**THE STATE OF SOUTH CAROLINA**

In the Court of Appeals

---

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
J. Mark Hayes, II, Circuit Court Judge

---

RECEIVED
Sep 28 2020
SC Court of Appeals

Appellate Case No. 2020-000619

Teresa Parler, derivatively on behalf of SCANA Corporation,

*Plaintiff,*

v.

Kevin Marsh, Gregory Aliff, James Bennett, John Cecil, Sharon Decker, Maybank Hagood, Lynne Miller, James Roquemore, Maceo Sloan, Alfredo Trujillo, Jimmy Addison, and Steven Byrne,

*Defendents*,

and

SCANA Corporation,

*Nominal Defendant*.

Of Whom:

Nominal Defendant SCANA Corporation and Defendants Kevin Marsh, Gregory Aliff, James Bennett, John Cecil, Sharon Decker, Maybank Hagood, Lynne Miller, James Roquemore, Maceo Sloan, Alfredo Trujillo, Jimmy Addison, and Steven Byrne are

*Appellants*,

And

Plaintiff Teresa Parler, derivatively on behalf of SCANA Corporation, is

*Respondent*.

---

# RESPONDENT'S RETURN TO PETITION FOR REHEARING

---

Mark D. Chappell
Graham L. Newman

Chappell, Smith & Arden, P.A.
2801 Devine Street, Suite 300
Columbia, South Carolina 29205
(803) 929-3600
(803) 929-3604 (facsimile)

Lawrence P. Eagel (pro hac vice admission)
Melissa A. Fortunato (pro hac vice admission)
BRAGAR EAGEL & SQUIRE, P.C.
885 Third Avenue, Suite 3040
New York, New York 10022
(212) 308-5858
(212) 486-0462 (facsimile)

ATTORNEYS FOR RESPONDENT

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**



**Statutes**



**Other Authorities**

## INTRODUCTION

The question before the Court is whether the "nature and effect" of the trial court's order denying the Appellants' Rule 12(c) motion for judgment on the pleadings is sufficiently distinct to except it from this Court's holding that "the denial of a motion for judgment on the pleadings is not directly appealable under S.C. Code Ann. § 14–3–330 (1976), even if it raises only a question of law." Appellate Order citing Rose v. Thrash, 291 S.C. 459, 459, 354 S.E.2d 378, 378 (1987). Defendants implore the Court to examine the "*substance* of the appealed order—rather than its *form*." (Petition at 1) (emphasis in original).

The "substance" of the appealed order declined to dismiss Plaintiff-Respondent Teresa Parler's ("Parler") derivative complaint on the basis that she lacked standing to maintain the action. Appellants argued, unsuccessfully, that, pursuant to the "continuous ownership rule," the merger of SCANA Corp. ("SCANA") and Dominion Energy, Inc. ("Dominion") (the terms of which converted Parler's SCANA stock into Dominion stock) divested Parler of standing to represent SCANA under Rule 23(b)(1), SCRCP. (Order Granting Motion to Intervene and Denying Motion to Dismiss ("Trial Court Order") at 3) The trial court found the application of the "continuous ownership rule" to the present set of facts to be "novel" and ultimately ruled:

> In light of the admitted factual allegations from the Complaint, the reasonable inferences from these facts, the allegations that the merger and accompanying conversion of stock were orchestrated by the board of directors in an effort to avoid accountability, and the information, although limited at this juncture, that supports those allegations related to the merger, South Carolina jurisprudence and the Johnson v. Baldwin rule, will not terminate the present litigation.

(Trial Court Order at 8) The trial court then ordered the case to proceed with discovery.

"As a general rule, only final judgments are appealable." Ex parte Wilson, 367 S.C. 7, 12, 625 S.E.2d 205, 208 (2005), citing Culbertson v. Clemens, 322 S.C. 20, 23, 471 S.E.2d 163, 164 (1996). "Any judgment or decree, leaving some further act to be done by the court before the rights

of the parties are determined, is interlocutory and not final." Ex parte Wilson at 12, 625 S.E.2d at 208, citing Mid–State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 336, 426 S.E.2d 777, 780 (1993). However, "there are certain interlocutory orders that are immediately appealable. . . . [T]he immediate appealability of an interlocutory order depends on whether the order falls within one of the several categories of appealable judgments, decrees, or orders listed in section 14-3-330." J. Toal, A. Walker, M. Baker, Appellate Practice in South Carolina (3d ed.) at 143. This is not such a case.

