the House. (Pl. Compl. ¶ 1). Plaintiff, Jonathon Hill for SC House District 8, is the officially-recognized campaign committee supporting his re-nomination and reelection. (Pl. Compl. ¶ 4). Defendant, South Carolina Republican Party, has its principal office within Richland County, at 1913 Marion Street, Columbia, South Carolina, 29201. (Pl. Compl. ¶ 6). Defendant, Vaughn Parfitt, is the only opponent of Plaintiff in the race for the Republican nomination to the District 8 seat. (Pl. Compl. ¶ 7).

This matter is before the Court on a verified petition and motion for preliminary injunction, complaint for declaratory and injunctive relief, and motion to expedite discovery, filed by Plaintiffs Jonathon Hill and Jonathon Hill for SC House District 8 against the South Carolina Republican Party and Vaughn Parfitt. Plaintiff Hill is a candidate for the State House of Representatives. Plaintiff Jonathon Hill for SC House District 8 is the official campaign committee advancing his candidacy. Defendant Parfitt is his opponent in the South Carolina Republican primary to be held

on June 9th.

Plaintiffs' petition and complaint alleges the South Carolina Republican Party is violating the South Carolina Ethics Act by paying for mailers in support of Parfitt. Specifically, Plaintiff alleges that the South Carolina Republican Party is limited to expending not more than \$1,000 or \$5,000 per election cycle in support to a given campaign, see S.C. Code Ann. §§ 8-13-1314, 8-13-1316, whereas the South Carolina Republican Party has expended more than \$5,000 in support of Mr. Parfitt's campaign.

A "contribution" under state law includes "in-kind contribution[s] or expenditure[s], . . . or anything of value made to a candidate or committee to influence an election[.]" S.C. Code Ann. § 8-13-1300(7). Plaintiffs allege that Mr. Parfitt violated S.C. Code Ann. § 8-13-1314 by accepting the contributions.

### ANALYSIS

#2  
JLS  
Section 8-13-1314(a)(1) of the South Carolina Ethics Act does not control this issue. 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.

Plaintiff contends that Defendants violated SC Ethics Act §8-13-1316(a)(2) which forbids a candidate from accepting a contribution from a political party through its party's committee in excess of \$5,000.00 and forbids a political party through its committee from making a contribution to a candidate which exceeds \$5,000.00. 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.

The constitutionality of the SC Ethic's Act, regulation of "committee" as defined in Section 8-13-1300(6) was challenged in *S.C. 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. Therefore, Plaintiffs cannot succeed on the merits of this litigation.

**IT IS SO ORDERED!**



Jean H. Toal  
Chief Justice (Retired) serving as an Acting  
Circuit Court Judge

June 5, 2020  
Columbia, South Carolina

#3

# EXHIBIT F

to

## **Respondents' Motion to Dismiss**

Appellate Case No. 2020-000851

*Plaintiffs' Motion to Reconsider,  
Alter or Amend Judgment*



In South Carolina, it is well-established that if the words of a statute are clear and unambiguous, they must be given their necessary effect.

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). See also *State v. Corey D.*, 339 S.C. 107, 120, 529 S.E.2d 20, 27 (2000) (citing *Keyserling v. Beasley*, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996)) (holding, “Although it may seem illogical [to follow the statutory language], it is beyond this Court's power to effect a change in the statutes enacted by the Legislature.”). See also *Benat v. State Farm Mut. Ins. Co.*, 286 S.C. 132, 134, 333 S.E.2d 57, 58 (Ct. App. 1985) (stating that “We have no legislative authority and cannot vary a statutory scheme and this is true no matter how logical the basis of the variance.”)

Here, Section 8-13-1300(25) states (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.” Here, the plain language includes the Republican Party of South Carolina as an entity that is subject, like all the rest of us, to the restrictions placed on a “person.”

There are places in the statute where political parties are treated differently from “any person.” Where the Legislature meant to create exceptions for political parties, it said so. Otherwise, parties are bound by the background law that applies to all persons.