Appellants claim the trial court's decision is immediately appealable because it harms them in three ways: denying SCANA control of the litigation; denying SCANA the right to counsel of its choosing; and denying SCANA the right to choose defendants. These results, Appellants contend, bring the trial court's order within the purview of both Section 14-3-330(1) (orders "involving the merits") and Section 14-3-330(2) (orders "affecting a substantial right").

Appellants' argument fails for at least three reasons. First, the rights allegedly impaired do not belong to Appellants and thus can create no basis for appealability. Second, the right SCANA does possess—to challenge the adequacy of Parler's representation of the corporation—does not give rise to an appealable interlocutory order. And third, the nature and the substance of the Trial Court Order underlines the importance of this case proceeding to fact discovery prior to appeal. Appellants' parade of horribles (Petition at 2-3) is an attempt to distract the Court from the issue at hand, an improper interlocutory appeal.

## ARGUMENT

### I. The rights asserted by Appellants do not belong to them and thus form no basis for appealability

Appellants assert that SCANA possesses the "substantial rights" of controlling the litigation, choosing its counsel, and choosing the defendants in this litigation.[1] The unique relationship between the derivative plaintiff and the nominal defendant under Rule 23(b)(1), SRCP, however, defeats this assertion. The rule describes a derivative action as one "brought by one or more shareholders or members to enforce a right of a corporation . . . ." Rule 23(b)(1), SCRCP. This representative relationship gives rise to the "rule of corporate neutrality."

> [W]here directors are charged with misconduct in office and are sought to be held accountable, the corporation is required to take and maintain a wholly neutral position, taking sides neither with the complainant nor with the defending director.

Swenson v. Thibaut, 39 N.C. App. 77, 99, 250 S.E.2d 279, 293–94 (N.C. Ct. App. 1978), quoting Solimine v. Hollander, 129 N.J.Eq. 264, 19 A.2d 344 (N.J. Ch. 1941).[2] In other words, the right to control the litigation, to choose counsel, and to choose the defendants to be sued lie with Parler—not with SCANA.[3]

---

[1] Appellants do not assert that the individual director/officer defendants possess any such rights, and they do not. Appellants suggest that Dominion may, but Dominion is not a party to this litigation. Because "[o]nly a party aggrieved by an order, judgment, sentence or decision may appeal," Rule 201(b), SCACR, Appellants have no ability to invoke the rights of a third party.

[2] Swenson sets forth a lengthy string citation of supporting authority. Id. at 99, 250 S.E.2d 279, 294 (1978). For a more recent analysis, please see D. DeMott, Shareholder Derivative Actions: Law and Practice (2017-18 ed.) §1:1 at 2-3. See also Krakow Bus. Park v. Locke Lord, LLP, 135 F. Supp. 3d 770, 791 (N.D. Ill. 2015), aff'd sub nom. Domanus v. Locke Lord LLP, 847 F.3d 469 (7th Cir. 2017) ("In a shareholder's derivative suit, the corporation generally cannot participate in the merits of the defense."); Sobba v. Elmen, 462 F.Supp.2d 944, 947-948 (E.D. Ark. 2006) ("[T]he general rule for corporate participation in a derivative action is that '[u]nless the derivative action threatens rather than advances corporate interests, [the corporation] cannot participate in the defense on the merits.'").

[3] "Absent extraordinary circumstances, the lead plaintiff in a derivative suit selects lead counsel." D. DeMott, Shareholder Derivative Actions: Law and Practice (2017-18 ed.) § 6:2 at 856.

But this does not mean that Parler possesses unfettered control over the corporation or the litigation. The right that SCANA *does* possess is set forth in Rule 23(b)(1): "The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association." Rule 23(b)(1), SCRCP.

> This is not to say that in all cases and in all circumstances a corporation is powerless to resist a derivative action. In some situations, the corporation in whose interest the derivative action is purportedly brought will have interests adverse to those of the nominal plaintiffs bringing the action derivatively, and will of necessity be more than a nominal defendant. . . . Additionally, certain defenses which are properly asserted before trial on the merits of the action are peculiar to the corporation alone, and may be properly raised only by the nominal defendant who, for purposes of those matters, ceases to be a nominal defendant and becomes an actual party defendant. These defenses would include the lack of standing of the plaintiffs to sue derivatively for reasons of insufficient representation of shareholders and a failure on plaintiffs' part to make a demand upon the board of directors.

Swenson at 100, 250 S.E.2d at 294.

Of course, Appellants have moved to dismiss Parler's complaint for a lack of standing, and they were entitled to do so. But the right to challenge a plaintiff's lack of standing differs markedly from the right to control the litigation, the right to choose one's counsel, and the right to choose defendants. Thus, the question before the Court turns to whether the denial of Appellants' motion pertaining to Parler's standing gives rise to appellate jurisdiction pursuant to S.C. Code Ann. § 14-3-330. It does not.

## II. The denial of a Rule 12(c) motion for judgment on the pleadings on the basis of standing does not give rise to appellate jurisdiction under S.C. Code Ann. § 14-3-330

Section 14-3-330 provides Appellants with two potential arguments that the Trial Court Order is immediately appealable, namely that it "involves the merits" of the case or "affects a

substantial right." The Trial Court Order does neither and therefore this appeal should be dismissed.

**A. "Involving the Merits"**

Section 14-3-330(1) provides for the appeal of "[a]ny intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas . . . ." S.C. Code Ann. § 14-3-330(1). Interpreting this subsection, the Supreme Court defines an order which "involves the merits" as "an order which 'must finally determine some substantial matter forming the whole or a part of some cause of action or defense . . . .'" Mid-State Distributors, Inc. at 334, 426 S.E.2d at 780, quoting Jefferson v. Gene's Used Cars, Inc., 295 S.C. 317, 318, 368 S.E.2d 456, 456 (1988); Knowles v. Standard Savings & Loan Ass'n, 274 S.C. 58, 59, 261 S.E.2d 49, 49 (1979).[4] Mid-State Distributors spoke directly of orders denying Rule 12 motions, such as that in this case, noting that "[a] party who is denied a dismissal under Rule 12 has forfeited nothing, they must simply continue to trial." Id. at 334-335, 426 S.E.2d at 780.

This is true here. The trial court's order merely declined to find that Parler's standing had been stripped by the SCANA/Dominion merger. All defenses remain open to Appellants. In fact, after the completion of discovery, should Appellants believe the facts of the case support the equitable application of the "continuous ownership rule," they would be free to reassert their position in a motion for summary judgment.

**B. "Affecting a Substantial Right"**

Section 14-3-330(2) sets forth three circumstances in which an order is deemed to affect a "substantial right" sufficient to give rise to appellate jurisdiction, but Appellants only argue that

[4] Chief Justice Toal later noted that in Mid-State Distributors "the Supreme Court greatly narrowed the definition of 'involving the merits'." J. Toal, A. Walker, and M. Baker, Appellate Practice in South Carolina (3d ed.) at 144.

subsection (2)(a) applies, that the Trial Court Order "[i]n effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." S.C. Code Ann. § 14-3-330(2)(a). However, the Trial Court Order denying dismissal under Rule 12(c) has neither "determined the action" nor "discontinued the action," and therefore is not appealable.

"Generally, this subsection has only been used when the trial order affected the 'mode of trial' because if those orders are not immediately appealed, no appellate review is available to correct any error." Breland v. Love Chevrolet Olds, Inc., 339 S.C. 89, 93, 529 S.E.2d 11, 13 (2000). In Breland, the Supreme Court dismissed the interlocutory order denying a change of venue, finding:

> Already the progress of this case has been delayed several years over the issue of venue. Requiring a defendant to wait until after trial to appeal the issue of proper venue is the most appropriate course to take where any error in that decision will not prejudice the defendant anymore than other interlocutory orders which, if in error, would require a new trial.

Breland at 94, 529 S.E.2d at 14 (2000). Here, the facts are substantially similar. This action is now over three years old. Discovery has just finally begun, despite the substantial age of the case and the seriousness of the allegations. Permitting appeal on a question of standing will only succeed in delaying this matter further. In contrast, the question of Parler's standing remains appealable in the face of any potential judgment that might be rendered in the future.

Appellants insist, however, that their rights cannot be vindicated by any post-judgment appeal because SCANA "may be on the hook for the cost of defending against [the derivative claims]." (Petition at 9) As an initial matter, Breland specifically held that anticipated litigation expenses are insufficient to justify interlocutory appeal. Id. at 94, 529 S.E.2d at 14 ("Since any trial court error concerning venue will be correctable on appeal, the only damage a losing party will sustain is the expense of litigating in an improper county.") Beyond this point of law, however,

Appellants have already revealed that Dominion is both indemnifying Appellants in this litigation and paying the costs of litigation.[5]

> Trial Court: Then is it not a proper question for me to ask then, is Dominion indemnifying these people, the original people that are listed as the Defendants in the lawsuit present before the Court? Is Dominion indemnifying these people in these other litigations?
>
> Appellant's Counsel: "Yes, Your Honor. Dominion is indemnifying these Defendants in those cases I just described."