Similarly, while Section 8-13-1314(A) places a one-thousand dollar limit on donations to a candidate for a State House seat, Section 8-13-1316 provides that notwithstanding Section 8-

13-1314(A)(1), within a given 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” more than five thousand dollars to a candidate for the State House. 8-13-1316(A) (emphasis added).<sup>1</sup>

Clearly, the Legislature did not mean to allow political parties, except as acting through party committees or legislative caucus committees, to provide candidates with contributions in excess of the limits that apply to contributions from the rest of us. To read the statute otherwise is to render the repeated qualification, “through its party committees or legislative caucus committees,” as mere surplusage. “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* and rejecting a reading of a statute that would render text “mere surplusage.”)

Similarly, *expressio uni est exclusio alterius*, the specification of one thing is the exclusion of another, e.g., *Riverwoods, LLC v. Cty. of Charleston*, 349 S.C. 378, 384, 563 S.E.2d

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<sup>1</sup> 8-13-1316(A) provides in full,

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.

Thus, the Section contemplates five thousand dollars as the maximum contribution per election cycle to a candidate for the State House.

651, 655 (2002). *See also Kosciusko v. Parham*, 428 S.C. 481, 498, 836 S.E.2d 362, 371 (Ct. App. 2019) (following *Riverwoods*). 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.

Here, the record is clear that the contributions were not made through any committee of any kind. Instead, the testimony was that the contributions were authorized and made by one man. Drew McKissick testified that the decision was his alone, and no one else had any role. The statute does not state, “Notwithstanding the limitations of Section 8-13-1314, the chairperson of each party may provide unlimited contributions to candidates of his or her choice.”

There are many solid reasons the Legislature could have chosen to restrict the allowance for the larger contributions to those coming via a committee, a group of people who will pool their combined judgment, and to avoid putting that power in the hands of one man or woman (the chair of a political party). 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.

Additionally, whether federal district courts found the unadorned term “committee” in the statute to be overly broad is not controlling, for the narrower term “party committee” that is employed in section 1316 is not overly broad. *See S.C. Citizens for Life v. Krawcheck*, 759 F. Supp. 2d 708 (D.S.C. 2010) (*Krawcheck I*) (finding the defined term “committee” in section 8-13-1300(6) to be overly broad); *S. Carolinians for Responsible Gov’t v. Krawcheck*, 854 F. Supp. 2d 336 (D.S.C. 2012) (*Krawcheck II*) (same); *see also* section 8-13-1300(24) (“‘Party committee’ means a committee established by a political party.”). Plaintiffs therefore

respectfully maintain that the Court erred in concluding that, “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,” and therefore that 8-13-1316’s restrictions are invalidated. *See* Order, page 3. Striking the broad term “committee” as overly broad does not necessitate striking the narrower term “party committee.”

Moreover, if every provision in the Ethics Act containing the word “committee,” including use of other terms such as “party committee” and “ethics committee,” is to be struck down, the result would be to invalidate virtually the entirety of Article 5 of the Ethics Act. Thus, the Senate and House Ethics Committees must be stripped of their power. *See* S.C. Code Ann. § 8-13-510 *et seq.*

Additionally, whether the term “committee” or “party committee” is unconstitutionally overbroad or of proper breadth, ambiguous or clear, is not relevant to the issue before the court, for there was no party committee, purported party committee, claimed party committee, nor any committee of any sort involved in the contributions here, and the Legislature did not intend to create an exception that allows party chairpersons to direct unlimited sums, or even greater sums than the rest of us, to candidates for office.

Similar logic applies to the limitations in Sections 8-13-1314 and 8-13-1316 regarding candidates’ acceptance of such contributions.

In considering an analogous issue, Judge Manning reached a conclusion directly opposite to the Court’s order in this case. *Harpootlian v. South Carolina Senate Republican Caucus*, 2018-CP-40-05370 (5th Circuit, 10/19/2018). There, “The Senate Republican Caucus read[] *Krawcheck I* and *Krawcheck II* for the proposition that its spending is no longer constrained by the Ethics Act because the federal courts have struck down the definition of ‘committee’ under § 8-13-

1300(6) as unconstitutionally broad.” *Id.*, ¶25. Judge Manning squarely rejected that argument. *Id.*, ¶¶ 39-41, 44.