(**Exhibit A:** November 19, 2019 Hearing Transcript at 17, ll. 3-10)

> Appellants' Counsel: "Because Dominion is going to be—at this time, Dominion is responsible for paying the cost of the defense of this lawsuit."

(**Exhibit A:** November 19, 2019 Hearing Transcript at 17, ll. 14-16) Thus, the purported financial threat to SCANA by the prospect of continuing litigation is illusory.

## III. A case-specific analysis of the questions at hand supports factual development prior to appeal

An analysis of the "nature and effect" of the trial court's order declining to apply the "continuous ownership rule" reveals that dismissing this appeal would promote both judicial economy and the policy underlying the consideration of novel questions of law. Our courts recognize that improper interlocutory appeals harm judicial economy. "The basic policy behind denying immediate review of pretrial motions is avoidance of piecemeal litigation where the rights of the parties have not been substantially impacted." Breland at 94, 529 S.E.2d at 13, citing Knowles v. Standard Sav. and Loan Ass'n, 274 S.C. 58, 261 S.E.2d 49 (1979). At the same time, "[a]s a general rule, important questions of novel impression should not be decided on a Rule

[5] Dominion's indemnification of Appellants was revealed in the Articles of Merger attached to the Appellants' Rule 12(c) motion. The Trial Court Order denying that motion addressed the indemnification at length, noting "this provision from the merger agreement can be read as the defendants having anticipated the claims of prior shareholders because they created a provision in the merger agreement addressing the payment of them." (Trial Court Order at 13, n. 9)

12(b)(6), SCRCP, motion to dismiss. Instead, a novel issue is best decided in light of the testimony to be adduced at trial."[6] Evans v. State, 344 S.C. 60, 68, 543 S.E.2d 547, 551 (2001), citing Tyler v. Macks Stores of South Carolina, Inc., 275 S.C. 456, 272 S.E.2d 633 (1980). Both policies are implicated here.

The trial court recognized that application of the "continuous ownership rule" in the face of the involuntary divestment of stock ownership and potential self-dealing by corporate management presented a novel question under South Carolina law.

> The answer to the question of how the Johnson v. Baldwin "continuous ownership" rule will apply to the factual scenario presented by the present litigation can be considered novel in South Carolina. Important questions of novel impression should not be decided on a motion to dismiss. Therefore, the better and proper approach, and the one adopted by this Court, is to deny the defendants' motion to dismiss.

(Trial Court Order at 8, n.8) While the trial court did not have the advantage of documentation or testimony produced in discovery, it did note the "likelihood of the truth of the matters asserted in Parler's arguments" in holding that the case should proceed with discovery rather than enforcing a strict and rigid application of the "continuous ownership rule." Trial Court Order at 13.

---

[6] Appellants cite State v. Register, 308 S.C. 534, 419 S.E.2d 771 (1992) for the prospect that the novelty of the question at hand justifies interlocutory appeal. (Petition at 9) In that case, the Supreme Court agreed to hear the appeal of a 15 year-old girl who had been ordered by the trial court to provide samples of her blood, saliva, and pubic hair in the course of a murder investigation. The minor then petitioned the Supreme Court for a Writ of Supersedeas. The Court noted "[o]rdinarily, this type of order is not directly appealable," but went on to add "[h]owever, because we are dealing with a novel issue and the rights of a minor, we have chosen to address the merits of the petition." Id. at 536, n.1, 419 S.E.2d at 772.

The circumstances of this case are quite different. Appellants are not before the court on a petition for an extraordinary writ, this case does not involve the bodily integrity of a child, and (thankfully) the factual backdrop of this case does not involve a murder investigation. Therefore, to the extent that State v. Register established a common law "novelty and significance" basis for appellate jurisdiction, it would not apply to this case.

Publicly-revealed developments since this appeal was filed demonstrate how right the trial court was in desiring full discovery. On June 8, 2020—the date that Appellants filed their initial brief in this matter—Appellant Stephen Byrne entered a guilty plea in which he agreed to "plead guilty to an Information charging conspiracy to commit federal mail and wire fraud in violation of Title 18, United States Code, Section 371." (**Exhibit B:** Byrne Plea Agreement at 1) The Information to which Byrne pleaded guilty contains explosive allegations.

> The defendant, STEPHEN ANDREW BYRNE, along with others known and unknown to the United States Attorney, consisting of former SCANA Corporation ("SCANA") executives, employees, and the lawyers who advised them, led a failed effort to construct two nuclear power generators in Fairfield County, South Carolina. As construction problems mounted, costs rose, and schedules slipped, the defendant, STEPHEN ANDREW BYRNE, and others, hid the true state of the project. Through intentional and material misrepresentations and omissions, the defendant, STEPHEN ANDREW BYRNE, deceived regulators and customers in order to maintain financing for the project and to financially benefit SCANA. The members of the conspiracy's actions and the associated cover-up allowed the project to continue until the contractor went bankrupt and the project was abandoned, resulting in billions of dollars of loss.

(**Exhibit C:** Byrne Criminal Information at ¶1) Beyond Byrne's criminal culpability and that of his thus far unnamed co-conspirators, these are the central allegations of this derivative action in which Parler seeks to hold Appellants accountable for the extraordinary damage inflicted upon SCANA.

If our appellate courts are to consider whether to apply the "continuous ownership rule" or whether to adopt a modification of that rule, they will be much better positioned to consider the equities with a fully developed factual scenario. As the Byrne guilty plea shows, the actions within SCANA pertaining to the failed nuclear project rose far beyond mere corporate misconduct.

## CONCLUSION

For the reasons stated above, the trial court's order is not immediately appealable under S.C. Code Ann. § 14-3-330. Appellants' petition for rehearing should be denied.

Respectfully submitted,

s/ Graham L. Newman
Mark D. Chappell
Graham L. Newman
CHAPPELL, SMITH & ARDEN, P.A.
2801 Devine Street, Suite 300
Columbia, South Carolina 29205
(803) 929-3600
(803) 929-3604 (facsimile)

Lawrence P. Eagel (pro hac vice admission)
Melissa A. Fortunato (pro hac vice admission)
BRAGAR EAGEL & SQUIRE, P.C.
885 Third Avenue, Suite 3040
New York, New York 10022
(212) 308-5858
(212) 486-0462 (facsimile)

ATTORNEYS FOR RESPONDENT

Dated: September 28, 2020

**THE STATE OF SOUTH CAROLINA**

In the Court of Appeals

---

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
J. Mark Hayes, II, Circuit Court Judge

---

Appellate Case No. 2020-000619



Teresa Parler, derivatively on behalf of SCANA Corporation,

*Plaintiff,*

v.

Kevin Marsh, Gregory Aliff, James Bennett, John Cecil, Sharon Decker, Maybank Hagood, Lynne Miller, James Roquemore, Maceo Sloan, Alfredo Trujillo, Jimmy Addison, and Steven Byrne,

*Defendents*,

and

SCANA Corporation,

*Nominal Defendant*.

Of Whom:

Nominal Defendant SCANA Corporation and Defendants Kevin Marsh, Gregory Aliff, James Bennett, John Cecil, Sharon Decker, Maybank Hagood, Lynne Miller, James Roquemore, Maceo Sloan, Alfredo Trujillo, Jimmy Addison, and Steven Byrne are

*Appellants*,

And

Plaintiff Teresa Parler, derivatively on behalf of SCANA Corporation, is

*Respondent*.

---

CERTIFICATE OF SERVICE

---

I, Graham L. Newman, an attorney practicing with Chappell, Smith & Arden, P.A., certify that on this day, pursuant to Section (g)(3) of the Supreme Court's Order in Appellate Case No.

2020-000447 (May 29, 2020), I served this *Return to Petition for Rehearing* on the following counsel of record using the primary email addresses listed in the Attorney Information System (if applicable):

John A. Massalon
Wills Massalon & Allen, LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net

Counsel for Defendants-Petitioners
Gregory E. Aliff; James Bennett;
John F.A.V. Cecil; Sharon A. Decker;
D. Maybank Hagood; Lynne M.
Miller; James W. Roquemore;
Maceo K. Sloan; and Alfredo Trujillo

William A. Coates
Roe Cassidy Coates & Price P.A.
1052 North Church Street
Post Office Box 10529
Greenville, South Carolina 29603
(864) 349-2600
wac@roecassidy.com

John A. Jordak, Jr. (pro hac vice)
Meredith J. Kingsley (pro hac vice)
Alston & Bird
1201 West Peachtree Street
Atlanta, Georgia 30309
(404) 881-7000
john.jordak@alston.com
meredith.kingsley@alston.com