In sum, even before one gets to the principles of statutory construction, one must determine whether the words have a clear meaning and if so, the Court must give effect to that meaning, which in this case mandates a ruling in Plaintiffs’ favor and in accord with the Legislature’s intent. If one must construe a statute, the cardinal rule is to give effect to the intent of the legislature, which in this case was to limit contributions; in determining the intent of the legislature, one is to presume that the Legislature had a reason for its language and did not add mere surplusage.

For all these reasons, Plaintiffs very respectfully ask the Court to reconsider its ruling, and issue injunctive and/or declaratory relief.

Respectfully Submitted,

LAW OFFICE OF BROOKS R.  
FUDENBERG, LLC

/s/ Brooks R. Fudenberg

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Law Office of Brooks R. Fudenberg, LLC  
171 Church Street, Suite 160  
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Attorney for the Plaintiffs

# EXHIBIT G

to

## **Respondents' Motion to Dismiss**

Appellate Case No. 2020-000851

*Defendants' Response in Opposition to  
Plaintiffs' Motion to Reconsider*

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
 COUNTY OF RICHLAND ) FIFTH JUDICIAL CIRCUIT

Jonathan Hill and Jonathan Hill for SC ) Civil Action No. 2020-CP-40-02636  
 House District 8, )  
 )

Plaintiffs, )

vs. )

South Carolina Republican Party and )  
 Vaughn Parfitt, )  
 )

Defendants. )  
 \_\_\_\_\_ )

**DEFENDANTS’ RESPONSE IN  
 OPPOSITION TO PLAINTIFFS’  
 MOTION TO RECONSIDER**

The defendants, South Carolina Republican Party and Vaughn Parfitt, submit this response in opposition to the Rule 59(e), SCRCP, motion to reconsider the Court’s ruling denying the motion for temporary injunction. For the reasons that follow, the Court should deny the motion.

A Rule 59(e), SCRCP, motion provides a vehicle through which a party may (1) request that the circuit court reconsider matters properly encompassed in a decision on the merits or “alter or amend” its judgment, or (2) attempt to obtain a ruling on issues or arguments previously raised to the court. See Elam v. S.C. Dep’t of Transp., 361 S.C. 9, 21–22, 602 S.E.2d 772, 779 (2004). It is well-settled that a party cannot use a Rule 59(e) motion to raise an issue for the first time to the circuit court when the party could have raised it prior to judgment but failed to do so. See Gartside v. Gartside, 383 S.C. 35, 43, 677 S.E.2d 621, 625 (Ct. App. 2009); Patterson v. Reid, 318 S.C. 183, 185, 456 S.E.2d 436, 437 (Ct. App. 1995); JEAN HOEFER TOAL ET AL., APPELLATE PRACTICE IN SOUTH CAROLINA 189 (3d ed. 2016).

Here, the plaintiffs, Jonathan Hill and Jonathan Hill for SC House District 8, raise two arguments in their Rule 59(e) motion. Both are outside the scope of a motion to reconsider, alter,

or amend judgment. First, the plaintiffs again seek to argue that the statutory definition of “committee,” see S.C. Code Ann. § 8-13-1300(6), is not triggered in this case because Drew McKissick, the Chairman of the South Carolina Republican Party, testified he approved the mailers. The Court already rejected this argument during the hearing, and the plaintiffs offered no justification for departing from this ruling. Indeed, the plaintiffs’ argument is inconsistent with the evidence in the record and without merit. And in any event, a Rule 59(e) motion is not a proper means for simply rehashing arguments. Second, the plaintiffs raise new arguments regarding the applicability of the Krawcheck decisions and attach a circuit court order from another case. But none of these arguments were presented to the Court during the hearing on June 5, 2020. Because it is well-settled that a party may not raise an issue for the first time in a Rule 59(e) motion, these arguments are not properly before the Court.