Counsel for Defendant-Petitioner
Jimmy Addison

Steven J. Pugh
Benjamin P. Carlton
Richardson Plowden
& Robinson, P.A.
Post Office Drawer 7788 (29202)
1900 Barnwell Street
Columbia, South Carolina 29201

(803) 771-4400
spugh@richardsonplowden.com
bcarlton@richardsonplowden.com

I.S. Leevy Johnson
George C. Johnson
Johnson Toal & Battiste, P.A.
1615 Barnwell Street
Columbia, South Carolina 29201
(803) 252-9700
islj@jtbpa.com
George@jtbpa.com

Brian D. Schmalzbach (pro hac vice)
Brian E. Pumphrey (pro hac vice pending)
McGuireWoods LLP
800 East Canal Street
Richmond, VA 23219
(804) 775-7745
bschmalzbach@mcguirewoods.com
bpumphrey@mcguirewoods.com

Counsel for Nominal Defendant-Petitioner SCANA Corporation

J. Brady Hair
Derk Van Raalte
Law Offices of J. Brady Hair
2500 City Hall Lane
Post Office Box 61896
North Charleston, SC 29419
(843) 572-8700
Brady@bradyhair.com
Derk@bradyhair.com

Anne M. Tompkins (pro hac vice)
Jonathan M. Watkins (pro hac vice pending)
Aaron C. Lang (pro hac vice pending)
Cadwalader, Wickersham & Taft LLP
227 West Trade Street
Charlotte, NC 28202
(704) 348-5222
Anne.Tompkins@cwt.com
Jonathan.Watkins@cwt.com

Aaron.Lang@cwt.com

Counsel for Defendant-Petitioner
Kevin B. Marsh

James M. Griffin
Margaret N. Fox
Griffin Davis
4408 Forest Drive, Suite 300
Columbia, SC 29206
(803) 744-0800
jgriffin@griffindavislaw.com
mfox@griffindavislaw.com

James F. Wyatt, III (pro hac vice)
Robert A. Blake, Jr. (pro hac vice)
Wyatt & Blake, LLP
435 East Morehead Street
Charlotte, NC 28202
(704) 331-0767
jwyatt@wyattlaw.net
rblake@wyattlaw.net

Counsel for Defendant-Petitioner
Stephen A. Byrne

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

s/ Graham L. Newman
Graham L. Newman
Chappell, Smith & Arden, P.A.
2801 Devine Street, Suite 300
Columbia, South Carolina 29205
(803) 929-3600
gnewman@csa-law.com

Dated: September 28, 2020

## Graham Newman

**From:** Graham Newman
**Sent:** Monday, September 28, 2020 6:48 PM
**To:** Ben Carlton; Mark Chappell; eagel@bespc.com; fortunato@bespc.com
**Cc:** IS Leevy Johnson (islj@jtbpa.com); George Johnson (GEORGE@jtbpa.com); Steve Pugh; Charity McQueen; Carmen Ganjehsani; jmassalon@wmalawfirm.net; Bill Coates (wac@roecassidy.com); john.jordak@alston.com; meredith.kingsley@alston.com; Schmalzbach, Brian D.; Pumphrey, Brian E.; Brady@bradyhair.com; Derk@bradyhair.com; Anne.Tompkins@cwt.com; Jonathan.Watkins@cwt.com; Aaron.Lang@cwt.com; jgriffin@griffindavislaw.com; mfox@griffindavislaw.com; James Wyatt (JWyatt@wyattlaw.net); rblake@wyattlaw.net; scott.greene@bclplaw.com; john.bielema@bclplaw.com; michael.carey@bclplaw.com; barbara.smith@bclplaw.com
**Subject:** RE: Parler v. Marsh et al. - 2017-CP-40-00621; Appellate Case No. 2020-000619 (Court of Appeals) - Appellants' Return to MTD & Motion to Address Appellate Jurisdiction in the Parties' SCACR 208 Briefs
**Attachments:** Exhibit A.pdf; Exhibit B.pdf; Exhibit C.pdf; Return to Petition for Rehearing.pdf

Colleagues,

I hope this email finds you and your loved ones well during this time of Covid-19. Pursuant to the Supreme Court's order of May 29, 2020, I am serving the Respondent's Return to the Petition for Rehearing upon you via this email.

The file is somewhat large. If I receive a response from your email server that the email is being rejected I will follow up with a Dropbox link.

Graham Newman