Based upon the foregoing, the Court should uphold its sound ruling and deny the plaintiffs’ motion to reconsider. The plaintiffs cannot succeed on the merits of this litigation and, therefore, are not entitled to an injunction.

*(Signature page to follow)*

Respectfully submitted,

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*Attorneys for South Carolina Republican Party and  
Vaughn Parfitt*

Columbia, South Carolina  
June 8, 2020

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*Attorney for South Carolina Republican Party*

Columbia, South Carolina  
June 8, 2020

# EXHIBIT H

to

## **Respondents' Motion to Dismiss**

Appellate Case No. 2020-000851

*Order Denying Motion to Reconsider*

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

JONATHON HILL and JONATHON HILL  
FOR SC HOUSE DISTRICT 8,

Case No. 2020-CP-40-02636

Plaintiffs,

vs.

THE SOUTH CAROLINA REPUBLICAN  
PARTY and VAUGHN PARFITT,

Defendants.

ORDER

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Jun 09 2020

SC Court of Appeals

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JAH

Plaintiffs, Jonathon Hill and Jonathan Hill For SC House District 8, filed a Motion to Reconsider, pursuant to Rule 59, SCRCP. I conducted a hearing on Plaintiffs Petition and Motion for a Preliminary Injunction and Complaint for Declaratory and Injunctive Relief on Friday, June 5, 2020. At the conclusion of the hearing, I read into the record and filed a written order denying Plaintiffs Petition for a Preliminary Injunction.

Plaintiffs contend that the Defendants are violating §§ 8-15-1314 and 8-13-16 of the SC Ethics Act by the giving by the SC Republican Party and the receiving by Vaughn Parfitt, Plaintiff Hill's opponent in the June 9, 2020 Republican Primary for S.C. House District 8, of contributions in excess of the \$100 and \$5,000 limits imposed by these two sections. I denied relief on the grounds that the ruling of U.S. District Court Judge Terry Wooten in *S.C. Citizens for Life v. Krawcheck*, 759 F.Supp.2d 708 (D.S.C. 2010), invalidated these limitations as they pertained to Defendants.

Plaintiffs draw my attention to the Order of Judge L. Casey Manning in *Richard A. Harpootlian v. South Carolina Senate Republican Caucus*, Case No. 2018-CP-40-05370 (Oct. 19, 2018). Plaintiffs contend that Judge Manning construed these sections of the SC Ethics Act to require the Defendant before him to adhere to the \$5,000 limit. Judge Manning issued a cease and desist order enjoining the Defendant from placing any further advertisements for Mr. Harpootlian's opponent in the General Election for State Senate District 20.

Judge Manning's Order deals with the same statutes at issue in this case. Judge Manning construed the federal court's order as invalidating the Ethics Act contributions limits only as they

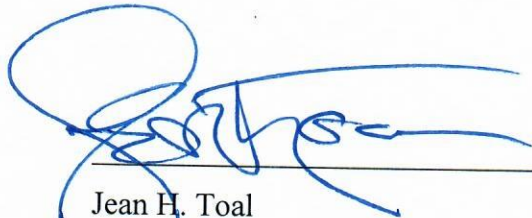
applied to advocacy committees such as SC Citizens for Life.

I respectfully disagree with Judge Manning's interpretation of *S.C. Citizens for Live v. Krawcheck, supra*. As I indicated in my order, Judge Wooten was asked to narrowly construe the statute and find its constitutional limits unconstitutional only as to advocacy committees like the plaintiff in his case. Judge Wooten specifically declined to so rule, as do I. This is an issue of novel impression for the South Carolina Supreme Court. It is there that this matter should be resolved.

The Motion to Reconsider is denied.

**IT IS SO ORDERED!**

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Jean H. Toal  
Chief Justice (Retired) serving as an Acting Circuit  
Court Judge

June 8, 2020  
Columbia, South Carolina